

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Cundy.

IN RE GULA'BDA'S BHA'IDA'S.*

1892.

September 15.

Company—Indian Companies Act (VI of 1882), Sec. 28—Shares issued as fully paid up—Rights of a purchaser with notice taking from a purchaser without notice—Notice—Contributory.

Twenty shares of the Bella Spinning, Weaving and Manufacturing Company, Limited, were originally allotted to A as fully paid up shares partly for work done and partly for work to be done for the company. The agreement under which the shares were so allotted was not registered as required by section 28(1) of Act VI of 1882.

A sold three of these shares to D, who had no notice that they were not fully paid up. D sold the three shares to G, who was the managing director of the company. The company was wound up by the Court. At the date of the winding up, G was holder of the three shares. In settling the list of contributories, the Court ordered G's name to be placed on the list in respect of the three shares.

Held, that G was not liable as a contributory. Though G was a managing director of the company, and as such must have known that the shares had been issued as fully paid up shares without complying with section 28 of Act VI of 1882, he was not on that account estopped from taking advantage of the equitable rule which protects a purchaser with notice taking from a purchaser without notice.

APPEAL against the order of J. B. Alcock, District Judge of Surat, made in winding up proceedings under the Indian Companies Act VI of 1882.

The Bella Spinning, Weaving and Manufacturing Company, Limited, was ordered to be wound up by the Court in 1881.

Twenty shares of this company were originally issued as fully paid up shares to one Dorabji, a contractor, partly for work done, and partly for work to be done for the company. The agreement under which the shares were so issued was not registered according to section 28 of Act VI of 1882.

* Appeal No. 108 of 1892.

(1) Section 28 of Act VI of 1882 provides as follows:—

“Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.”

Dorábji sold three of these shares to one Dádyshtet, who had no notice that the shares were not fully paid up.

Dádyshtet sold the three shares to Gulábdás, who was the managing director of the company. At the date of the winding up, Gulábdás' name appeared on the register of the company as the holder of the three shares.

In settling the list of contributories, the District Court was of opinion that as Gulábdás was a managing director of the company he must be taken to have notice that the shares were not fully paid up, and that the fact of the intermediate holder not having notice, did not help him. The Court, therefore, held that Gulábdás was liable, as a contributory, to pay the full amount of the three shares. Gulábdás' name was accordingly placed on the list of contributories.

Against this order Gulábdás appealed to the High Court.

Kálabhái Lallubhái for appellant:—The appellant bought the shares from a person who had no notice of their not being fully paid up shares. The fact that the appellant had notice is immaterial. The ruling in *In re Stapleford Colliery Company*⁽¹⁾ is conclusive on the present question.

Ganpat Sadáshiv Ráo for respondents (official liquidators):—The appellant was a managing director of the mill. As such he must have known that the shares which he purchased were not, either in fact or in law, fully paid up. He cannot, therefore, avail himself of the equitable rule which protects a purchaser with notice taking from a purchaser without notice. That doctrine does not apply in the present case. The words of section 28 of Act VI of 1882 are clear. According to that section every shareholder is bound to pay, in cash, the full amount of the shares he holds, unless there is a registered agreement to the contrary. There is none such here. The appellant was, therefore, rightly put on the list of contributories.

SARGENT, C. J.:—Twenty shares were originally issued to the contractor Dorábji as fully paid shares and registered in his name, of which three were sold and transferred to Mr. Dádyssett,

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who, it is admitted, had no notice that the shares were not fully paid up. The decision in *In re Stapleford Colliery Company*⁽¹⁾ shows that as between the company and Mr. Dadysett the three shares must be treated as paid up, and that he could make a good title to a purchase whether with or without notice. It appears that they were sold to the appellant Gulábdás, who was the managing director of the company, and it has been urged that, as such, he must have known that the shares had been issued as fully paid up shares without complying with section 28 of Act VI of 1882, and cannot, therefore, take advantage of the rule which protects a purchaser with notice taking from a purchaser without notice. This argument, however, was addressed to the Court in *In re Stapleford Colliery Company*⁽¹⁾ where the appellant and his father, whose executor he was, had been the solicitor and chairman of the company at the time of the agreement with the contractor; and yet the Appeal Court held that the fact of their being such officers made no difference in their title.

We are unable to distinguish the present case from the one referred to, and must, therefore, discharge the order of the Court below placing the name of Mr. Gulábdás on the list of contributors. Appellant to have his costs throughout.

Order reversed.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

VENKATESH KHANDO AND ANOTHER, PLAINTIFFS, v. CHANAPGAVDA,
DEFENDANT.*

Award—Civil Procedure Code (XIV of 1882), Sec. 525.—Application for filing the award registered as a suit—Objections taken by the defendant—Court precluded from filing award.

An application for filing an award being registered as a suit, the defendant raised objections, and the following issues were raised :—

(1) Whether a certain arbitrator was nominated or accepted as one of the arbitrators by the defendant?

* Civil Reference, No. 12 of 1892.

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