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is added that the applicant still owes the decree-holder money under the decree and has obtained a respite from the decree-holder up to the end of 1930 for making further payment. This is a clear acknowledgment of liability.

In our opinion, therefore, the court below was right in holding that the application of the judgment-debtor of the 5th of September, 1929, started a fresh period of limitation from that date.

As we have held that the application for execution is within time in view of the judgment-debtor's acknowledgment of liability under the decree on the 5th of September, 1929, it is unnecessary for us to go into the question whether the signature of the judgment-debtor on the receipt for payment of the Rs.12,000 gave start to a fresh period of limitation within the meaning of section 20 of the Act.

The result is that the appeal fails and is dismissed with costs.

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

GUR PRASAD KAPOOR AND OTHERS (DEFENDANTS) *v.* RAMESHWAR PRASAD AND OTHERS (PLAINTIFFS)*

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Companies Act (VII of 1913), section 20—Articles of association, alteration of—Increasing the number of directors provided for by the articles—Special resolution, whether necessary.

One of the articles of association of a company provided as follows: "Until otherwise determined by a general meeting, the number of directors shall not be less than five, nor more than nine." By a resolution passed at a general meeting of the shareholders the number of directors was increased to 16. *Held* that the alteration was valid and no special resolution was required therefor. The right construction of the article was that it was open to the shareholders to vary the number of directors therein referred to without in any way necessitating an alteration in the article itself.

*First Appeal No. 211 of 1932, from an order of Syed Iftikhar Husain, Additional District Judge of Cawnpore, dated the 7th of November, 1932.

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This appeal arose out of a suit for a declaration that the plaintiffs were, and that the defendants were not, directors of a certain limited company, and for other reliefs. One of the questions on which the validity of election as directors of some of the plaintiffs depended was whether in view of the articles of association the number of directors could be increased by an ordinary resolution only or whether a special resolution was necessary. Other matters, not relevant to this question, have been omitted from this report.

Messrs. *P. L. Banerji*, *M. N. Raina* and *Govind Das*, for the appellants.

Messrs. *Bhagwati Shankar*, *S. N. Seth*, *Krishna Murari Lal* and *Nanak Chand*, for the respondents.

NIAMAT-ULLAH, J. :—[That part of the judgment which is not material for the purpose of this report has been omitted.]

* * * * *

An extraordinary general meeting of the shareholders was convened on the 14th of February, 1932. One of the resolutions moved at that meeting was that the number of directors be increased to 16. The resolution was carried, and the plaintiffs 1 to 5 were elected directors for a full term of three years. It is not disputed by the plaintiffs that this resolution was not a "special resolution" within the meaning of section 81 of the Indian Companies Act. A special resolution to be valid must be confirmed at a subsequent meeting. Section 20 of the Indian Companies Act lays down that no alteration in the articles of association can be made except in pursuance of a special resolution. The learned advocate for the appellants contended that in so far as the increase in the number of directors involved an alteration of article 98 of the articles of association, it should have been sanctioned by a special resolution and that, in the absence of such a resolution, the number of directors could not be increased. Article 98 is worded as follows: "Until otherwise determined by a general meeting, the number

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of directors shall not be less than five, nor more than nine." Having carefully considered the argument addressed to us on behalf of the appellants, I think that merely increasing the number of directors does not involve any alteration in article 98, which itself gives latitude to the shareholders in that respect. The words "Until otherwise determined by a general meeting" clearly imply that it was open to the shareholders to alter the number of directors mentioned in article 98. If the shareholders do alter it, their action is in pursuance of article 98 and not otherwise. If the contention put forward on behalf of the appellants be accepted, the article will have to be read as if the aforesaid words were not part of it. No clear authority was quoted in support of the view urged on one side or the other. The cases that were referred to in course of the argument are those in which the question did not directly arise and no opinion was definitely expressed. It is, therefore, unnecessary to examine them in this connection. In my opinion the right construction of the article is, as already indicated, that it is open to the shareholders to vary the number of directors therein referred to without in any way necessitating an alteration in the article itself. In the view of the case I have taken, it must be held that plaintiffs 1 and 2, who had been previously elected by the directors at their meeting of the 6th of February, 1932, and plaintiffs 3 to 5 were validly elected for the normal term at the general meeting of shareholders held on the 14th of February, 1932.

BENNET, J. :—I agree with the judgment of my learned brother and desire to add a few words on the argument of the appellants on article 98 of the articles of association. The appellants correctly pointed out that under section 20 of the Indian Companies Act any alteration or addition to the articles of association must be by a special resolution. The chief points about a special resolution are that, under section 81 of the Indian Companies Act, a special resolution must be passed by a

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majority of not less than three-fourths of the members entitled to vote at a general meeting, and the special resolution must be confirmed by a majority of the members entitled to vote at a subsequent general meeting under certain conditions of notice. The Act draws a distinction between the matters which are to be dealt with by special resolutions and the ordinary matters. The matters which are to be dealt with by special resolutions are those which relate to the constitution of the company, that is, its articles of association. The question before us is whether there was any alteration or addition to article 98 by the resolution passed at the general meeting of the 14th of February, 1932. The article states that "Until otherwise determined by a general meeting, the number of directors shall not be less than five, nor more than nine." The resolution altered the maximum from 9 to 16. The argument for the appellants is that by this alteration the article has been altered. No direct authority was shown for this proposition. There are the following reasons to consider that the raising of the maximum is not an alteration of the article :

Firstly, the increase in the number of directors is not a matter which the Act lays down in any part as requiring a special resolution. On the contrary, we find in schedule I, table A, regulation 83, the following provision: "The company may from time to time in general meetings increase or reduce the number of directors . . . ." The lower court took a peculiar view that this table A was no part of the Act; but in section 17, sub-section (2) it is stated that articles of association may adopt all or any of the regulations contained in table A in the first schedule. I consider that there is an analogy between this regulation 83 of table A and the article 98 in question. It is true that regulation 83 does not lay down the number of directors; but there is a provision in regulation 68 that the number of directors shall be determined in writing by a majority of the

subscribers of the memorandum of association. Regulation 83, therefore, contemplates a change being made in the original number of directors, and that change to be made by a general meeting and not by a special resolution.

Another authority against the appellants is Palmer's Company Precedents, 13th edition, 1927, Part I, page 698, where there is a specimen of one of the articles of association exactly similar to article 98. This specimen says: "Until otherwise determined by a general meeting, the number of directors shall not be less than three or more than seven." This article gives the English practice, and apparently under this article the number of directors is altered by a general meeting, as a note given by Palmer states that there is only a doubt in the absence of the first seven words as to whether a special resolution is necessary. Palmer, therefore, considers that where these first seven words were present, there was no doubt that a general meeting could make the alteration required.

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Lastly, in regard to the ruling quoted by the lower court, *Navnitlal Chabildas* v. *Scindia Steam Navigation Co.* (1), that ruling has been reported more fully in 29 Bom. L.R., 1362. In the Law Reporter the terms of the article in question are given, and we find that the words "unless otherwise determined by a general meeting" do not appear in the article which was the subject-matter of that case. That case, therefore, is no authority for the case before us.

For these reasons I consider that the number of directors was validly altered by the resolution of the general meeting of the 14th of February, 1932.

(1) A.I.R., 1927 Bom., 609.