## ORIGINAL CIVIL.

*Before McNair J.*

*In re* ARYYA INSURANCE COMPANY, LIMITED.

1935
Dec. 9.

*Company—Registered Office, Situation of—Indian Companies Act (VII of 1913), ss. 6, 10, 12, 72.*

The statement in the memorandum of association of a company that its registered office would be situated in a particular town is not a condition in the constitution of the company. The company can, by resolution and upon giving notice as provided by the Indian Companies Act, alter the situation of its registered office from one town to another in the same province.

*Obiter.* It is very doubtful whether the Judge dealing with company matters has jurisdiction to entertain an application for rectification of the register kept by the Registrar of Joint Stock Companies.

APPLICATION by the company.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

*S. C. Bose, A. Sen* and *R. Choudhuri* for the applicant.

*S. M. Bose*, Standing Counsel, *N. C. Chatterjee* and *J. C. Moitra* opposed.

MCNAIR J. This is an application by the Aryya Insurance Company, Limited, that the register of the Registrar of Joint Stock Companies, Assam, be rectified and that the registered office of the insurance company be recorded as being in the town of Silchar as provided in the memorandum of association of the company. The petition is verified by the officiating secretary of the Aryya Swamic, Limited, who is the secretary of the insurance company.

Apparently, there are two factions in the company directly opposed to one another and considerable litigation has taken place in Silchar on matters connected with this company.

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Clause 2 of the memorandum of association is as follows:—

> The registered office of the company will be situated in the town of Silchar. The company can open branch offices anywhere.

At a meeting held on July 14, 1935, in the town of Sylhet, a resolution was passed that the registered office of the Aryya Insurance Company, Limited, be removed to Sylhet. The petitioner contends that that resolution was illegal, inasmuch as it purported to effect a change in the memorandum of association of the company. Various other contentions had been raised as to the legality of the resolutions, but the contentions regarding those matters have not been pressed by counsel on either side, and the two questions which have been argued before me are: (i) whether this Court has jurisdiction to deal with this matter on an application under the Companies Act, and, (ii) whether it is within the powers of the company to alter its memorandum of association, it being contended that the clause defining the location of the registered office is a condition and unalterable.

Dealing first with the second contention, s. 6 of the Indian Companies Act provides for certain facts to be stated in the memorandum of association of a company. The memorandum must state (i) the name of the company, with the word "Limited" added, (ii) the province in which the registered office is to be situated, (iii) the objects of the company, (iv) that the liability of the members is limited, and (v) the amount of share capital and its mode of division into shares.

Section 10 provides:—

> A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

The decision of the question before me depends largely on whether the alteration which purports to have been made is or is not a condition within the meaning of s. 10. Both sides rely on the case of

*Ashbury* v. *Watson* (1) where Lord Esher M. R. said :—

"It is admitted that the resolutions made an alteration in a condition "contained in the memorandum of association, but it is said that the altera- "tion was not as to any of the matters mentioned in s. 8" (which corresponds to s. 6 of the Indian Companies Act) "and that therefore it "was not an alteration of a condition in the memorandum of association "within the meaning of the statute, and it was argued that the meaning of "s. 12 is only that those conditions in the memorandum of association "as required by s. 8 could not be altered, and that other conditions in "the memorandum of association could be altered, if altered with the assent "of every shareholder of the company."

No question arises here with regard to the assent of the shareholders, but a similar argument has been put forward on the relevant sections of the Indian Companies Act which correspond closely to the terms of the English Act.

In *Ashbury* v. *Watson* (2), Lord Esher says :—

Now anything which is laid down as a rule in the memorandum of association must, I think, be taken to be one of the conditions on which the company is established. Then the 12th section says that "no alteration shall be made by any company."..... Therefore it seems difficult to me to imagine a case in which any stipulation in the memorandum of association can be altered even by the whole company, save such as is expressly mentioned in the 12th section.

Reliance is placed on these words of Lord Esher in support of the contention that anything inserted in the memorandum of the company becomes a condition and as such unalterable except under the provisions of the Companies Act.

Section 12 of the Indian Act is the section which empowers a company to alter its memorandum and provides, if I may so call them, the exceptions to the rule laid down in section 10. Section 12 provides that, subject to the provisions of this Act, a company may alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company, so far as may be required for certain purposes which are set out in the clauses immediately following.

(1) (1885) 30 Ch. D. 376, 380. (2) (1885) 30 Ch. D. 376, 381.

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In support of his contention, Mr. S. C. Bose, for the petitioner, has referred me to page 28 of the 14th edition of Palmer's Company Law. The learned author is there dealing with the conditions and provisions generally inserted in the memorandum of association. He refers to the main provisions required by the English Act to be stated in the memorandum, and continues:—

> .....but occasionally additional provisions are inserted, clauses, for example, defining the rights attached, as abovementioned, to different classes of shares, rights as regards dividend, voting, and participation in assets on a winding up, and various other matters. There is nothing illegal in the insertion in the memorandum of such additional provisions, but it must be borne in mind that, if inserted without qualification, they become conditions contained in the company's memorandum within the meaning of s. 4 of the Act of 1929, and the rule is that such a condition cannot be altered, except under a scheme of arrangement sanctioned by the Court, and that nothing can be done in contravention thereof—a conclusion of law which may prove embarrassing to the company.

In support of that statement the learned author refers to the case of *Ashbury* v. *Watson* (1).

It is noticeable that s. 6 of the Indian Companies Act specifically provides that the memorandum must state the province in which the registered office of the company is to be situate, but there is no specific provision as to the town where the registered office may be located. The reason, no doubt, is because the various provinces have their separate rules, and it is essential that the public should know the particular province and the rules under which the company will be governed.

There can be no doubt that had the province been changed that would have been permissible, provided the provisions of s. 12 of the Act had been complied with. It is contended by the learned Standing Counsel, who opposes this application, that there is no prohibition with regard to the alteration of the town where the registered office is situated. It is true, he argues, that a clause setting out the location of the registered office has been inserted in the

(1) (1885) 30 Ch. D. 376.

memorandum of association, but it does not thereby become an essential condition. It is merely a provision with regard to management. He relies on the judgment of Fry L. J. in the same case of *Ashbury* v. *Watson* (1).

Dealing with the 12th section of the English Companies Act of 1882, which corresponds with s. 10 of the Indian Companies Act, Fry L. J. says:—

> Now that section, it must be borne in mind, does not refer to necessars conditions or to essential conditions, and the 8th section, though it specifiey certain conditions, does not say that no other conditions shall be in the memorandum of association. I am not prepared to say that there might not be inserted in the memorandum of association details with regard to the management of the company which would not be conditions within the meaning of the 12th section, but I think that section does apply to all conditions in the memorandum of association, which may fairly be described as essentia parts of the constitution of the company, and upon which it was establishedl

At the conclusion of his judgment Fry L. J. says:—

> By essential condition I mean that which in fact is part of the essence of the constitution of the company.

It is contended by the learned Standing Counsel that the insertion of the name of the registered office is a detail with regard to the management of the company, which is not a condition within the meaning of s. 10 of the Indian Act, and he relies on s. 72 of the Act, which is the first section in Part IV. Part IV of the Act is headed, "Management and Administration". Section 72 provides:—

> Every company shall have a registered office to which all communications and notices may be addressed.

It is contended that the registered office is therefore definitely considered by the Act itself as appertaining to the management and administration of the company.

(1) (1885) 30 Ch. D. 376, 384.

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This argument is also supported by a paragraph in the 14th Ed. of Palmer's Company Law :—

> The company's memorandum of association states (says the learned author) as we have seen, in what part of the United Kingdom the office of the proposed company is to be situate. This, once declared, becomes an unalterable condition of the company's constitution, which nothing short of an Act of Parliament can change. But though confined to that part of the United Kingdom—England, Scotland or Ireland—which it has chosen by its memorandum, the company may, subject to that limitation, fix its office anywhere it likes within the chosen area, and change it from time to time provided it gives notice of each change to the Registrar.

Similarly, in this country, the company's memorandum must state the province in which the office of the proposed company must be situate, but once that province has been declared, there appears to me to be no valid reason why the company should not fix its office anywhere it likes within that province, and change it from time to time, on giving notice.

It is stated that the reason why the town was mentioned here instead of the province was because, at the time this company was incorporated, the Act of 1882 was in force, under which it was not the province which had to be specified, but the place in which the registered office of the company would be situated.

In my view, the insertion of the name of the place in the memorandum of association of the company does not make it an unalterable condition of the company's constitution, and provided the alteration of the place has been made in the manner provided by the Act, such alteration is valid and binding on the company.

The other question, which has been raised, is as to the power of this Court to interfere. The petitioner contends, relying on s. 3 of the Companies Act, that the High Court is the Court which alone has power under the Indian Companies Act, but it is noteworthy that that section provides that the Local Government may empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court (that is to say, the High Court), and it seems clear that all that s. 3 is referring

to, is the exercise of the jurisdiction conferred by this Act, with reference, more particularly, to matters such as the winding up of companies. Those are matters which are essentially within the jurisdiction of the High Court and cannot be dealt with by the District Courts unless they have been specially empowered to do so by the Local Government.

It is admitted that there is no specific section of the Indian Companies Act which deals with the question now before this Court. There is no section, that is to say, which entitles this Court to direct the Registrar to rectify his register, and it is contended by the learned Standing Counsel that s. 45 of the Specific Relief Act is inapplicable, because there is another remedy which has already been followed, namely, to bring a suit for determination of this question. There is, in fact, a suit already on the file, at Silchar, for a declaration that the removal of the registered office is illegal.

In my view, the jurisdiction conferred on this Court, in company matters, is the jurisdiction to deal with matters provided for, by the Act, and it is very doubtful whether an application to rectify the register, for which no provision is made in the Act, can properly be brought before the Judge who is dealing with company matters. In view, however, of my finding on the other point this question need not be decided.

The application will be dismissed with costs. Certified for counsel.

*Application dismissed.*

Attorney for applicant: *P. C. Mallik.*

Attorney for respondent: *J. M. Choudhury.*

P. K. D.