# ORIGINAL CIVIL.

*Before Mr. Justice Farran.*

*EX PARTE* R. GILBERT.

1892. *March* 5.

## IN THE MATTER OF THE BOMBAY FIRE INSURANCE COMPANY, LIMITED.

*Company—Directors—Transfer of shares—Sanction to transfer not obtained—Application for registration by transferee—Refusal of directors to register—Procedure—Specific Relief Act I of* 1877, *Section* 45—*Indian Companies Act VI of* 1882, *Section* 58.

Mr. G. bought some shares in the Bombay Fire Insurance Company and applied to the directors for registration as a shareholder in respect of the shares bought. The directors refused the application, giving no reason for so doing. Mr. G. now applied to the Court, under section 45 of the Specific Relief Act, and under section 58 of the Indian Companies Act, for an order compelling the directors to register him as a shareholder. The Articles of Association of the Company provided *(inter alia)* that any shareholder might, with the sanction of the Board of Directors, sell or dispose of and transfer all or any of his shares to any other person approved by the Board (who shall not be bound to assign any reason for the withholding of such sanction).

*Held*, that the application should be refused, for section 45 of the Specific Relief Act did not apply (there being another "specific and adequate legal remedy"), and under the Companies Act the proper procedure had not been adopted. Mr. G. was a transferee whose title was not complete, in as much as the requisite sanction to the transfer had not been obtained, and, therefore, there was no privity between him and the directors of the company, and he had no right to complain.

RULE obtained by Mr. R. Gilbert on the 27th February, 1892, calling on the Bombay Fire Insurance Company and the Directors thereof to show cause why they should not be ordered to register the name of the said applicant as a shareholder in respect of four shares.

The affidavit of the applicant stated that for many years he had been a registered shareholder in the said company and that he had from time to time sold his shares, and was now the registered holder of two shares; that on the 11th February, 1892, he purchased from one of the directors (Byrámji Jijibhoy) four shares in the said company, the transfer-deed of which was duly lodged, with a request that the shares should be transferred into the purchaser's name.

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On the 20th February, 1892, the applicant was informed by the secretaries of the company that the directors refused to transfer the shares into his name. Mr. Gilbert thereupon wrote to the secretaries asking why the transfer was refused, and offering to deposit with the company Government promissory notes as security for any unpaid calls which might be due upon the shares. To this letter the secretaries replied declining to give any reason for the directors' refusal to transfer.

In the affidavit upon which the rule was obtained, Mr. Gilbert stated as follows:—

"8. I say that I believe the said refusal to transfer the said shares into my name was not *bonâ fide*, but was for some private purpose of the said directors present at the meeting when the said transfer was refused, or of some one or more of them, and I say so for the following reasons. In the month of October last T. M. Drennan, a wealthy broker in Bombay who had been, but was not then, a shareholder in the said company, purchased eight shares in the said company and applied to have the same transferred into his name. The directors, of whom the said Ahmedbhoy Hubibhoy was one, refused to transfer the said shares, with the exception of two, into the name of the said T. M. Drennan without giving any reason for such refusal, and thereupon the said T. M. Drennan refused to take any shares. Shortly afterwards the said Ahmedbhoy Hubibhoy purchased the said shares himself, and the same were transferred into his name on the 7th November, 1891.

"9. I further say that many of the shareholders think that the said company ought to be wound up while it is in a solvent condition, as they do not consider that the risk attending fire insurance is sufficiently covered by the present low *premiums*, and they see no prospect of the rate of premium being increased. Some of the said directors, including the said Ahmedbhoy Hubibhoy and Dámodar Tápidás, are strongly opposed to such a course, and it is well known that I am one of the shareholders who think the company should be wound up, and I am one of those who have signed a requisition to the directors requiring them to call a meeting to wind up the said company, and I believe that one or other of the objecting directors may wish to prevent my becoming a holder of more shares than are now registered in my name, in order to purchase the said four shares, and thus secure more votes in case the question of winding up the said company should come before a meeting of the shareholders."

In reply to the above affidavit one of the directors (Ahmedbhoy Hubibhoy) filed an affidavit, in which he stated as follows:—

"I say that the refusal to sanction the transfer was decided upon at a board meeting held on the 24th day of February, 1892, after the question had been fully and fairly considered. Such refusal was *bonâ fide* and not for the private pur-

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pose of the said directors present at the said meeting, or of any one or more of them, as suggested by the applicant in paragraph 8 of his affidavit. I say that the suggestion that the directors, or one or other of them, wish to prevent the applicant from becoming a holder of more shares than are now registered in his name in order to purchase the said four shares, and thus secure more votes in case the question of winding up the said company should come before a meeting of the shareholders, is unfounded."

*Jardine* for the Company and Directors showed cause:—The procedure adopted in this case is not the right procedure. No suit has been filed. Nor is this application made by the proper person. It is only the transferor who can make such an application as this. The transferee cannot—*In the matter of Indian Companies Act*(1); *Kaikhosro* v. *The Coorla Spinning and Weaving Company and others*(2).

As to the main question we rely on the case of *Ex parte Penney*(3). Article 13* of the Articles of Association give the directors a discretion to refuse to transfer shares. He cited Buckley on Companies, (6th Ed.), p. 37.

*Starling*, for the appellant, *contra*:—Under section 58 of the Indian Companies Act (VI of 1882) a transferee has a right to apply. As to the question of registration it is clear that no personal disqualification can be alleged against Mr. Gilbert, as he is already a shareholder. See Healey on Companies, p. 79. The only other possible objection is that he is unable to meet the liability on the shares. But he has offered to lodge security for that liability. The only director who makes an affidavit in this rule is the director who has bought the share himself. This director is on bad terms with Mr. Gilbert. No doubt the case of *Ex parte Penney* decides that directors need not assign any reason for refusal to the transferor or transferee, but if the matter is brought before the Court the directors should be required to show that the transfer is not refused from mere caprice or from any unworthy motive, and that the question has been properly considered. Here there is a dispute about the

(1) I. L. R., 8 Calc., 317. (2) I. L. R., 16 Bom., 80. (3) L. R., 8 Ch. Ap., 446.

* Any shareholder may, with the sanction of the Board of Directors or of the Secretaries, sell or dispose of and transfer all or any of his shares to any other person approved by the Board or the Secretaries (who shall not be bound to assign any reason for the withholding of such sanction).

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policy of winding up the company, and the refusal evidently has reference to that—*Moffat* v. *Farquhar*(1); Lindley on Company Law, (5th Ed.), 465; *In re Bell Brothers; ex parte Hodgson*(2); *In re The Ceylon Company; ex parte Anderson*(3).

FARRAN, J.:—In this matter Mr. Starling, on the 27th February last, moved for, and was granted, a rule *nisi* ordering that the Bombay Fire Insurance Company and the Directors do appear and show cause why they should not be ordered to register the name of Mr. R. Gilbert as a shareholder in respect of four shares referred to in the affidavit on which the rule was granted. The application was also headed and moved under section 45 of the Specific Relief Act. Mr. Jardine, in showing cause against the rule, objected that section 45 of the Specific Relief Act was inapplicable to the case, and that the proper procedure had not been adopted under the Companies Act. Both these objections appear to me to be well founded. Without considering whether a private company can be said to be a corporation within the meaning of chapter 8 of the Specific Relief Act, a chapter headed "Of the enforcement of public duties," I am of opinion that the provisions of that chapter cannot be invoked in the present case. Procedure under it can only be adopted when "the applicant has no other specific and adequate legal remedy." In this case, section 58 of the Companies Act affords the applicant a remedy both specific, adequate, and appropriate. Recourse cannot, therefore, be had to the chapter for the enforcement of public duties.

It is equally clear that a rule was improperly taken out in Court in this case. Rule 10 of the rules and orders of the High Court provides that certain matter shall be disposed of in Chambers, amongst which are applications in all matters arising under the Indian Companies Act; and such the application in the present case, so far as it is moved under the Companies Act, undoubtedly is. The application ought to have been made by summons to the sitting Judge in Chambers. The rule, however, does not deprive the Court of jurisdiction in the matter, but may have an important bearing on the question of costs.

(1) 7 Ch. D., 591. (2) 7 Law Times, 689. (3) *Ibid.*, 692.

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I postponed my decision for the purpose of reading the judgment of Mr. Justice Chitty in the cases of *In re Bell Brothers; ex parte Hodgson* (1), and *In re The Ceylon Company; ex parte Anderson*(2). I have done so; and the first question which arises for decision is whether Mr. Gilbert is entitled to make the application. Article 13 of the Articles of Association of the Bombay Fire Insurance Company provides that "any shareholder may, with the sanction of the board of directors or of the secretaries, sell or dispose of and transfer all or any of his shares to any other person approved by the board or secretaries, who shall not be bound to assign any reason for the withholding of such sanction." The board in this case have at a board meeting refused to sanction the transfer from Byrámji Jijibhoy to Mr. Gilbert of the four shares in question, and the secretaries decline to interfere in the matter. Section 58 of the Companies Act provides that the person aggrieved, or any member of the company, or the company, may apply for the rectification of the register. The term "person aggrieved," used in the section, is, no doubt, wide enough to include the transferee of shares in the company whose legal title the company refuses to recognize. Accordingly, in several cases, companies have, at the instance of transferees, been ordered to rectify their register by placing the names of such transferees upon them. *Ex parte Shaw* (3) is an instance in point. There, however, the legal title of the transferee was complete. In this case it is argued that the applicant's title is not complete, inasmuch as the consent of the board to the transfer has not been obtained by the transferor. That contention appears to me to be well founded. It is like the case of the assignee of a lessee, who is forbidden by the terms of the lease to assign without the assent of his lessor, claiming to be recognized as assignee, although the consent of the lessor has not been obtained to the assignment. The lessee can complain that the lessor refuses his consent capriciously, assuming it to be open to him to do so under the terms of the lease, but the proposed assignee cannot. Between him and the lessor there is no privity until the assignment

(1) 7 Law Times, 689.

(2) 7 Law Times, 692.

(3) 2 Q. B. D., 463.

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is complete. This is what, I think, Lord Justice James refers to when he says: "But in order to interfere upon that ground it must be made out that the directors have been acting from some improper motive,' or arbitrarily, or capriciously. That must be alleged and proved, and the person who has a right to allege and prove it is the shareholder who seeks to be removed from the list of shareholders and to substitute another person for himself." And, again, "that gentleman was not then and is not up to the present in any relation of *cestui que trust* towards them, and, therefore, he has no right to complain." Upon this ground, therefore, I think that this application must be refused.

Upon the main point argued before me I wish to say but little. It would be open to the transferor to prove by evidence that the directors in refusing this transfer are acting from some improper motive or arbitrarily and capriciously. This was laid down in *Penney's case*, and was acted on by Justice Chitty in *Ex parte Hodgson*. It is difficult to suppose that there can be any reasonable ground for the board objecting to Mr. Gilbert holding four shares in addition to the two which he now holds, but it is sworn that the reason why the directors declined to sanction the transfer was decided upon at a board meeting after the question had been fully and fairly considered. If the Court were to rule that, having regard to the high esteem in which it holds Mr. Gilbert, the board ought to sanction the transfer to him, it would substitute the approval of the Court for the approval of the board; and that, of course, cannot be. Is it, then, proved that the board are acting arbitrarily or capriciously, or from some improper motive in this matter? Having regard to the terms of article 13, that the board shall not be bound to assign any reason for the withholding of their sanction, I can draw no inference from their declining to state their reasons in Court. I can, therefore, only consider the facts stated in the affidavits, and decide whether, upon them, the applicant has made out a case. They are (1) the circumstances relating to the refusal of the board to sanction the transfer of certain shares to Mr. Drennan, and the subsequent purchase of the same shares by Ahmedbhoy Hubibhoy, from which I am asked to draw the inference that the refusal in this case was occasioned by the desire

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of Ahmedbhoy, or one of the directors, to purchase the shares himself. (2) The difference in opinion between the shareholders as to whether the company should be continued or wound up, and the fact that Mr. Gilbert is in favour of winding up the company, from which I am asked to draw the inference that the views held by Mr. Gilbert are the cause of the board's refusal to allow the shares to be transferred to him. (3) The bad and unfriendly terms which Mr. Gilbert says have for many years subsisted and still subsist between him and Ahmedbhoy Hubibhoy, which suggest a cause for the board's refusal. To draw the first of these inferences would, in my opinion, be to draw an erroneous inference from the facts, in addition to its being positively denied by Ahmedbhoy. To draw the second inference would be to make a plausible guess without evidence to support it. I have not been referred to any authority which shows that the third reason suggested is an illegitimate one to influence the board's decision; but were it otherwise, I have no evidence before me to show that it did operate in their minds. I cannot act upon guesses more or less probable, and must hold that there is no proof of any fact which would invalidate the decision at which the board has arrived. I, therefore, have no option but to discharge the rule with costs.

Attorneys for appellant :— Messrs. *Payne, Gilbert and Sayáni.*

Attorneys for the company :—Messrs. *Craigie, Lynch and Owen.*

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*Before Mr. Justice Farran.*

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*January* 28.

LEKHRA'J CHUNILA'L, PLAINTIFF, *v.* SHA'MLA'L NA'RONDA'S AND OTHERS, DEFENDANTS.*

*Practice—Civil Procedure Code (Act XIV of* 1882), *Sec.* 370—*Right form of order thereunder—Power of Court to rectify its own mistake.*

On the 3rd of August a case came on for hearing. Prior to that date the plaintiff in this suit had been adjudicated an insolvent and did not appear, but the Official Assignee appeared and applied for a postponement. The Court accordingly made the following order :—"It is ordered that the suit be dismissed under section 370 of the Civil Procedure, unless the Official Assignee elects on before the fifth day of October next to continue the suit and give security for the de-

* Suit No. 359 of 1890.