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[After dealing with the merits of the application the learned Judge concluded :—]

Having regard to all these matters it appears to me that this is a case in which in the interests of justice it is expedient that an enquiry should be made into offence under section 193 of the Indian Penal Code or such other sections as may be applicable, committed in the course of the suit in question, and I therefore record a finding to that effect. The action to be taken upon this finding is of course to be taken by the Court itself, and a complaint will be drafted and sent to the Magistrate for disposal.

I direct that the words "why sanction for the criminal prosecution of the said defendant Vanmalidas Lakhmidas should not be given" should be deleted from the rule.

In other respects rule made absolute with costs.

Solicitors for plaintiff: Messrs. *Muljee, Thakordas & Co.*

Solicitors for defendant: Messrs. *Mirza & Mirza.*

Rule made absolute.

K. MCI. K.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Chief Justice, and Mr. Justice Coyajee.

HABIB ROWJI (APPELLANT AND ORIGINAL DEFENDANT) *v.* THE STANDARD ALUMINIUM AND BRASS WORKS, LTD. (RESPONDENTS AND ORIGINAL PLAINTIFFS)*.

1925. *March* 17.

Company—Shares—Unpaid calls—Forfeiture—Article creating special contract on forfeiture—Liability after forfeiture—Limitation.

On March 31, 1920, the defendant applied for and was allotted 100 shares in the plaintiff company, of the value of Rs. 100 each. The defendant failed to pay the allotment money. Thereafter first and second calls became payable on August 5, 1920, and February 20, 1921, respectively, but these also remained unpaid by the defendant.

* Appeal No. 118 of 1924 ; O. C. J. Suit No. 266 of 1924.

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By their notice, dated April 15, 1921, the board of directors called upon the defendant to pay the amount of allotment money and first and second calls before May 5, 1921, threatening in default of payment to forfeit the said shares under Article 32 of the Articles of Association. Article 32 was in the following terms :—

"Any member whose shares have been forfeited shall notwithstanding be liable to pay, and shall forthwith pay to the company all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon, from the time of forfeiture until payment, at nine per cent. per annum, and the directors may enforce the payment thereof if they think fit"

The defendant failed to comply with the notice and by a resolution of the board, dated August 3, 1921, his shares were duly forfeited.

On July 29, 1924, the plaintiff filed a suit to recover the amount due with interest for allotment money and first and second calls. The defendant pleaded limitation.

Held, that although on the forfeiture of his shares the defendant had ceased to be a member of the company and liable in that capacity to be sued for past calls, the foundation of the suit was the special contract contained in Article 32, under which a fresh liability was created to pay all calls and other moneys owing in respect of the shares at the time of forfeiture, and, inasmuch as the cause of action thereon had not arisen till the forfeiture, the suit was not barred.

THE plaintiff company, the Standard Aluminium and Brass Works, Ltd., was incorporated under the Indian Companies Act on February 27, 1920, with a capital of Rs. 25,00,000 divided into 25,000 shares of Rs. 100 each. On March 31, 1920, the defendant Habib Rowji applied for 100 shares in the company and paid Rs. 1,000, application money. He was allotted 100 shares but failed to pay Rs. 1,500 allotment money. By a resolution, dated July 20, 1920, the board of directors made a first call of Rs. 15 per share, payable on or before August 5, 1920. The defendant, however, failed to pay the amount due on his shares. By a further resolution, dated January 27, 1921, the board made a second call of Rs. 15 per share payable on or before February 2, 1921. The defendant again failed to pay the amount due in respect of his 100 shares.

On April 15, 1921, the board served a notice upon the defendant calling upon him to pay the sum of Rs. 4,500, being the amount due in respect of allotment money and first and second calls, on the 100 shares standing in his name, and threatening that in default of payment with interest at nine per cent. within 20 days from the receipt of the notice, the shares would be forfeited and the plaintiff company would proceed to recover the unpaid amount with interest. Article 32 of the Articles of Association provided that :—

"Any member whose shares have been forfeited shall notwithstanding be liable to pay, and shall forthwith pay to the company, all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture together with interest thereon from the time of forfeiture until payment at nine per cent. per annum, and the directors may enforce payment thereof if they think fit."

The defendant failed to comply with the above notice, and by a resolution of the board of directors, dated August 3, 1921, the shares standing in his name were forfeited. On July 29, 1924, the plaintiffs filed the present suit to recover the sum of Rs. 5,959-5-0 with interest being the amount due to the company in respect of allotment money and first and second calls on the 100 shares standing in the name of the defendant. In his written statement the defendant admitted the facts set out in the plaint but pleaded limitation as a bar to the plaintiffs' suit in respect, not only of the allotment money, but also of the first and second calls, inasmuch as the amount became due and payable more than three years before the filing of the suit.

The learned trial Judge (Kemp J.) held, that the suit was not barred by limitation, for on the date when the shares were forfeited (August 3, 1921) the claim for allotment money and calls was not barred. His Lordship further held that Article 32 of the Articles of

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Association provided for a new and increased liability which was to arise on the date of forfeiture when the character of the member was changed from that of a shareholder to that of an outside debtor.

The defendant appealed.

B. J. Desai, for the appellant.

Kanga (Advocate General) with *Sir Thomas Strangman*, for the respondent.

MACLEOD, C. J.:—The plaintiffs were a joint-stock company incorporated on February 27, 1920, under the provisions of the Indian Companies Act VII of 1913, and having their registered office at Thakurdwar without the Fort. The capital of the company was rupees twenty-five lacs divided into 25,000 ordinary shares of the value of Rs. 100 each. On March 31, 1920, the defendant applied for one hundred shares of the said company and duly paid the application money thereon, viz., Rs. 1,000. Pursuant to the resolution in that behalf the board of directors of the plaintiff company allotted to the defendant one hundred shares, and the relative allotment letter duly addressed was duly posted to the defendant. By a resolution passed on July 20, 1920, the board of directors of the plaintiff company made a first call of Rs. 15 per share upon the members of the said company payable on or before August 5, 1920. Due notice of the said resolution was given to the defendant, and he was required to pay the amount of the said call on or before August 5, 1920, at the office of the company. The defendant was further informed that interest at nine per cent. per annum would be charged on the amount of the said call from August 5, 1920, until payment. A further call of Rs. 15 per share payable on or before February 20, 1921, was made by a resolution passed on January 27, 1921, and due notice was given to the defendant. The defendant did not pay the amount

due on the allotment or on the calls made by the plaintiff company. Accordingly the directors served a notice on the defendant, dated April 15, 1921, requiring him to pay the same together with interest thereon in accordance with the provisions of the articles of association of the company, and stating therein that in the event of non-payment of the said allotment and call money with interest thereon at nine per cent. within twenty days from the date of the notice, that is, on or before May 5, 1921, the directors would forfeit the shares and proceed to recover the unpaid amount. The defendant failed to comply with the requisitions contained in the notice of April 15, 1921, whereupon by a resolution passed on August 3, 1921, by the board of directors the shares held by the defendant were duly forfeited in accordance with the provisions of the articles of association of the company. The plaintiff sought to recover from the defendant the sum of Rs. 5,959-5-0 with interest on Rs. 4,694-12-3 at the rate of nine per cent. per annum from July 29, 1924, till judgment.

The defendant admitted the statements in the plaint but submitted that the suit as against him was barred by the law of limitation in respect not only of the allotment moneys, but also in respect of the first and second calls, inasmuch as the same became due and payable more than three years before the filing of the suit.

At the hearing issues were raised whether the claim in respect of the allotment money, the first call and the second call respectively were barred by limitation. The learned Judge held that the plaintiffs' claim to recover all the three amounts was not barred by limitation and passed a decree as prayed.

In appeal it has been argued that that decision is wrong, that the suit was in fact a suit for payment of the allotment money and the calls made by the company on the shares, and that as it fell under Article 112

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of the Indian Limitation Act it was barred. It was also argued that, although under Article 32 of the Articles of Association the company was entitled to enforce payment of the allotment money and the calls in spite of the defendant's shares having been forfeited, the cause of action was the same, and the period of limitation for the suit was the same as on the original cause of action.

Article 32 runs as follows:—

"Any member whose shares have been forfeited shall, notwithstanding be liable to pay, and shall forthwith pay to the company, all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture together with interest thereon, from the time of forfeiture until payment, at nine per cent. per annum, and the directors may enforce the payment thereof if they think fit"

It is admitted that, but for the provisions of that article, if the shares of any member are forfeited, he ceases to be a member of the company in respect of the forfeited shares, and so would no longer be liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. It follows that if a member's shares are forfeited and he ceases to be a member of the company, it is only by virtue of Article 32 that he becomes a debtor to the company for the amount of calls, instalments, interest and expenses due at the time of forfeiture, and it can be said that on that account a new cause of action arises under that special contract between him and the company. The question has not arisen in any reported case as to when the period of limitation begins to run for a suit by a company against a late member for money in respect of calls, instalments and expenses which were due from him at the time his shares were forfeited. The learned Judge has relied upon the decision in *Stocken's Case*.[1] In that case by the articles of association of the company overdue calls

[1] (1868) L. R. 3 Ch. App. 412.

were to carry interest at twenty-five per cent., and, by clause 50, it was provided that the forfeiture of a share should involve the extinction at the time of the forfeiture of all interest in, and all claims and demands against, the company in respect of the share, and all other rights incident to the share but that the shareholder should, notwithstanding be liable, "to pay to the company all calls owing on such share at the time of such forfeiture". An action was brought by the company to recover from Stocken the amount due on the shares belonging to him which had been forfeited under clause 50. The company having gone into liquidation after forfeiture Stocken successfully resisted being placed on the list of contributories, but then received a notice in writing, calling upon him to pay to the official liquidator the amount of the call which was due at the time of forfeiture, "and interest thereon, calculated according to the articles of association and the notice of call issued to the shareholders". The question then was whether Stocken was bound to pay not only the amount due to the company but also "interest thereon". The Master of Rolls decided that no interest was payable. In appeal Lord Cairns L. J. said (p. 414):

"I think that the 50th clause of the articles of association, whether it be called a penal clause or not, must receive a strict construction, and that the rights of the parties on one side and the other must depend upon its construction...But whether that be so or not, the construction of that clause, as it seems to me, is reasonably clear. The first part runs thus:—'The forfeiture of any share shall involve the extinction at the time of the forfeiture of all interest in and all claims and demands against the company in respect of the shares and all other rights incident to the share.' Now, suppose the clause had stopped there, and there had been nothing more in the articles. I apprehend that clearly no action could, after forfeiture, have been maintained for the recovery of the calls previously due, and that for two reasons. First, I think so in consequence of the words used, namely, that all rights incident to the share are extinguished, which words cannot, in my opinion, be confined to rights against the company, but must extend to all rights incident to the share. In addition to that, I am strongly disposed to think that the mere fact of a duly authorised forfeiture of

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shares without anything in the articles defining the effect of forfeiture, would of itself, in the very nature of things, render any proceedings at law for past calls incompetent, because such proceedings must, I apprehend, be on the footing that the person sued was a shareholder in the company; and if his interest in the company had been destroyed, it is by no means clear that the action could be maintained. The following part of the 50th clause shows that the construction which I have put upon the first part is the construction put on it by the framer of the articles: for he evidently thought that if he stopped there any right to proceed for calls would be gone, and he therefore introduces a provision which seems to me to be in substance and in words the creation of a new right."

Accordingly it was held that no interest was payable, as no demand had been made for payment with interest after forfeiture on the sum payable under the forfeiture clause. It simply gave an independent right to recover after forfeiture the sum due at the date of forfeiture. That was the sum which appeared to the Court, could be recovered and nothing beyond that.

A reference has also been made to the case of *Ladies' Dress Association* v. *Pulbrook*[a], in which the defendant was sued after the company went into liquidation for the unpaid calls due by him, and it was held that, "notwithstanding the provisions of section 38 of the Companies Act, 1882, sub-sections 1, 3, the action was maintainable, inasmuch as the defendant was liable, not as a contributory, but as a debtor to the company".

By analogy a reference may also be made to section 61 of the Indian Companies Act (VI of 1882) which makes it clear that when a company has gone into liquidation "every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs, charges and expenses of the winding up". And under sub-clause (*d*): "In the case of a company limited by shares, no contribution shall be required from any member exceeding the

[a] [1900] 2 Q. B. 376.

amount, if any, unpaid on the shares in respect of which he is liable as a present or past member". So that when a company goes into liquidation, although as against the members the company's right to recover the money due on the calls may be barred, the members of the company are liable to contribute to the assets of the company to the extent of the amount unpaid on their shares in order that the debts and liabilities of the company should be paid. It seems to me, therefore, that by article 32 of the articles of association, there was a special contract whereby the defendant agreed that in the event of his shares being forfeited he would be liable to pay to the company all the moneys that were due by him for allotment, calls and further calls made on the shares allotted to him with interest, and it was on that contract that the plaintiffs were suing. The cause of action then arose on August 3, 1921, when the company forfeited the shares, and, therefore, the suit to recover what was due from the defendant on his shares was within time. The appeal, therefore, fails and must be dismissed with costs.

COYAJEE, J.:—I concur. The foundation of the suit is the special contract evidenced by Article 32 of the plaintiff company's articles. On forfeiture of his shares, the defendant ceased to be a member, and the company could not thereafter sue him for past calls. But although his liability to pay such calls came to an end, he incurred, under the terms of Article 32, a fresh liability to "forthwith pay to the company all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon, from the time of forfeiture until payment". This, in my opinion, was a new obligation giving the company a fresh cause of action against the defendant; and the period of limitation for a suit to enforce this new obligation began to run from

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the time the shares were forfeited. In this case, the plaintiff company exercised the power of forfeiture on August 3, 1921, and the suit having been instituted on July 31, 1924, is not barred by limitation.

Solicitors for appellant: Messrs. *Payne & Co.*

Solicitors for respondents: Messrs. *Mulla & Mulla.*

Appeal dismissed.

O. H. B.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice and Mr. Justice Coyajee.

1925. *March* 18.

R. K. MODY & Co., KHUSHIRAM HIRANAND (APPELLANTS AND ORIGINAL DEFENDANTS) *v.* MAHOMEDBHAI ABDOOL HOOSEIN & Co. (RESPONDENTS AND ORIGINAL PLAINTIFFS)*.

Bombay Rent (War Restrictions) Act (Bombay Act II of 1918), sections 1, proviso, and 10A—Ejectment by landlord—Application for restoration of possession—Expiry of Rent Act—Determination of proceedings.

The plaintiffs filed a suit to recover possession of certain business premises from their tenants, the defendants, alleging that the premises were required reasonably and *bona fide* for their own use and occupation. In accordance with a consent decree subsequently passed therein the defendants vacated the premises on January 31, 1924. The plaintiffs, however, did not occupy the premises themselves but in fact re-let them at a higher rent. The defendants, thereupon, on August 20, 1924, took out a notice of motion under section 10A of the Rent Act, for an order restoring them to possession and directing the plaintiffs to pay compensation. On August 31, 1924, before the motion came on for hearing, the Rent Act ceased to be in operation in respect of business premises.

Held, affirming the judgment of Pratt J., that the defendants were not entitled to the relief claimed, the Act being a temporary Act, and the proceedings, on the expiration of the Act, having *ipso facto* determined.

Applicability of the proviso to section 1 of the Act considered.

*Appeal No. 121 of 1924, O. C. J. Suit No. 2244 of 1923.