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Sukhamoni Chowdhurani v. Ishan Chunder Roy (1). In that case one of the co-debtors admitted the debt in an application to the manager of the state. Another debtor paid off the debt and then sued for contribution. His claim was met with a plea of limitation; but it was rejected on the ground that the admission made in the petition to the manager amounted to an acknowledgment and saved limitation. We, therefore, think that the claim of the plaintiffs respondents is not barred by limitation and that the order of the court below was correct. The appeal fails and is dismissed with costs.

Appeal dismissed.

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

CHANGA MAL (DEFENDANT) v. THE PROVINCIAL BANK, LD (PLAINTIFF)
DURGA PRASAD (DEFENDANT) v. THE PROVINCIAL BANK, LD.
(PLAINTIFF) and JAGMANDAR DAS (DEFENDANT) v THE PROVINCIAL
BANK, LD. (PLAINTIFF).*

Company—Board of Directors—Allotment of shares by an irregularly constituted board—Notice of allotment not given to applicant—Liquidation—Contributory.

Held that an allotment of shares in a joint stock company made by an irregularly constituted board of directors is *prima facie* invalid *British Empire Match Company, Ltd. Ex parte Ross* (2) referred to. But this defect may sometimes be cured if the articles of association of the company provide for the validation of an act done by a *de facto* director in a *bona fide* manner.

Held also that if no notice of allotment of shares in a company is given to an applicant before the company goes into liquidation, such applicant is not liable to be placed on the list of contributories. *In re Scottish Petroleum Company* (3), *Dawson v. African Consolidated Land and Trading Company* (4) and *British Asbestos Company v. Boyd* (5) referred to.

THESE were three appeals arising out of the proceedings in liquidation of the Provincial Bank, Limited, Meerut. It appears that the official liquidator called upon the three appellants to contribute the balance of the price of shares which had been allotted to them at different times by the board of directors of the bank. The appellants objected to be put on the list of contributories and supported their objections on several technical

*First Appeal Nos. 196, 197 and 198 of 1913 from orders of Muhammad Shaif, Additional Judge of Meerut, dated the 28th of June, 1913.

(1) (1898) L. R., 25 I. A., 95.

(3) (1883) 23 Ch. D., 413.

(2) 49 Law Times, 291.

(4) (1898) 1 Ch. D., 6.

(5) (1903) 2 Ch. D., 439.

pleas. The learned Judge disposed of their objections in a very summary manner without discussing the objections or giving any reason for rejecting them. In appeal three objections were urged on behalf of the appellants, namely, that the board of directors which allotted the shares to the appellants was not properly constituted, that the allotment was made after an unreasonable delay, and that no notice of allotment was given to or received by the appellants.

Mr. D. R. Sawhny and Pandit Brajnath Vyas, for the appellants.

Mr. M. L. Agarwala, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—The three appeals of Changa Mal, Durga Prasad and Jagmandar Das, marked as Nos. 196, 197 and 198 respectively of 1913, arise out of the proceedings in liquidation of the Provincial Bank, Limited, Meerut. It appears that the official liquidator called upon the three appellants to contribute the balance of the price of shares which had been allotted to them at different times by the board of directors of the bank. The appellants objected to be put on the list of contributors and supported their objections on several technical pleas. The learned Judge disposed of their objections in a very summary manner without discussing the objections or giving any reason for rejecting them. In appeal three objections are urged on behalf of the appellants, namely, that the board of directors which allotted the shares to the appellants was not properly constituted, that the allotment was made after an unreasonable delay and that no notice of allotment was given to or received by the appellants.

The first objection is founded on an alleged defect in the constitution of the board of directors which allotted the shares to the appellants. It is said that under the articles of association the least number of directors required to form a quorum was three. The board that allotted the shares to the appellants was composed of three persons, two of whom only were regularly appointed directors. Changa Mal was allotted shares at a meeting held on the 17th of September, 1910, at which three persons were present, viz. Shafiq Ilahi, E. A. Roberts and Abdul Majid. The first two were among the first three directors originally appointed and named in the articles of association. Abdul Majid was, according to the directors

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minute book, appointed at a meeting of the original directors held on the 1st of May, 1910. At that meeting only two directors were present, namely, E. A. Roberts and Shafiq Ilahi, and it was resolved that, as the third director Parbhu Dayal could not always attend, Fakir Chand and Abdul Majid should be added to the Board of Directors. Under the articles of association in case of an occasional vacancy among the directors the remaining directors could appoint a properly qualified member of the company as director pending the confirmation of his appointment at a general meeting of the share-holders. But there was no vacancy, as Parbhu Dayal had not resigned, and, even if he had, only one person could be appointed in his place and not two. Moreover, the name of Abdul Majid must have been added after the meeting of the 1st of May, 1910, and probably at the meeting of the 17th of September, 1910. The proceedings of the 17th of September, 1910, as recorded in the directors' minute book, at first mention the name of Fakir Chand as one of the three directors present. But his name is scored off in pencil and that of Abdul Majid added in ink at the end. The appellants suggest that the name of Fakir Chand was written at first in the hope that he could be present at the meeting, but as he did not come the name of Abdul Majid, a share-holder, who was probably sent for at the time, was added, and in order to show that he was a director regularly appointed, his name was added to the proceedings of the 1st of May, 1910. That the suggestion as to the interpolation of Abdul Majid's name in the proceedings of the meetings of the 1st of May, 1910, and the 17th of September, 1910, is not unfounded, reference is made to the circulation of a printed notice convening a general meeting for the confirmation of Fakir Chand's appointment and the absence of any such notice about Abdul Majid. The shares allotted to Durga Prasad and Jagmandar Das were allotted at a meeting held on the 7th of April, 1912, at which E. A. Roberts, Fakir Chand and H. Hassan were present. It is said that there is nothing to show that Fakir Chand's appointment was confirmed at a general meeting and his provisional appointment at the meeting of the 1st of May, 1910, was irregular. As to H. Hassan he was appointed in place of Shafiq Ilahi who resigned on the 4th of January, 1912. The Board that appointed H. Hassan consisted of E. A. Roberts and Fakir Chand and the approval and signature of

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Parbhu Dayal were obtained subsequently. The allotment of shares to Changa Mal was thus by two regularly appointed directors only, *viz.*, E. A. Roberts and Shafiq Ilahi and to Durga Prasad and Jagmandar Das by one director only, *viz.*, E. A. Roberts. As no business of the company could be transacted without a quorum of three directors the allotment of shares to the appellant was, therefore, clearly invalid and the latter are not bound by such allotment. In support of his contention that such an allotment is invalid at law the learned counsel for the appellants has relied on the case of the *British Empire Match Company, Limited, ex parte Ross* (1). We think that the objection of the learned counsel as to the irregularity in the appointment of Fakir Chand and Abdul Majid is well founded. But we cannot say on the evidence in the case that the name of Abdul Majid was inserted in the proceedings of the meeting of the 1st of May, 1910, after the meeting. The appointment of H. Hassan seems to have been regular as there was a vacancy in the board of directors and he was appointed to the vacancy by the remaining directors. However, the objection for the appellant remains that on both the occasions, *viz.*, the 17th of September, 1910, and the 7th of April, 1912, there were only two regularly appointed directors, as Abdul Majid in one case and Fakir Chand in the other was not a properly appointed director.

It may also be conceded that the case relied upon by the learned counsel supports his contention that allotment of shares by an irregularly constituted board of directors is invalid. But other cases, some of them later, lay down that if the articles of association of a company validate an act done by a *de facto* director in a *bonâ fide* manner the courts will uphold his act; *vide, In re Scottish Petroleum Company* (2), *Dawson v. African Consolidated Land and Trading Company* (3), *British Asbestos Company, Ltd. v. Boyd* (4). In the present case article 96 of the articles of association of the bank is directly in point. It is as follows:—“The *bonâ fide* acts of the board of directors and of any committee appointed by it shall, notwithstanding any vacancy in the board or committee or any defect in the appointment of any

(1) 49 Law Times, 291.

(3) (1898) 1 Ch. D., 6.

(2) (1888) 23 Ch. D., 413.

(4) (1903) 2 Ch. D., 432.

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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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