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question was really made in November, 1886. This suit was filed in September, 1889, and so, assuming three years to be the period of limitation, the suit would not be barred. For by article 9 of the articles of association the money became due on the inscription of the defendant's name as the holder of such shares. His liability may have commenced, and the debt may have accrued, when he signed the registered memorandum of association, but the debt could not become recoverable before notice was sent to him for enforcing such liability, or at least before the inscription of his name (*cf.* section 125, Act VI of 1882). Under these circumstances we confirm the decree of the District Judge with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

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CHHOTA'LA'L CHHAGANLA'L (ORIGINAL DEFENDANT), APPELLANT, *v.* DALSUKHRA'M HARGOVINDA'S, LIQUIDATOR OF THE GUJERAT OIL MILL COMPANY, LIMITED (ORIGINAL PLAINTIFF), RESPONDENT.*

Company—Suit by liquidator against shareholder—Limitation—Commencement of liability of shareholder in respect of shares—Memorandum of association—Subscriber to memorandum—Attestation of signature of subscriber—Want of attestation—Irregular attestation—Indian Companies Act, VI of 1882, *Section* 11.

A suit against a shareholder to enforce liability in respect of his shares, if brought within three years from the date at which his name is inscribed in the register as the holder of such shares, is not barred by limitation.

Where a memorandum of association of a company has been registered, a subscriber cannot divest himself of his liability as a member of the company, although his signature to the memorandum may not have been properly attested. The transaction may be irregular, but it is not void.

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad.

The plaintiff as liquidator of the Gujerat Oil Mill Company, Limited, sought to recover Rs. 400 and interest Rs. 97-12-0, in all Rs. 497-12-0, from the defendant, being the amount due by him in respect of two shares held by him in the company.

* Second Appeal, No. 732 of 1891.

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The defendant Shá Chhotálál Chhaganlál pleaded *(inter alia)* that the suit was time-barred. He also contended that he was not a shareholder, on the ground that his subscription to the registered memorandum of association was not duly attested. The fact was that the witness, who was said to have attested the defendant's signature, had attested other signatures written above that of the defendant, and had written his name in the parallel column. Instead of again writing his name in that column opposite the name of the defendant, the witness had merely made two marks (,,) commonly used to signify "ditto."

The Subordinate Judge allowed the plaintiff's claim to the extent of Rs. 400 only, and disallowed it with respect to interest.

On appeal by the defendant, the District Judge in confirming the decree made the following observations:—

"It is established beyond all reasonable doubt that the defendant's signature appears below the registered articles of association. It is, however, contended that his signature has not been attested as required by law. It is true that the attesting witness has not signed his name in full against the signature of the defendant, but it appears that the witness attested the names just above and below that of the defendant, and the defendant's signature is attested in exactly the same way as those signatures. It appears to me that the requirements of law have been fully satisfied. * * Having become a shareholder by signing the registered articles of association, the defendant cannot divest himself of his legal liability."

The defendant appealed to the High Court.

Chimanlál Hirálál Setalvad for the appellant (defendant):—In this case, in addition to the point of limitation argued in *Malichand* v. *Dalsukhram*[1], there is the question of attestation. Under section 11 of the Indian Companies Act (VI of 1882), attestation is necessary for each signature. The defendant's signature is not attested. The marks indicating "ditto" are not a sufficient attestation—*D. Fernandez* v. *R. Alves*[2]; *Nitye Gopál Sarkár* v. *Nagendra Nath Mitter*[3]. There are cases

(1) *Ante* p. 469. (2) I. L. R., 3 Bom., 382.

(3) I. L. R., 11 Calc., 429.

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which lay down that a mark is a sufficient attestation, but the mark must be some distinguishing mark, and not mere dots. The provisions of attestation and registration are made as a safeguard against fraud and deception, and, therefore, it is imperative that the attestation should be made in the usual manner.

The provisions of section 11 of the Companies' Act have not been complied with, and the defendant has not become a shareholder of the company.

Russell (with *F. Chalk*) for the respondent:—Section 11 does not say that the signature of each shareholder shall be attested by a witness. It merely lays down that the signatures shall be attested by one witness at least. In the present case the mark (dots) made by the witness is a sufficient attestation. We further say that for the purpose of the present case no attestation is necessary, because when a memorandum is subscribed to and registered, the person subscribing cannot divest himself of liability—section 45 of the Indian Companies Act (VI of 1882).

CANDY, J.:—Two points have been raised in second appeal: (1) first that the defendant cannot be held to be a shareholder at all, because his subscription to the registered memorandum of association was not duly attested according to law; (2) second, that the claim is barred by limitation.

The point of limitation may be disposed of at once. Assuming three years to be the period of limitation, it is clear on the face of the plaint that three years had not elapsed, when the suit was first brought, since the date when defendant's name was inscribed in the register of members as the holder of such share as he had agreed to take.

With regard to the first point, we are of opinion that, assuming the mark made to represent the signature of the attesting witness to be bad, it would nevertheless be very difficult to hold that the plaintiff, who is proved to have signed the registered memorandum of association, is not a member. The language of section 11 of Act VI of 1882, which follows the English Act, is somewhat peculiar. "The memorandum of association shall be signed by each subscriber in the presence of, and be attested by,

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one witness at the least." In its strict grammatical sense this would mean that the memorandum of association shall be attested by one witness at the least, not that the signature of each subscriber shall be attested by one witness at the least. Form A in Schedule II of the Act contemplates one witness attesting at the foot of the memorandum the signatures of all the subscribers. However that may be, and whatever weight the consideration of the question might have before the registration of the memorandum, we think that when the memorandum has been registered, a subscriber cannot divest himself of his liability. The transaction may have been irregular, but it is not void. Under these circumstances we confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

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VISHVANÁTH BHIKÁJI (ORIGINAL PLAINTIFF), APPELLANT, v. DHONDÁPPA' AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Landlord and tenant—Inámdár—Enhancement of rent—Landlord's right of enhancement—Ejectment for non-payment of enhanced rent—Plea of permanent tenancy—Decision of Judge not based on evidence given in the case—Practice—Second appeal—Finding of fact when binding in second appeal—Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible.

In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants, (2) that the plaintiff had no power to enhance, (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well known distinction between the *sheri* or private lands of an inámdár and the *khata* or *rayatwar* lands held by recognised tenants." The exercise of certain rights of transfer or inheritance, &c., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff to the High Court it was argued that the District Court having found, as a fact, that the defendants were permanent tenants bound to pay a reasonable rent, the High Court in second appeal was bound by that finding.

* Second Appeal, No. 279 of 1891.