

(1871) 06 CAL CK 0019

Calcutta High Court

Case No: None

In the Matter of the
Indian Companies Act,
1866, and of the Port
Canning Land
Investment
Reclamation and Dock
Company, Limited

APPELLANT

Vs

Claim of Prankrishna
Law and Co. Claim of
Pyarichand Mitter and
Co. Claim of Mr. T. C.
Cadogan, Claim of the
Oriental Bank

RESPONDENT

Date of Decision: June 30, 1871

Judgement

Phear, J.

The claims are not all similarly situated, but it is not necessary, for the moment, that I should mention the particular facts by which they are severally distinguished. The liquidators, on behalf of the Company, resist these claims on the ground that they arise out of transactions which were ultra vires of the Company, and for which the Company cannot be made responsible. The claimants maintain the contrary, and also endeavour to avoid this ground of defence in more than one way; but I think it will be convenient that I should first direct my attention to the question which is thus raised.

2. It will be observed that the bills, upon the foundation of which the claims are preferred, are re-drafts, that is, bills drawn by the consignees of the goods for the purpose of obtaining reimbursement of so much of the money which they originally in effect advanced to the shippers of the goods, by duly meeting the bills drawn against these goods,--so much of this money as they failed to repay themselves out of the process of the sale of the goods. In other words these bills, at the bottom, represent the claims of

persons who received the goods to sell for the shippers on certain terms for repayment of money advanced by them in the course of the transaction. I have already said that the shipments of rice were made by Messrs. Pyarichand and Co., under the authority of the directors of the Company for and on behalf of the Company. It is further clear enough that they were made in the way of a trade speculation, and not merely, as was suggested to me in the argument, for the purpose of advantageously getting rid of some superfluity of rice originally purchased to supply the needs of coolies. The first question, then, which I have to determine, seems to shape itself thus:--

Is trading in rice within the scope of the Company's Articles of Association?

Now the objects of the Association are specified in the Memorandum thus (reads Memorandum set out at page 586).

3. It is apparent that the first three paragraphs are limited to the acquisition of certain land, its material improvement, the conversion of it into a money profit by letting or selling, and the construction of public works, &c., upon it such as are calculated to facilitate trade, i.e., the purpose of the Association (as so far defined) is, having acquired the land, to make it productive, and to fit it to be a convenient and valuable place of trade. Now, trading in rice clearly is not action directed to either of these ends.

4. The fourth paragraph, however, goes on to say, "and for all other purposes that may be essential or conducive to the attainment of or connected with the above objects." It was very earnestly contended before me, on behalf of the claimants, that this clause at any rate was large enough to let in rice trading at Mutlah, and the cases of *Simpson v. Westminster Palace Hotel Company* 2 De Gex, Fisher, & Jones, 141; S.C., 6 Jur. H.S., 985, in re the *Peruvian Railway Company* 2 L.R. Ch. App., 622, and several others were cited as authorities in support of the argument. I feel myself obliged to say that none of these cases give me any assistance. By the nature of the question, it was not likely that they should do so. The words used by each Association must speak for themselves, and those of the paragraph in question are plain enough to preclude the necessity of having recourse to judicial decision as a guide to interpretation. The "attainment of or connection with the before-mentioned objects" are the governing words in the sentence. Can trading with England in rice be brought within them? It is argued that, by trading from the port of Mutlah, the Company will practically demonstrate the advantages of the place as a trading site, will attract other traders there, and so in the end promote the material prosperity of the port. By using the port themselves, they will lead others to use it, and so further the ultimate objects of the Association. In a certain vague sense, results of this sort may be said to be "connected with the before-mentioned objects" of the section, but they are not conducive to or connected with these "objects" as a means to an end; and it is in this sense only, as it seems to me, that the words of the fourth paragraph are employed. I think this paragraph is simply supplemental to the preceding three paragraphs of the section, and that the whole together amount shortly to this, namely, that the object of the Company is to deal with certain land, and to convert the whole or

part of it into a convenient site for trade; and to do anything which may be incidental, or which may lead, to carrying this purpose into effect. Trade is in the order of things subsequent to the work which the Company by its Memorandum has set itself to do, not part of it. Therefore, according to the plain meaning of the Memorandum, as I read it, trading in rice was a business in which the Company could not engage, because it was distinctly ultra vires of the Association; and if this be so, whatever was done in this way by the directors, as on behalf of the Company, must be treated as having been done by them without authority, for their powers, as agents of the Company, did not extend thus far; and they could not acquire power to bind the Company, quod Company, from any conduct on the part of the shareholders. To use the words of Lord Westbury, in the case of *in re the British Provident Society, ex parte Grady* 9 Jur., N.S., 632, if a Company has no power to do a particular thing, undoubtedly that power cannot be added to the Company, either by the agreement of the shareholders, nor can it be inferred to have been done legally, merely from acquiescence or subsequent delay in questioning the transaction."

5. During the argument it was very strongly urged before me, upon the authority of *Taylor v. The Chichester & Midhurst Railway Company L.R.*, 4 E. & I. App., 628, and some cognate cases, that an incorporated Company had power to do everything which is not illegal or actually prohibited to it by the terms of its incorporation. This is true as regard the means of carrying into effect the purposes for which the Company is incorporated. But the principle thus contended for does not apply outside that limit. Perhaps rather I should say, the Company is by implication prohibited from engaging in undertakings, which do not fall among the objects of its incorporation. I need not now advert to the great mischief, public and private, which might ensue, if Joint Stock Companies were not held strictly to the terms of their incorporation. The interests of the public on the one hand, and of the shareholders on the other, require that directors should be rendered powerless to use the strength and means of the Company, and to pledge its credit beyond the scope of these. It is accordingly perfectly well settled in Westminster Hall that, in whatever way the incorporation may have been effected, whether by special Act of Parliament, as in the case of Railway Companies, or by registration under the provisions of a general act, these Companies in the eye of the law exist, each for limited purposes only--*Hare v. London and North Western Railway Company* 7 Jur., N.S., 1145, and *Be Athenaeum Life Insurance Company, ex parte Eagle Insurance Company* 4 Jur., N.S., 1140, and what those purposes are, every one dealing with them, must be taken to know. In the language of the English Courts, he is bound to know the terms of the deed of settlement," see *Royal British Bank v. Turquand* 2 Jur., N.S., 664 and *Balfour v. Ernest* 5 Jur., N.S., 443.; S.C., 5 C.B., N.S., 601. If the directors, through whom alone a Company can act, endeavour to carry the Company beyond the limits of its powers, they cease immediately to represent it, and become themselves personally liable in the transaction towards those with whom they deal.

6. But Mr. Phillips argued that even if the business of trading in rice was not comprehended within the expressed objects of the Port Canning Association, still the Company had, under the circumstances which have occurred, implied power to engage in it, because it had advanced money for the construction of a rice-husking mill at Mutlah, as it lawfully might, that this mill had come into the Company's hands as security for this advance, and that the only mode in which the Company could make the security available was by themselves buying rice, husking it at the mill, and exporting it. This, I think, is the substance of the learned counsel's argument on this point, and he fortified his position by citing *The Royal British Bank of India's Case*, in *re Asiatic Banking Company* 2 Johns & Hem., 441. I will not now enquire whether the directors' doings, with regard to this husking mill, can be correctly represented as legitimate acts of the Company. I will assume for the moment that the Company rightly became possessed of the mill, and entitled to turn it to the best account it could for the purpose of reimbursing itself the money laid out upon it. The Company would no doubt in such case have full power to sell the mill, or even to use it for profit, but by no reasonable implication could it thereby acquire power to engage in another business not otherwise lawful, merely in order to bring work to the mill.

7. Next, it is said that the consignees of the rice by honoring the bills drawn against them, on behalf of the Company, did, in effect, advance money to the Company; that the money so advanced, as a matter of fact, went into the coffers of the Company; and it was argued very speciously that the Company having thus borrowed the money, and had the benefit of it, was bound both at law and in equity, irrespective of the character of the rice trading, to pay back the money: at law, because, the 76th section of the Articles of Association gives the directors power to borrow money, and therefore they having done so, there was a legal duty to repay: in equity because, having, with a legal capacity to receive money, taken the money of the consignees, without giving consideration, it would be contrary to all principles of equity and justice that the Company should be allowed to retain it. The principal cases in the English Courts which have suggested this argument are in *re Phoenix Life Assurance Company* 2 Johns & Hem., 441, in *re German Mining Company* 4 De Gex, M. & G., 19, and in *re Cork and Yuoghal Railway Company* L.R., 4 Ch. App., 748, and they seem to me to represent two distinct classes: one class consists of cases in which the money has been advanced for a purpose which totally fails, and in which the obligation to repay rises solely by implication of law out of that failure of consideration. Such an implication will arise against a corporation, which, with power to receive money, has received money as against an individual. The other class embraces the cases in which money borrowed without authority has been applied to discharge legal liabilities of the Company and in these the lender is allowed in a Court of Equity to take the place of the creditors whose debts have been paid with his money. Of this latter class, I may remark, Lord Justice Giffard lately spoke thus:--"I have no hesitation in saying that those cases have gone quite far enough, and I am not disposed to extend them (see in *re National Benefit Building Society*) L.R., 5 Ch. App., 309, see 313. But, in truth, the matter before me cannot be made to fall under either of these heads. The money for which the

re-drafts are drawn is not separable from the other parts of the shipment transaction. The mere drawing of the return bill does not affect the character of the relations between the consignee and the Company and putting this document on one side, we see at once that the right of the consignee to claim repayment of any portion of the money expended in honoring the bills turns entirely upon the terms, express or implied, of the contract of shipment, and the extent to which he had complied with them. If, therefore, the directors were powerless to impose such a contract on the Company, clearly, as it seems to me, there can be no right on the part of the consignee to recover against the Company in any degree on the footing of that contract. If it were otherwise, the consignee would be able to take up some such a position as this, namely, although it may be that by law my contract of agency is at best a contract with the directors alone, and not with the Company, and that I am responsible to the directors personally (who employed me) for the propriety of the sales effected by me of the goods which I received under their consignment, and must account to them as separate from the Company for the proceeds of those sales, my commission, &c, still, as regards the margin by which I am out of pocket by the transaction, I am entitled to claim that from the Company itself, because I know that the amount of the bills, which I honored, went to increase the funds of the Company. It is manifest that a course of proceeding like this, if it were practicable, would absolutely nullify the operation of the doctrine of ultra vires. And still less, as I think, can the consignee claim from the Company the whole amount paid by him on the original drafts, irrespective of the money realized by him, through sale of the goods? It seems to me there is no mean between the alternatives of making the Company responsible for the whole of this trading transaction, and holding it free of every part of it. The correct view of the matter seems to me to be this. The consignee engaged in a certain trading transaction, with the intention of taking the ordinary part of a commission agent in it, under the authority and by the directions of the directors of the Port Canning Company, and on the faith that these directors were the agents of the Company capable of binding it in this matter. It turns out that the directors were not such agents of the Company, and that the Company is incapable of adopting or ratifying their acts. Under these circumstances the consignee is without any way of recourse to the Company itself, whatever remedy he may be entitled to he must seek against the directors personally. See *Richardson v. Williamson* L.R., 6 Q.B., 279. The fact that the directors may have paid and probably did pay, the whole of the proceeds of the bills to the Company's account at the bank does not, I think, in any way affect the merits of the case on this view. Indeed, so far as the Company was concerned, the probability is (though I need not now enquire into the fact) that such payment as this would be but a reimbursement pro tanto of the money which the directors had taken from the Company to initiate the trading speculation. And by making such a payment, the directors who, for the right judging of the matter, must be carefully kept separate from the Company, only replaced a portion of that which, they had previously misapplied.

8. It appears to me therefore that, in whatever aspect the case be viewed, the consignees cannot establish a valid claim against the Company, directly upon the facts of the

shipping transaction. It remains to be enquired whether that which has occurred with respect to the re-drafts, has placed them or their payees and endorsees in a better position.

9. Now of the re-drafts in question, the one in favor of Messrs. Pyarichand Mitter and Co., has not been accepted by or on behalf of the Company. Also the two under which Messrs. Prankrishna Law are payees have not been accepted, but the liquidators have endorsed on each of them the Memorandum that it had been registered as a claim. Clearly, as it seems to me, in neither of these cases is there anything to make any substantial difference between the rights of the drawer and payee respectively: if the drawer had no valid claim against the Company, assuredly the Company was not bound to accept his bill drawn upon it in respect of his pretended claim. The remaining drafts, under which Mr. Cadogan and the Oriental Bank prefer their respective claims, were on presentation accepted by the secretary of the Company, by order of the directors, and were thus put into the form of completed negotiable instruments. If then the directors of the Company have power, on behalf of the Company, to make or accept Bills of Exchange, it may be that the claimants, who are the holders of these bills, have a right to prove against the Company for the amount of them, notwithstanding the fact that the drawers were not themselves creditors of the Company in respect of the sums for which the bills were drawn. Now, certainly no such power as this is expressly given to the directors by the Articles of Association. And I think it plain that it cannot be held to be implied from anything in the Articles, or in the nature of the Company's business. I have already stated my conclusion that the Company is not a Trading Company. There is nothing in the nature of the objects for which the Company was incorporated, as I understand them, which would render it necessary or even convenient that the Company should have the power of making negotiable instruments. And the judgment of the Lords Justices, in the case of *in re the Peruvian Railway Company L.R.*, 2 Ch. App., 622, shows that an incorporated Company does not derive this power from any other source than the instrument under which it is constituted, or the character of the business therein prescribed to the Company. In that case the Lords Justices found in the Memorandum and Articles of Association particular terms which in their opinion gave the Company power if it thought fit to make deferred payments in the course of its business by the expedient of a Bill of Exchange. I cannot see anything of similar import in the Memorandum and Articles of Association now before me. I am unable fairly to put upon these such a construction as would make them authorize the issuing of Bills of Exchange; I need not stay to point out that the power to borrow money on mortgages, bonds, or other security, given in the seventy-sixth Article, is a totally distinct thing from a power to issue negotiable instruments. Also it does not seem to me that the proper business of the Company was such as could not, in its ordinary course, be carried on without Bills of Exchange.

10. I arrive thus at the conclusion that the present case must on this point be governed by the principles established by such decisions as those in *Balfour v. Ernest* 5 Jur., N.S., 439

and *Bateman v. Midwales Railway Company L.R.*, 1 C.P., 499. The latter case, so closely resembles the present, that the words of the Judges will be very applicable here. The endorsements there were precisely in the form of those which the re-drafts in the hands of Mr. Cadogan and the Oriental Bank bear; and were strengthened, so to speak, by the addition of the seal of the Company. Chief Justice Erle said:--"These were actions by the endorsees against the acceptors of several Bills of Exchange. The defendants pleaded in each action that they did not accept. It appeared that the defendants are a Company incorporated by an Act of 22 & 23 Vict., c. 63, for the purpose of making and working a railway in Wales. The precise purposes for which they are incorporated, and the powers which are entrusted to them, are limited and defined by the special Act, and the provisions of the general Acts incorporated therewith. I take it to be well-established that a corporation, established for a specific purpose, cannot bind itself by a contract which is entirely unconnected with the purposes of its incorporation. The question then is whether this Company, being a corporation created for the specific purpose of making a railway, can lawfully bind itself by accepting a Bill of Exchange. I am of opinion that it cannot. The Bill of Exchange is a cause of action, a contract by itself, which binds the acceptor in the hands of any endorsee for value; and I conceive it would be altogether contrary to the principles of the law which regulates such instruments, that they should be valid or not according as the consideration between the original parties was good or bad, or whether, in the case of a corporation, the consideration, in respect of which the acceptance is given, is sufficiently connected with the purposes for which the acceptors are incorporated. It would be inconvenient to the last degree if such an enquiry could be gone into. Some bills might be given for a consideration which was valid, as for work done for the Company, and others as a security for money obtained on loan beyond their borrowing powers. It would be a pernicious thing to hold that, in respect of the former, the corporation might be sued by an endorsee, but in respect of the latter not. So much for the general bearing of the question upon principle. How stands the matter as to authority? Subject to three exceptions, I find no case in which an action upon a Bill of Exchange or Promissory Note has been sustained against a corporation; and these exceptions prove the rule. In *Slark v. Highgate Archway Company* 5 Taunt., 792, the Company was empowered by its Act of Parliament to accept bills for the specific purpose: and in the cases of the Bank of England and the East India Company, the negotiation of bills and notes was within the very scope and object of their incorporation. In no other case that I am aware of has the liability of a corporation ever been enforced. In *Broughton v. Manchester Waterworks Company* 3 B. & A., 1, the doctrine I have stated is laid down in general terms: and Bayley, J., entertained a doubt whether the holder of a Bill of Exchange, accepted by a corporation, could sue the corporation without showing that the acceptance was given for a purpose for which it was competent to the corporation to accept. That proposition derives much more force when applied to the case of a corporation created for a specific purpose, as we have judicial notice from the Act of Parliament that this is. Upon both principle and authority, therefore, I am of opinion that the acceptances given by this Company are not binding acceptances, and that the plea is established." And Mr. Justice Byles added:--"These cases are of great importance,

raising, as I believe they do for the first time, the precise question whether it is competent to a Railway Company to accept Bills of Exchange. No precedent has been cited in support of the affirmative; and I cannot but feel that, if we intimated any doubt upon the matter, the market would in a short time be inundated with acceptances by Railway Companies. Only three instances can be cited of the acceptance of negotiable instruments by corporations. The first is that of the Bank of England; but that establishment was incorporated for the very purpose; its promissory notes and bank post bills forming a very large portion of the circulating medium of this country. The second is that of the East India Company: there, the authority to draw, accept, and endorse bills and notes, if not created, is at all events ratified and confirmed by two Acts of Parliament, the 9 & 10 Wm. III, c. 44, and 55 Geo. III, c. 155. The third instance is that of *Slark v. Highgate Archway Company* 5 Taunt., 792, where the Company had express authority to give bills. Excepting these, there is no authority to show that a Common Law corporation can draw, accept, or endorse Bills of Exchange, and it seems to me that there would be more difficulty in the case of a corporation created by statute. It is clear from the language of Bayley, J., in *Broughton v. Manchester Waterworks Company* 3 B. & A., 1, that a Company, constituted for the construction and maintenance of waterworks, could not issue Bills of Exchange. Therefore, even if we know nothing more of this Company than that it was formed for the purpose of constructing and making a railway, it is plain that it could have no power to accept bills. But we have before us in the statute, 22 & 23 Vict., c. 63, and in the statutes incorporated therewith, the constitution of this Company, and we see that it has power to construct and work the railway, with a limited and strictly defined authority to raise money. It is true they may incur debts in the construction of the line and providing rolling-stock. So, in *Broughton v. Manchester Waterworks Company* 3 B. & A., 1, the Company might contract debts for the construction of their reservoirs and buildings, and for their pipes and mains, and the labor expended in laying them. It seems plain, therefore, that this Company has no power to bind itself by accepting bills. In what manner, then, is that inability to be taken advantage of? It is suggested that this should have been done by demurrer, but it does not follow that the defence is not admissible under a plea denying the acceptance. It is said that the agents of the Company placed the corporate seal upon these bills. It seems to me that the present plea properly raises the question whether or not they were agents for that purpose."

11. I am therefore of opinion that Mr. Cadogan and the Oriental Bank are no better off by reason of the secretary's acceptance, than are Messrs. Prankrishna Law and Messrs. Pyarichand Mitter and Co. It appears to me that the claimants, without distinction, are none of them holders of Bills of Exchange binding on the Company, and that consequently, as against the Company, they stand simply in the shoes of the consignees, whose re-drafts are the foundation of their claims. I have not discussed fully every point raised by the learned counsel in the able arguments with which they have assisted me in this case, but I think I have said sufficient to indicate how, starting with the opinion that trading in rice is ultra vires of the Company, I have been led to the conclusion that the claims now made cannot be sustained.