granted probate of the will under which the right is claimed, or shall have granted Letters of Administration under section 180." The words, I think, are perfectly plain, and the intention of the Legislature is clear that the party claiming an interest under a will must prove the execution of the document and its terms by the particular procedure which has been laid down by the Legislature. *Lakshmamma* v. *Ratnamma*(1) supports this construction. It is not sufficient if the actual document be produced in the suit and the plaintiff prove it in the way in which ordinary documents are proved; that is what the plaintiff apparently sought to do in this case—to go into Court and to put the document in as an ordinary exhibit. The plaintiff claims as heir of a legatee, and is, therefore, under the section only in the position of legatee, and I hold that she must establish her title by production of the evidence required by the section, that is, a grant of Probate issued by a Court of competent Jurisdiction. On this ground the suit fails and must be dismissed with costs.

BAKEWELL, J.

N.R.

ORIGINAL CIVIL.

Before Mr. Justice Bakewell.

1915 September 29.

V. RAMASWAMI IYER (PLAINTIFF),

v.

THE MADRAS TIMES PRINTING AND PUBLISHING COMPANY, LIMITED (DEFENDANTS).*

Company—Directors—Appointment of a director as officer under the company—Personal interest of a director clashing with his duty to shareholders—Meeting of directors—No right for such director to vote on his appointment—Invalidity of appointment if no quorum of directors without counting him—Duties of an editor of a newspaper—Incapacity to perform—Propriety of dismissal for incapacity.

The directors of a company are agents of the company and trustees for the shareholders of the powers committed to them. A director who has an interest in a matter which is the subject of discussion of a meeting of the directors, in which his interests conflict with his duty to the shareholders is incompetent to vote.

Hence even when the articles of association of a company permit a director to hold any other office under the company in conjunction with his directorship

(1) (1915) I.L.R., 38 Mad., 474.

* Civil Suit No. 71 of 1914.

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and on such remuneration as the directors may fix, yet the appointment of a director to any other office at a meeting of the directors at which the quorum was made up only by counting him also as one present, is not a valid appointment as the company did not have the unbiassed and independent advice of at least such a number of the directors as would without him have made a quorum.

A person appointed as co-editor of a newspaper should put forth or publish the paper and exercise a general supervision over the matter which is written for the paper or extracted as news. For this, certain literary and business qualifications are necessary. If he is absolutely incapable of performing these duties which the company has a right to expect of him, his dismissal on that account from co-editorship is right.

THE facts are given in the judgment.

C. P. Ramaswami Ayyar, C. K. Mahadeva Ayyar, V. V. Srinivasa Ayyangar and *A. Duraiswami Ayyar* for the plaintiff.

E. R. Osborne and *R. N. Ayyangar* for the first defendant.

A. Suryanarayanayya for the second defendant.

T. Narasimha Ayyangar for the third defendant.

BAKEWELL, J. JUDGMENT.—In December 1912, the plaintiff and two other persons were directors of the defendant company, which carries on the business of a newspaper called the "Madras Times." The plaintiff had been appointed managing director of the company at a meeting of himself and another director, on the 7th January 1912. At a meeting of the same two directors, on the 31st December 1912, it was resolved that the plaintiff in addition to his duties as managing director should be co-editor of the "Madras Times." At a subsequent meeting of the same two directors held on the 28th February 1913, it was resolved that the plaintiff should receive, with effect from the 31st December 1912, a sum of Rs. 250 per mensem, for his duties as co-editor of the "Madras Times," and that the above resolution should be in operation for a period of ten years. On the 19th October 1913 a resolution was passed by the same two directors and the third director of the company that the plaintiff should be given, with effect from the 15th October 1913, a carriage allowance of Rs. 100 as managing director and co-editor. The last resolution was not passed at a meeting, but, under a special power in the articles of association, was circulated to the directors and signed by them.

It has been argued that this last resolution is a confirmation and ratification of the previous resolution passed by only two directors, but the resolution does not refer to the terms of the previous resolutions, and it does not appear that they were before the three directors at the time when the last resolution was

passed; and the resolution of October 1913 might as well have reference to the resolution of the 31st December 1912, whereby apparently the plaintiff was appointed co-editor without remuneration, as to that of the 28th February 1913. Article 89 of the articles of association declares that a director may hold any other office under the company, in conjunction with the office of director; and on such terms as to remuneration and otherwise as the directors may arrange; and article 90 declares that no director shall be disqualified by his office from contracting with the company either as vendor, editor, purchaser or contributor to the paper or otherwise. These articles constitute an exception to the general rule of law that "a director cannot enter into a contract with the company for profit to himself. The directors of a company are agents of the company and trustees for the shareholders of the powers committed to them" (See Buckley on Companies and Limited Partnerships, 9th edition, page 626); and as such trustees the general rule applies that "no one who has a duty to perform shall place himself in a situation in which his interest conflicts with his duty, and he must not make profit by the trust. (See Lewin on Trusts, 12th edition, page 310). The company is entitled to the unbiassed advice of every director upon matters which are brought before the board for consideration, and a contract made by a director with the company for profit to himself is generally invalid. (See Buckley, pages 640, 641). The members of a company may have such confidence in their directors as to exempt them from this salutary rule, but any such exemption is an exception from the general law, and a director who claims a special authority must show that any particular arrangement falls precisely within it. This principle is well exemplified by three English cases. In *Yuill* v. *Geymouth Point Elizabeth Railway Coal Co., Ltd.*(1), the facts were very similar to those in this case, but the articles provided that the director interested should not vote on any matter relating to his contract, and it was held that, as one of the directors did vote, his vote should not be counted, there was no quorum and consequently there was no valid contract for the issue of debentures. Mr. Justice FARWELL in that case says, "I think the other directors would have been justified in asking them to retire while the

(1) (1914) I Ch., 32.

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question of giving security was discussed, because they were interested against the company. Certainly it is a case in which the company is entitled to have the benefit of all the protection it can get from the independent directors." In *Toms* v. *Cinema Trust Co., Ltd.*(1), Mr. Justice SCRUTTON held that a contract was invalid on the ground that the articles of association had not been strictly followed. In another case *In re Alexander's Timber Co.*(2) before Mr. Justice WRIGHT, it was held that the contract was invalid, because the articles of association having directed that the directors in making any such contract should take into consideration the interests of the company, there was no evidence that this had been done. It appears to me that the provisions of the articles in those cases merely enunciate the general law that a director is bound to take into consideration the interests of the company and to give the company the benefit of his independent advice. If he is engaged in a transaction with the company and is thereby incapable of giving to the company the advice which it is his duty to give, it appears to me that it is his duty to refrain from taking any action in the particular arrangement. It is possible, of course, that a person may be so altruistic that in coming to an arrangement in which his interest is concerned, he will give better terms to the other contracting parties than if he had no interest at all; but persons of such disposition are not usually found among the directors of a company, and it must, I think, be assumed that in the making of an arrangement a man will consider his own interests rather than the interests of the other contracting party. The position, therefore, at the meetings of the two directors in December 1912 and February 1913 was that the company had the advantage of the disinterested advice of only one director, and that director was liable to be influenced, in considering the interests of the company, by the presence of his co-director.

Articles 101 to 107 deal with the proceedings of the directors. Article 101 deals with their meetings and provides that until otherwise determined two directors shall be a quorum. Article 104 provides that a meeting of the directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by

(1) (1915) W.N., 29. (2) (1901) 70 L.J., Ch. 767.

the directors generally. Therefore, the agents by whom the company can act are first the directors, or, if all the directors are not available, at least two. I think that the intention of the articles is that the company shall only be bound if two of the directors exercise authority, consider its interests and act on its behalf. For the reasons which I have given, I hold that at the meetings in question there was, in law and in fact, only one director acting on behalf of the company, the plaintiff being incapacitated by his interest from acting in the particular matters that were discussed. It follows that the appointment of the plaintiff as managing director and co-editor was not made with the authority of the company and is, therefore, invalid.

The second issue in the case is as to whether the plaintiff was wrongfully dismissed. In the original plaint he joined two other persons as defendants, and it contained allegations that one of these persons, the second defendant, purported to be the only other director with the third defendant and that these defendants had not been validly appointed. A question arose as to the joinder of these persons with the defendant company and the plaint was amended by striking out these allegations. The plaintiff at the trial desired to call evidence to show that these persons had not been validly appointed as directors of the company, that they were not authorised to act on behalf of the company and, in particular, that he was not bound by their orders. I think that the allegations as to the position of the directors were withdrawn by the amendment of the plaint, and that the plaintiff cannot in these proceedings raise any question either as to their appointment or as to their acts. It appears that the two persons mentioned became directors of the company in December 1913 and that one of them, Mr. Ormerod, was appointed managing director and that the plaintiff was requested to hand over charge of his position to him, and, after some delay, it appears that this was done and the plaintiff acquiesced in Mr. Ormerod assuming his position as managing director. Shortly afterwards, Mr. Ormerod gave directions to the plaintiff as to the manner in which he should carry out his duties as co-editor of the company. The plaintiff now alleges that his duties were to exercise a general supervision over the policy of the company. I intimated to the learned vakil for the plaintiff that I had extreme difficulty in understanding what the claim was;

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and I asked Mr. Ormerod what, in general, the duties of an editor are, and I understand that an editor has to put forth or publish the papers and to exercise a general supervision over the matter which is written for the paper or which is extracted as news. It is obvious that, for duties of this kind, certain literary and business qualifications are necessary. It is possible, of course, that the plaintiff may have been retained simply as a gentleman of eminence in the political, scientific or literary world, to keep the paper in touch with current opinion. He has not gone into the witness-box to prove that this was the purpose for which he was retained, and the only thing before the Court is the resolution appointing him as co-editor of the company. As such officer he should have been possessed of at least some literary and business qualifications. His own evidence apparently is that he possesses no qualifications whatever. It has not been explained how the plaintiff remained as managing director of the company for a considerable period and also acted as co-editor without qualifications, but I cannot accept the argument that the company in any way condoned the absence of these qualifications or ratified his appointment in those offices. The plaintiff has not gone into the witness-box to explain what took place during the period he held those offices or who, in fact, performed the work. The evidence that has been put in shows that Mr. Ormerod, as managing director, endeavoured to persuade the plaintiff to perform the duties of his office and that his endeavours failed, and they failed, I think, because the plaintiff was absolutely incapable of performing the duties which the company had a right to expect of him. On the second issue I hold that the plaintiff was rightly dismissed.

The plaintiff appears, in the view I take, to have obtained his position under the company in a manner which is unexplained and extremely suspicious. I think that he has no shadow of claim against the company and this litigation is ill-advised. For these reasons, I direct the suit to be dismissed with costs on the higher scale.

I certify for two counsel.

Messrs. *King and Partridge*, attorneys, for the first defendant.

N.R.