

direct that his security be discharged and the fine, if paid, be refunded.

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*Conviction set aside.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

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BAHADUR SINGH (PLAINTIFF) v SHIAM SUNDAR TUG (DEFENDANT).  
*Company—Sale of shares—Bond given for price—Unauthorized refusal of manager to register transfer—Suit on bond—Plea of non-registration of transfer not open to defendant.*

A sold to B certain shares in a company, and B instead of paying the price in cash, executed a bond therefor in favour of A. Registration of the transfer was refused by a person describing himself as the chief manager of the company, who, however, did not appear to have any authority under the articles of association to refuse to register a transfer of shares.

*Held* on suit by A on the bond that it was not competent to B to plead as a defence that the transfer of the shares purchased by him had not been registered, as there had in fact been no refusal to register by the company.

THE facts of this case were as follows :—

The plaintiff transferred 10 deferred shares in the Indian Co-operative Bank, Limited, to the defendant on the 18th of April, 1911, for Rs. 500, and in lieu thereof the defendant executed a bond in favour of the plaintiff on the same date. The articles of association of the Bank which were in force on the 18th of April, 1911, had the following provision in regard to transfers:—

“The Company may decline to register any transfer of shares made by a member indebted to it or on which the Company may have a lien and the Company may also decline to register any transfer to any transferee not approved of by the directors, and they shall not be required to assign any reason for refusing such transfer.”

On the 8th of August, the plaintiff instituted the present suit on foot of the bond. On the 19th of August, the Bank at a meeting adopted a new set of articles of association and resolved that “they shall have retrospective effect”. In the new articles in

\* Second Appeal No. 95 of 1913, from a decree of I. B. Mundle, Additional District Judge of Bareilly, dated the 23rd of November, 1912, reversing a decree of Abdul Halim, Munsif of Bareilly, dated the 20th of March, 1912,

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addition to the old clause about transfer of shares there was a further clause to the following effect:—

“A director of the Bank cannot transfer his qualification shares till he has resigned his directorship and his resignation has been accepted by the Board.”

In the meeting of the 19th of August, the Bank also passed a resolution delegating to one Mr. Sidheshwar Ghose, director and chief manager, “the power of allotting, transferring and accepting surrender of shares.”

On the 21st of August, the said director and chief manager passed an order refusing to register the transfer executed by the plaintiff in favour of the defendant on the 18th of April, on the ground that the plaintiff was a director and the shares transferred were his qualification shares, and on the further ground that some calls were due from the plaintiff on an ordinary share which he held in the Bank. It was also said in a general way that there were other reasons, but the Bank cannot be required to assign reasons for refusing to register transfers.

The defendant filed a written statement on the 22nd of January, 1912, and his defence was twofold; firstly, that the bond was executed under undue influence and, secondly, that the Bank not having agreed to the sale of shares, the plaintiff continued to be their owner and therefore the bond was without consideration.

The court of first instance decreed the suit. The lower appellate court dismissed it, holding that the consideration had failed. Both the courts below repelled the plea of undue influence.

The plaintiff appealed to the High Court.

*Babu Sarat Chandra Chaudhri*, for the appellant:—

The lower appellate court has taken a wrong view of the case. On the date when the sale to the defendant was made the plaintiff was in no way incompetent to transfer his shares. Even assuming the plaintiff to have been a director of the Bank, the articles of association on that date did not impose restrictions of any sort or description upon the power to transfer. The defendant complains that he was not registered, and the Judge holds that that fact constitutes a failure of consideration. It is submitted that it is the purchaser's duty to get himself registered; the vendor is only to assist him. Reference was made to the Indian Companies Act, 1882

section 29, and *The Muir Mills Co., Ltd. v. T. H. Condon* (1). As between the vendor and the purchaser the title of the latter is complete as soon as he accepts the transfer. From that date the purchaser becomes the equitable owner of the share entitled to all the rights and subject to all the obligations incidental to such ownership. The law is clear on the point: *Lindley on Companies*, Ed. 6, pp. 679 and 680. It is further submitted that the articles of association passed after the date of the sale (in fact, after the suit) cannot be made to have retrospective operation so as to affect a transfer made long prior to their date. Under the new articles a director is declared incompetent to transfer his qualification shares without resigning his directorship and until his resignation is accepted by the Company. The provision so made is not in accordance with law, for the law does not render such a transfer void or illegal. A director transferring his qualification shares *ipso facto* ceases to be a director. Even according to the new articles, it is submitted, there is nothing which renders the sale inoperative: *Halsbury's Laws of England*, Vol. V, p. 186, section 309. It is submitted, therefore, that unless the registration is refused on the ground that the transferor has no right to transfer, the transferee must pay the price. At the date of sale, the plaintiff was in no way disqualified from selling his shares. The decree of the lower appellate court is, therefore, wrong and cannot be sustained.

Babu *Purushottam Das Tandon*, for the respondent:—

I support the decree on two grounds, first, that the consideration failed and, secondly, that the transferor had no right to transfer. According to schedule I, article 8, of the Indian Companies Act the transferor continues to be the owner so long as the name of the transferee is not entered in the books of the Company. He will receive all the profits on the shares, in fact for all purposes as between the Company and himself he is the owner. The right to transfer is not an absolute right, it is subject to certain conditions imposed by the articles of association. The transfer is not complete without registration. It is true that the amended articles were passed after the transfer deed had been executed, but the resolution which accepted the new articles

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also gave it a retrospective effect. Whether the Board should or should not have passed such a resolution is not a matter for consideration here. The material fact is that acting upon that resolution the Board has disallowed the transfer. So the transferee gets nothing and the consideration has failed. If the new articles are binding the transferor had no right to transfer the shares, for they were his qualification shares as a director. Even if the new articles did not affect the transaction, the company could under the old articles refuse to register a transfer without giving any reasons. The transfer was with a warranty that the transferor had a right to sell. But as a matter of fact the seller had not an absolute right to sell for the sale was subject to the approval of the directors. The sale could be completed only after the registration of the transfer. The purchaser whether he paid cash or gave a bond purchased, not the paper on which the transfer deed was executed, but something more substantial, viz. the rights and status of a shareholder. The power to refuse to register a transfer had been delegated to the chief manager by the Board by their resolution of the 19th August. The words are "the power of allotting shares, transferring shares and accepting surrender of shares." They imply the right to refuse to register a transfer.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought under the following circumstances:—The plaintiff was the registered holder of certain shares in a concern known as the Indian Co-operative Bank, Limited. On the 18th of July, 1911, the plaintiff executed a deed of transfer of the shares to the defendant in consideration of Rs. 500. On the same date the defendant executed a bond in favour of the plaintiff whereby, after reciting that the defendant was indebted to the plaintiff in the sum of Rs. 500, being the price of the shares transferred to him, he covenanted to pay Rs. 500 with interest at 12 per cent. per annum. The money has not been paid, and the plaintiff instituted the present suit to recover the amount due under the bond. The defendant pleaded, first, that the transfer and the bond were obtained from him by undue influence and, secondly, that there had been a failure of consideration inasmuch as the company had refused to recognize the transfer and register the transferee as

the holder of the shares. The court of first instance decreed the claim. The lower appellate court, while finding that there was no undue influence, dismissed the suit on the ground of failure of consideration. The exact circumstances under which the transfer and the bond were executed have not transpired. If we were to speculate on the matter, we might probably think that the plaintiff was anxious to get rid of his shares, and that he brought some pressure on the defendant, who was the managing director of the concern, to take the shares from him. When we use the word "pressure" we do not necessarily mean "illegal pressure." The defendant contends that the company refused to recognize the transfer. Under the deed of transfer the plaintiff never undertook to obtain the recognition of the transfer by the company. On the face of the contract of transfer the transferor was immediately entitled to receive the sum of Rs. 500 and the bond in suit was given to secure the indebtedness of the defendant to the plaintiff for the value of the shares. There is an endorsement on the deed of transfer under the hand of a person by the name of Sidheshwar Ghose, who is described as the Chief Manager of the company. After citing a large number of legal rulings he declined for various reasons to register the transfer. He purported to do this on the delegated authority of the directors. We have looked at the resolution which is relied on as giving this authority and we find that no authority to refuse to register shares was conferred upon him. It thus does not appear that the company ever refused to recognize the transfer. Refusal could only be by a resolution of the company in pursuance of the articles of association.

It is then contended that the plaintiff was himself a director of the company and that the shares which he purported to transfer were the shares which he held as "qualification shares" for his being a director. In the articles of association which were in force at the time of the transfer, there is nothing to prevent a director from transferring his shares. New articles of association are said to have been adopted subsequently with retrospective effect. The provisions of some of these new articles of association are very suspicious, but even if we assume that the new articles of association were legally adopted, they could not

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apply to the transfer, which had been made long before they came into operation.

The defence fails, so far as it is based on the allegation of undue influence, on the finding of fact by the court below.

In our opinion, there was no failure of consideration. This being so the appeal must be allowed. We, accordingly, set aside decree of the court below and restore the decree of the court of first instance with costs.

*Appeal allowed.*

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

BALKARAN UPADHYA AND OTHERS (DEFENDANTS) v. GAYA DIN KALWAR AND OTHERS (PLAINTIFFS) AND AISHA BIBI AND OTHERS (DEFENDANTS). \*  
*Amendment of plaint—Limitation—Power of court to allow amendment—Fresh relief claimed in respect of which a suit would have been time-barred.*

A deed of mortgage purported in the first place to mortgage with possession certain specified plots of *sir* and *khudkasht* land. There was, however, a stipulation in the mortgage-deed that, if the mortgagees failed to obtain possession under the deed or were disturbed in their possession, they would be entitled to recover their money from the mortgagors, and this either by sale of the mortgaged plots, or by sale of the *zamindari* share to which these plots appertained or from the persons and the property of the judgement-debtors. A suit was filed just within the extended period of limitation allowed by section 31 of Act No. IX of 1908 for sale of the specified plots. After the period of limitation, however, had expired the plaintiffs applied for leave to amend the plaint and asked for sale of the *zamindari* share. The court below allowed the amendment.

*Held* that the court had no power to allow amendment of the plaint by introducing a new cause of action after the period of limitation in respect of such cause had expired. *Muhammad Sadiq v. Abdul Majid* (1) distinguished.

THIS was a suit for sale under a mortgage, dated the 24th of May, 1893. The suit was brought on the 23rd of May, 1910, and the plaintiffs therefore had to take advantage of the special limitation granted by section 31 of Act No. IX of 1908. The mortgage on the face of it was a mortgage with possession of certain specific plots of *sir* and *khudkasht* land; but it further contained a stipulation to the effect that, if the mortgagees failed to obtain possession under the deed, or were disturbed in their possession, they were to be entitled to sue the mortgagors for the recovery of the

\* Second Appeal No. 403 of 1913, from a decree of L. Marshall, District Judge of Jaunpur, dated the 9th of January, 1913, confirming a decree of Gopal Das Mukerji, Munsif of Jaunpur, dated the 29th of February, 1912.