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director or member, be as valid as if no such vacancy or defect had existed, provided they were done in the case of any defect before its discovery." Now it is not said, or at least not proved, that the appointment of Fakir Chand and Abdul Majid was made by the directors with the knowledge that they were acting against the rules of the company or that the allotment of shares was made to the appellants by the directors who were conscious of the defect in the constitution of their board. It is neither alleged nor proved that the directors who allotted shares to the appellants acted in a *malâ fide* manner. They, no doubt, thought that the board was regularly constituted and acted in a *bonâ fide* manner in allotting shares to the appellants. The provisions of article 96 sufficiently cover, in our opinion, the irregularity complained of by the appellants and validate the allotments made by the directors.

The second objection, that of unreasonable delay in awarding the shares, has no force. If the appellants had declined to accept the shares allotted to them on the ground of unreasonable delay, their objection might have succeeded. They cannot raise that objection against their being put on the list of contributories when the bank has gone into liquidation.

The third objection as to the receipt of the notice of allotment must, we think, prevail in the case of Jagmandar Das. It has not been shown to us that any notice of allotment was received by him.

In view of our findings the result is that the appeals of Changa Mal and Durga Prasad fail and that of Jagmandar Das succeeds. The appeals of Changa Mal and Durga Prasad are dismissed with costs and the appeal of Jagmandar Das is decreed with costs.

Appeals nos. 196 and 197 dismissed.

Appeal no. 198 decreed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

KUNJ KISHORE AND OTHERS (APPLICANTS) v. THE OFFICIAL LIQUIDATOR,
SHRI BALDEO MILLS LIMITED, (OPPOSITE PARTY).*

Act No. VI of 1882 (Indian Companies Act), sections 76 and 77—Articles of association—Agent—Borrowing powers—Act No. IX of 1872 (Indian Contract Act), section 237—Estoppel.

The agents of a joint stock company—a joint Hindu family firm—borrowed a considerable sum of money on hundis executed by the managing member of

* First Appeal No. 61 of 1913 from an order of O. B. Guiterman, Second Additional Judge of Aligarh, dated the 28th of February, 1913.

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the firm in the name of the company. These hundis were signed with the name of the managing member simply, having nothing on the face of them to indicate that the person who signed them was signing as an agent and not in his personal capacity.

The company had no valid articles of association and neither the memorandum of association nor table A of the Indian Companies Act, 1882, empowered the agents to borrow money. There were, however, what purported to be articles of association, which, though legally invalid (they had never been registered), were treated by the company and submitted to the public as being the genuine and legally adopted articles of association of the company. These articles did give the agents of the company power to borrow.

Held that the signature of the managing member of the agent firm was sufficient, and that, although the articles of association were not valid, yet the company was in the circumstances estopped from raising the plea of their invalidity against holders in due course of these hundis.

THIS was an appeal under section 169 of the Indian Companies Act, 1882. There was a company at Hathras known as the Shri Baldeo Mills, Ltd., which went into liquidation. This company had two permanent agents appointed by the Memorandum of Association. One of these agents was the firm of Di. Chand Lalji Mal— a joint Hindu family firm doing business at Hathras, whose managing member was one Keshab Deo. This Keshab Deo drew a large number of hundis on behalf of the company, signing his own name to them, and sold them and placed the proceeds to the account of his firm. When the Shri Baldeo Mills went into liquidation, the holders of the hundis so drawn put in claims before the official liquidator, who referred them for decision to the liquidating court (second Additional Judge of Aligarh). The liquidating court rejected the claims generally, holding that the hundis were not binding on the company.

The applicants appealed.

The Hon'ble Dr. *Sunder Lal* and The Hon'ble Munshi *Gokul Prasad*, for the appellants.

Mr. *B. E. O'Connor*, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This is one of a series of appeals arising out of proceedings in liquidation in respect of a trading company known as the "Shri Baldeo Mills, Limited." In some of these appeals there are special circumstances to be considered, so that the decision in the present case (First Appeal from Order No. 61 of 1913) will not necessarily govern the whole

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series; but this appeal raises in a form free from accidental complications a single point which is common to all of them. The appellants are holders in due course of a number of bills of exchange, or hundis, which purport to be drawn on behalf of the Shri Baldeo Mills on themselves, in favour of a firm known as Dip Chand Lalji Mal. Their case is that the Shri Baldeo Mills are liable to them as principal debtors in respect of these hundis, for which they undoubtedly gave good consideration, and the firm of Dip Chand Lalji Mal as sureties. The official liquidator, in charge of the affairs of the Shri Baldeo Mills, referred the appellant's claim to the District Judge for a decision whether the company was in fact liable in respect of the same. The District Judge has found in the negative, hence this appeal. In the court below a number of objections, of what may be described as a formal or technical character, were taken to the validity of these hundis; but these have been decided in favour of the appellants. It did not appear to us that the propriety of the decision of the court below on this point was very seriously controverted on behalf of the respondent in the course of arguments before us. We are content to say that we find ourselves in agreement with the findings recorded by the learned Additional Judge in favour of the appellants, and with the reasons for the same which he has given in his carefully elaborated judgement. It must be remembered in connection with all objections taken in respect of the mere form of these documents that the proviso embodied in section 1 of the Negotiable Instruments Act (No. XXVI of 1881) exempts from the operation of that Act "any local usage relating to any instrument in an oriental language." We are satisfied that the hundis in question, when considered in the light of the common usage affecting such documents, do purport to be signed by one Keshab Deo as the authorized agent of the Shri Baldeo Mills Limited. The only question really in issue before us is whether the said Keshab Deo had valid authority, express or implied, to pledge the credit of the Mills in this way, and whether the Shri Baldeo Mills Limited are bound by his act, by reason of ratification or on some other principle of equity. This is the question which the court below has decided against the appellants. It has been very fully argued before us, and we may say at once that, after allowing all possible weight to the arguments which

determined the decision of the learned Additional Judge, we are not able to concur in that decision.

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The memorandum of association of the Shri Baldeo Mills Limited provided that "Messrs. Dip Chand Lalji Mal of Hathras and Messrs. Narain Vishram and Company of Bombay shall be the permanent agents of the company," and went on to confer upon these agents, both jointly and severally, "subject to the general control of the directors for the time being of the company," very wide powers of management. These extended to the doing of "all such acts as are necessary for the carrying on of the business of the Company."

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Now Keshab Deo was not only the managing director of the Shri Baldeo Mills Limited, but he was also the manager of the firm of Dip Chand Lalji Mal. His power to act for and on behalf of that firm has never been questioned. What we have to determine therefore is whether the firm of Dip Chand Lalji Mal, as permanent agents of the Shri Baldeo Mills Limited, had power to pledge the credit of that company by executing in its name the hundis now in question. The memorandum of association above referred to was registered without any articles of association; and it is not denied that the result of this was to make the regulations given in Table A appended to the Indian Companies Act (No. VI of 1882) operative as the articles of association of the company, unless and until these were formally altered in accordance with the procedure laid down by sections 76 and 77 of the said Act. The regulations in Table A aforesaid do not of course provide for the peculiar case of a company like this Shri Baldeo Mills Limited provided by its memorandum of association with two sets of "permanent agents"; they do not help towards defining or limiting the powers of those agents in any way. The share-holders of the Shri Baldeo Mills Limited did, however, make an attempt to provide themselves with a complete and appropriate articles of association. They passed a most elaborate set of articles of association at a general meeting held on the 7th of November, 1905 and confirmed the same at a subsequent meeting. It was not shown to us in argument that these proceedings failed to satisfy the requirements of sections 76

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and 77 of the Indian Companies Act, except in one particular. The subsequent general meeting was held more than one month from the date of the first meeting at which the articles of association were passed. It follows that the said articles, having neither been registered along with the memorandum of association, nor subsequently passed in the manner provided by law, could not take effect as "articles of association" so as to replace the general provisions of Table A of the Indian Companies Act in regulating the affairs of the Shri Baldeo Mills.

This position was not controverted in argument on behalf of the appellants. The arguments addressed to us on their behalf proceeded along various lines. We were asked to consider the provisions of the memorandum of association in themselves, and the possible effect of the proceedings of the meeting of the 7th of November, 1905, regarded simply as resolutions passed by the entire body of share-holders empowering certain agents to act for them. Our attention was also drawn to various proceedings, both of the directors and of the share-holders in general meeting, which we were asked to treat as ratifications of the conduct of Dip Chand Lalji Mal in raising money on hundis for purposes of the Company. We do not desire to go into these matters in detail; there was force in the arguments addressed to us from each of these points of view, but we prefer to base our decision on a slightly different ground. The strongest line of argument on behalf of the appellants was struck when we were asked to consider whether, when all is said and done, the appellants were not fully warranted, by the proceedings of the general body of share-holders as well as of the directors of Shri Baldeo Mills Limited, in dealing with Keshab Deo as an agent fully empowered to act on behalf of that Company in this particular matter. The principle applicable is that laid down by section 237 of the Indian Contract Act (IX of 1872). The firm of Dip Chand Lalji Mal were admittedly agents of the Shri Baldeo Mills Limited for a variety of purposes. It is not really necessary for the disposal of this appeal that we should record a finding that their authority did extend to pledging the credit of the Mills by drawing these hundis, provided it is clear to us that the appellants were induced by the words or conduct of the directors and share-holders of the Shri Baldeo Mills to believe that

such an act was within the scope of the authority of the agents of the firm. Now it seems clear to us that the share-holders and the directors aforesaid were not aware that the validity of the articles of association passed at the general meeting of the 7th of November, 1905, was capable of being called in question. They invariably treated them as the articles of association binding on the company and referred to them as such in a variety of proceedings, not only at meetings of the directors but also at meetings of the share-holders. They published them for the information of the general public as the articles of association of the Shri Baldeo Mills Limited. In one of the cases before us there is very specific evidence that parties from whom it was desired to raise a loan were referred to these articles when they desired to be satisfied as to the authority of the persons with whom they were dealing. We need not labour this point; we are satisfied that, by a long course of conduct, the share-holders of the Shri Baldeo Mills Limited did put forward the articles of association, passed at the general meeting of the 7th of November, 1905, as embodying regulations, by which they were prepared to be bound, defining the scope and limits of the authority conferred on the firm of Dip Chand and Lalji Mal as agents of the Mills.

The question in issue therefore narrows itself down to this :— Assuming the regulations adopted at the general meeting of the 7th of November, 1905, to be in this matter binding on the share-holders of the Shri Baldeo Mills Limited, would those regulations empower the firm of Dip Chand Lalji Mal, as agents for that Company, to pledge its credit, as was done when Keshab Deo (as manager of Dip Chand Lalji Mal) executed the hundis in suit? A strenuous attempt was made in argument on behalf of the respondent to satisfy us that this question should be answered in the negative. The provisions of paragraphs 105, 107, 108 and 109 of the regulations in question seem to us sufficiently clear on the point, and still more so when considered in the light of the evidence as to the proceedings of the Shri Baldeo Mills Limited from the date of the incorporation of this Company and its dealings with the firm of Dip Chand Lalji Mal. The Mills did acquire a site, construct buildings and purchase machinery of considerable value for the purpose of carrying on its business. There are in the hands of the official

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liquidator assets exceeding two lakhs of rupees in value, obtained by the sale of these properties. The learned Judge of the court below was of opinion that the actual cost was considerably in excess of the sum realized in liquidation. Now the most striking feature in the history of this Company is that the bulk of this expenditure was met out of borrowed money, most of it borrowed through the firm of Dip Chand Lalji Mal. The curious system of account keeping adopted is explained in the judgement of the learned Additional Judge. It is only this system of account keeping which has prevented the appellants from establishing their claim beyond reasonable question by proving that the consideration paid by them for the hundis in suit actually went to the benefit of the Shri Baldeo Mills Limited. As a matter of fact it went into the hands of Dip Chand Lalji Mal, and this firm was continually making advances to the Shri Baldeo Mills, for whom they were agents. They have filed a claim before the Official Liquidator for over a lakh of rupees. The transaction effected by means of the hundis in suit has been argued before us as in substance a borrowing of money for the benefit of the Shri Baldeo Mills Limited. It might equally well be regarded as pledging of the credit of the Mills to enable the firm of Dip Chand Lalji Mal to recoup itself for advances previously made. From either point of view, the transaction was one, in our opinion, within the ostensible authority of the agency held by Dip Chand Lalji Mal under the resolutions passed at the general meeting of the 7th of November, 1905. The appellants paid money for these hundis in the belief that the agents held a valid authority under these regulations. We hold that, whether or not this belief was well-founded, it was induced by the conduct of the share-holders of the Shri Baldeo Mills Limited, and that the latter cannot now repudiate the authority of their agents.

We, therefore, set aside the order of the court below and allow the appellants' claim. The latter will get their costs.

Appeal decreed.