

CRIMINAL REVISION.

Before *Cuming J.*

KUMUDCHANDRA NANDI

v.

EMPEROR.*

1930

Nov. 19.

*Notice—Period of notice under s. 87, Indian Companies Act, what is—
Indian Companies Act (VII of 1913), s. 87.*

No period is prescribed by the Indian Companies Act, during which notice of any change among directors of a registered company, as contemplated by section 87 of the Act, should be filed with the registrar when one director retires. Presumably, the company is entitled to the time until a new director is appointed. It cannot be said to be in default from the moment the retiring director resigns.

The provision that notices of change should be given within 30 days mentioned in the footnote of form No. XXVI of Appendix A of the Act is not mandatory.

CRIMINAL REVISION.

B. C. Chatterjee and Shyamaprasanna Deb for
the petitioners.

CUMING J. The two petitioners are managing director and secretary respectively of a certain company and they have been prosecuted and fined Re. 1 each for neglecting to file with the registrar a notice of the change among its directors in proper time. It would appear that one of the directors resigned his post on the 6th February, 1930. This resignation and the name of the new director was notified to the Registrar of the Joint Stock Companies on the 8th May, 1930. Apparently the prosecution was lodged at the instance of the retiring director of the company. Section 87, under which the two petitioners have been convicted and fined, reads as follows:—

(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with

*Criminal Revision, No. 841 of 1930, against the order of M. A. Majid, Deputy Magistrate of Brahmanberiah, dated June 10, 1930.

the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

(2) If default is made in complying with this section, the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

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It is to be noticed that no time is prescribed within which the notice is to be given to the registrar. The only indication of any time being prescribed is to be found in the footnote of form No. XXVI, Appendix A of the Act. In that form, there is a footnote that notices of change should be given within 30 days from the date of occurrence. It is quite obvious, however, that this provision is not mandatory, the expression used not being "must" but "should." Therefore, as far as I can see, no period whatever has been prescribed within which such notice must be given and it is extremely difficult, therefore, to see when a company is to be considered as in default for not complying with the section. I presume, the company is entitled to the time until a new director has been appointed in the place of the retiring director to give notice to the registrar. In the absence of any period being prescribed, within which this notice must be given, it is difficult to say that the petitioners have committed any offence under section 87 of the Indian Companies Act. Obviously, it cannot be said that the company was in default from the very moment, when the retiring director resigned. In the circumstances, it does not seem to me clear that the petitioners have committed any offence under section 87 of the Indian Companies Act. The convictions and sentences are, therefore, set aside and the petitioners are acquitted. The fines, if paid, must be refunded.

Rule absolute.

A. C. R. C.