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publicly arrested as he has been and detained for some time by the Sheriff, and I award him Rs. 10 compensation.

The last point I have to decide is whether the plaintiff is to be allowed to withdraw this suit under section 373 of the Civil Procedure Code (Act XIV of 1882). I think I ought to allow him to do so. He brought this suit believing that he could have the defendant detained in Bombay, or at all events that he could compel the defendant to give security to answer any decree that might be passed against him. It would be unjust now to compel him to go on with it when it is clear that he could not possibly obtain satisfaction of any decree he might obtain. I shall, therefore, give him leave to withdraw this suit, with liberty to bring a fresh suit, but he must pay the costs incurred in this suit by the defendant.

Attorneys for plaintiff:—Messrs. *Thákoredás, Dharamsi and Cáma.*

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

ORIGINAL CIVIL.

Before Mr. Justice Farran.

1890. *November* 20.

LILÁDHAR SHÁMJI AND OTHERS, (PLAINTIFFS), *v.* REHMUBHOY ALLÁNÁ AND OTHERS, (DEFENDANTS).*

Company—Meeting of shareholders—Power of chairman—Poll—Time for taking a poll—Right of shareholder to vote at meeting—Construction.

At common law and where the taking of a poll is not governed by statute or special rule the chairman of a meeting is the proper authority to fix the time and place for the taking of a poll; and a poll is properly and correctly taken immediately after the termination of the meeting. The same rule applies to meetings of registered companies, unless their articles prescribe some other procedure. The object of a poll in the case of a meeting of members of a registered company, as of other meetings, is to ascertain the true sense of the meeting, and is not to give absent members a further opportunity of voting, unless a contrary intention is expressly or impliedly to be gathered from the articles of the company. There is no presumption in construing a doubtful article in the latter sense.

One of the articles of association of a joint stock company provided as follows:—"Every shareholder not disqualified by the preceding article or Article

* Suit No. 265 of 1890.

No. 17, and who has been duly registered for three months previous to the general meeting, shall be entitled to vote at such meeting, and shall have one vote in respect of every share held by him."

Held, that the meaning of the above article was merely that a shareholder should be registered for three months before he could vote, but that having thus once acquired the right to vote he had one vote in respect of every share held by him. It was not necessary under the article that every such share should have been held by him for three months.

THE plaintiffs were shareholders in the New Great Eastern Spinning and Weaving Company, Limited, registered under the Indian Companies Act, 1866, and carrying on business in Bombay. They filed this suit for a declaration that certain resolutions proposed at a general meeting of the shareholders, and subsequently declared to have been carried, were not duly carried.

The plaintiffs in the suit, as stated in the title of the plaint, were "Liládhar Shámji, &c., on behalf of himself and other shareholders of the company who voted in support of the amendments and against the resolutions herein referred to and the said New Great Eastern Spinning and Weaving Company, Limited, &c."

The defendants were the chairman of the meeting in question and two directors proposed for election at that meeting and declared to be elected.

The plaint set forth that a general meeting of the shareholders of the company was held on the 17th April, 1890, of which the first defendant, Rehmubhoy Alláná, was the chairman, and certain resolutions were proposed at that meeting.

One of the resolutions was that one Hirálál Tribhovandás should be the secretary of the company for five years at a certain remuneration. To this an amendment was proposed nominating another person as secretary with a less remuneration. "On the amendment being put to the vote, 38 shareholders voted in its favour and 21 against it, whereupon 5 of the shareholders then present demanded a poll both on the original proposition and the amendment. The chairman then put to the meeting the original resolution, when there were 24 for, and 40 against, it."

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Another resolution proposed was that Muncherji Nowroji Banáji and Chaturbhoy Bháichandbhoy (defendants 2 and 3) should be appointed directors in place of retiring directors. To this an amendment was proposed, nominating other persons as directors. "On the amendment being put to the vote there were 37 for, and 17 against, it, when the same shareholders demanded a poll both on the said proposition and the amendment. The said chairman then put the proposition to the said meeting, when there were 20 for the said resolution and 39 against it."

Three other resolutions, the nature of which is not material, were proposed and lost on being put to the vote, but in each case a poll was demanded.

The following paragraphs of the plaint set forth the plaintiffs' case :—

"11. The business of the said meeting terminated at 5 P.M. and the said chairman, the defendant Rehmubhoy Alláná, directed that the said polls should be taken immediately then and there in the said room where the said meeting was held. Some of the shareholders present protested against the said direction, and submitted that the said polls should be taken at a future time, but the said chairman disregarded the said protest, knowing well that taking the said poll immediately would be very advantageous to those who desired the said resolutions to be carried, but very disadvantageous to those who were of the opposite opinion.

"12. The plaintiffs submit that, having regard to the terms of the said clause 70 of the said articles, the said chairman had no power to direct that the said polls should be taken immediately after the said meeting in the said room, and that the said polls taken then in pursuance of the said direction are invalid.

"13. The said chairman appointed certain persons to be scrutineers, and the result of the said polls, as appears by their said report, was as follows :—

"For the said resolutions—

Undisputed votes	556
Votes of shareholders in respect of shares held by them, but not duly registered in their names for three months previous to the said meeting, though such shareholders had been duly registered as holders of other shares for the said three months	100
Votes otherwise disputed	35
	691

"For amendment—

Undisputed votes	552
Votes of shareholders in the same position as the abovementioned 100 votes	5
Votes otherwise disputed	66
	623

"14. The adjourned meeting for the declaration of the said polls was held on the 24th April, 1890. The said chairman ruled that the 100 votes and 5 votes should be allowed. Out of the 35 disputed votes for the said resolution the said chairman allowed 31 and out of the said 36 disputed votes for the amendments he allowed 24, and declared the said resolutions carried and the said amendments to be lost.

"15. The plaintiffs submit that even if the said polls were validly taken on the day and at the place aforesaid, the said resolutions were not duly carried.

"16. The plaintiffs submit that, having regard to the terms of clause 72 of the said articles, the said votes of the shareholders in respect of shares held by them, but not duly registered in their names for three months previous to the said meeting, ought not to have been taken or allowed either in favour of the said resolutions or the said amendments, and that consequently the said 100 votes in favour of the said resolution and the said 5 votes in favour of the said amendments ought not to have been allowed.

"17. The plaintiffs say that the said chairman improperly disallowed many other votes which were given in favour of the said amendments, and improperly allowed many other votes given in favour of the said resolutions, and the plaintiffs say that if the said polls had been properly taken, there would have been a large majority in favour of the said amendments and against the said resolutions."

The plaintiffs prayed as follows :—

"(*a*) That it may be declared that the defendant Rehmubhoy Alláná had no power to direct that the said polls should be taken immediately after the business of the said meeting was concluded, and that the said polls so taken are not valid.

"(*b*) That it may be declared that even if the taking of the said polls was not invalid as aforesaid, the said resolutions were not duly carried, and that the said amendments were duly carried.

"(*c*) That it may be declared that the defendants have not been duly elected by the directors of the said company, and that the defendants may be restrained by injunction from acting or attempting to act as such directors.

"(*d*) That in the meantime the defendants may be restrained by injunction from entering into any agreement with the said Hirálál Tribhuvandás appointing him the secretary of the said company."

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The defendants contended that, having regard to the provisions of the articles of association, the proceedings challenged by the plaintiffs were valid.

The following clauses of the articles of association are material:—

"70. If a poll be duly demanded, the same shall be taken at such time and place in Bombay and either by open voting or by ballot as the chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded."

"72. Every shareholder not disqualified by the preceding article or Article No. 17 and who has been duly registered for three months previous to the general meeting, shall be entitled to vote at such meeting, and shall have one vote in respect of every share held by him."

"77. No person shall act as proxy unless the instrument of his appointment shall be deposited at the office at least forty-eight hours before the time for holding the meeting at which he proposes to vote."

Lang and *Russell* for plaintiffs.

Latham (Advocate General) and *Macpherson* for defendants.

The following authorities were cited and commented on:—*In re Horbury Bridge Coal, Iron and Waggon Company* (1); *In re Chillington Iron Company* (2); *Re The British Flax Company, Limited* (3); *The Queen* v. *D'Oyly* (4); Lindley on Companies, p. 311; Buckley on Companies; Chadwyck Healey on Companies, p. 239; Palmer's Company Precedents, 226; Indian Companies Act, 1882, sec. 47.

FARRAN, J.:—The plaintiffs in this suit seek to have it declared that certain resolutions proposed at a general meeting of the shareholders of the New Great Eastern Spinning and Weaving Company, Limited, held on the 17th April last, and declared at an adjourned meeting held for the declaration of the polls on the 24th of the same month to have been carried, were not duly carried. Nothing turns on the nature of the resolutions themselves. They are set out in the plaint, and it is not necessary for me to refer to them more particularly. The resolutions were put to the meeting; and on the chairman, the defendant Rehmubhoy Alláná, declaring the results, polls were demanded.

(1) L. R., 11 Ch. D., 109 at p. 114.
(2) L. R., 29 Ch. D., 159.
(3) 60 Law Times, p. 215.
(4) 12 Ad. & Ell., 139.

The business of the meeting terminated at 5 P.M., and the chairman directed the polls to be taken then and there in the room where the meeting was held. The plaintiffs submit that the chairman had no power to direct the polls to be taken immediately after the meeting in the same room. The chairman appointed scrutineers.

The result of the poll, as set out in their report, was this:—For the resolutions, undisputed votes, 556. Votes of shareholders in respect of shares held by them, but not registered in their names for three months previous to the meeting, though such shareholders had been duly registered as holders of other shares for the said three months, 100; votes otherwise disputed, 35; making a total of 691. For the amendments, the undisputed votes were 552. Votes of shareholders in the same position as the above-mentioned 100 votes, 5. Votes otherwise disputed, 66, making a total of 623.

The chairman ruled that the 100 votes for the resolutions and the 5 votes for the amendments given in respect of the shares which had not been held by the voters for three months before the meeting should be counted. He also ruled on the objections to the other votes objected to, but the latter rulings have not been gone into before me, as the ruling on the 100 and the 5 votes turns the scale, in any event, against the plaintiffs. So ruling, he declared the resolutions carried.

The first question, which arises, is whether the polls were validly taken—whether they were taken in accordance with the articles of association of the company. Article 70 relates to polls. It is this: "If a poll be duly demanded, the same shall be taken at such time and place in Bombay as the chairman shall direct." It is argued for the plaintiffs that this article requires the poll to be taken at some future time; and that a poll directed to be taken immediately after the meeting does not satisfy its requirements. I feel unable to accede to that argument. At common law, and where the taking of a poll is not governed by statute or special rule, the chairman of a meeting is the proper authority to fix the time and place for the taking of a poll; and a poll is properly and conveniently taken immediately after the

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termination of the meeting—*The Queen* v. *D'Oyly*.(1) There is no reason that I can see why the same rule should not apply to meetings of registered companies, unless their articles prescribe some other procedure. The object, as I conceive, of a poll in the case of a meeting of members of a registered company, as of other meetings, is to ascertain the true sense of the meeting, and is not to give absent members a further opportunity of voting, unless a contrary intention is expressly or impliedly to be gathered from the articles of the company. There is no presumption in construing a doubtful article in the latter sense. The article, which I have just read, gives the chairman a discretion to fix the time and place for the taking of a poll. It is to be taken "at such time and place in Bombay as the chairman shall direct." Why may he not fix it to be taken immediately after the meeting? The article does not expressly, nor I think impliedly, forbid it. In the case of *In re Horbury Bridge Coal, Iron and Waggon Company*,(2) the learned Judges (Jessel, M.R., and Brett, L.J.) made some conversational remarks which would seem to indicate that they thought that there was some practical and legal difficulty in fixing a poll immediately after the meeting at which it was demanded: but the question did not arise in the case before them, nor was it argued, and the case of *The Queen* v. *D'Oyly* (3) does not seem to have been present to the minds of the Judges. Kay, J., had, however, occasion in a later case to consider this very question *In re Chillington Iron Company*,(4) and he decided that where the articles of a company gave the chairman power to direct in what manner a poll should be taken, he had discretion and power to direct it to be taken immediately after the meeting. I am unable to distinguish that case from the present. The chairman there had power to decide in what manner the poll was to be taken, which would impliedly include a power to fix the time and place. Here a discretion to fix the time and place is expressly given. The subsequent case of *Re The British Flax Producers Company, Limited* (5) is an instance of the articles of a company being held impliedly to require some time to

(1) 12 Ad. & Ell., 139.
(2) 11 Ch. D., 109.
(3) 12 Ad. & Ell., 139.
(4) L. R., 29 Ch. Div., 159.
(5) 60 Law Times Rep., 215.

elapse between a meeting at which a poll is demanded and the taking of the poll. The provision there was that the poll should be taken at a time and place to be fixed by the directors. The directors could not, as was there held, prospectively appoint a time for the taking of the poll, but were bound to exercise their discretion after the occasion for it arose. This involved a meeting for that purpose, and *ex necessitate rei* a postponement of the taking of the poll until after the directors had come to a decision. The case is altogether different from the present one, which it does not govern. I hold, therefore, that the poll in this case was validly taken.

The question whether the chairman was correct in allowing the votes for the 100 and the 5 shares which had not been held by the voters for three months, depends upon the construction of article 72, which provides that "every shareholder who has been duly registered for three months previous to the general meeting shall be entitled to vote at such meeting, and shall have one vote in respect of every share held by him." The articles contained in Table A to the Companies Act require a shareholder to be possessed of his shares for three calendar months before he can vote in respect of them. This provision is arbitrary, and there is no *a priori* inference that the framers of the present articles intended to introduce it into them, nor is there any reason for departing from the plain, grammatical meaning of article 72 in order to effect this object. In plain words, the article provides that a shareholder must be registered for three months before he can vote. That is a condition precedent to his exercise of that right. "Registered" applied to a member of a company is a technical expression, and means entered upon the register in pursuance of section 47 of the Act. The shareholders having acquired the right to vote by being entered for three months on the register, the article proceeds to define the extent of his voting power. He is to have one vote in respect of every share held by him. The plaintiffs contend that such share must have been held by him for three months; but why? To express that meaning, words must be introduced into the article such as held by him "for three months." This would involve a departure from the plain meaning of the words

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actually employed, but that is only allowable when it is sought to avoid an illegality, inconsistency, or manifest absurdity. No such reason exists here. I must, therefore, decide that the votes in respect of the 100 and the 5 shares were properly allowed. The suit will be dismissed with costs, including costs of the rule.

Attorneys for the plaintiffs :—Messrs. *Conroy and Brown.*

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

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood, and Mr. Justice Telang.

1890. *May* 1.

PARSHOTAM BHATSHANKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* HIRA' PARAG, (ORIGINAL DEFENDANT), RESPONDENT.*

Bhágdári (Bom.) Act V of 1862, *Sec.* 3—*Undivided share of a bhág, alienation of—Construction.*

The alienation of an undivided portion of a *bhág*, or share in the *bhág*, to a person who is not a *bhágdár*, is void under section 3 of Act V (Bom.) of 1862.

BIRDWOOD, J., dissented.

THE plaintiff obtained a decree against one Lakhmidás, and in execution he attached a certain *bhágdári* property as belonging to Lakhmidás. The present defendant objected to the attachment, alleging that the property was his, he having purchased it at a previous execution-sale. He pleaded adverse possession. The attachment was removed, and the plaintiff was referred to a suit to establish his right. He now sued to establish his right to attach and sell the said property in execution.

The Court of first instance found the previous purchase of the defendant proved, as also the plea of adverse possession, and rejected the plaintiff's suit.

The plaintiff appealed to the District Judge, who confirmed the lower Court's decree.

On appeal by the plaintiff to the High Court, among other grounds, the plaintiff contended that the property being an un-

* Appeal No. 378 of 1888.