

ALLAHABAD HIGH COURT

The Muir Mills Company

Vs

T.H. Condon

(Burkitt, CJ. Henderson, J.)

29.06.1900

JUDGMENT

Burkitt, CJ.

1. In this case I have had an opportunity of perusing the judgment which is about to be delivered by my brother Henderson. I fully concur in it, and have but little to add.

2. As to the preliminary points, in discussing which so much time was, I think unnecessarily, spent at the hearing of these appeals, I fail to see why they should have been raised at all by the applicants in the Court below (respondents here), where most of them were incidentally raised during the hearing of the applications. Though the proceedings before the lower Court were in form applications under Section 58 of the Indian Companies Act, they were tried most elaborately as regular suits. Regular pleadings were filed on both sides and issues joined on them. By their pleadings the Muir Mills Company admitted that the respondents had formally applied to have the shares registered in their names, and that the Company had refused to allow registration. The applicants in fact said that the Company had improperly refused to register the transfers. The Company, in reply, admitted the refusals, and justified their action by relying on Article 21 of their Articles of Association. It is difficult to understand why on such pleadings the applicants should during the hearing below have endeavoured to prove that in some of the cases there had not been any refusal to register owing to a legal defect in the constitution of the Board by which the refusals in those cases purported to have been made. In those cases if the contention of the applicants had been sustained they would have succeeded in showing that they had come into Court without any substantial cause of action. But anyhow as to all these preliminary matters I think my learned brother has come to a right conclusion.

3. On the merits it is abundantly clear that, though the appellant Company was not by law bound to disclose the reasons which actuated the Directors in declining to register the transfers which form the subject of these appeals, those reasons have been very fully disclosed. The question we have to consider is, whether those reasons are legitimate or are arbitrary and unjustifiable. Those

reasons succinctly put are that the Directors of the Muir Mills Company knew the transferees, the applicants, to be employees of Mr. McRobert of the Woollen Mills; that Mr. McRobert had not long previously been a Director of the Muir Mills; that he quarrelled with Mr. Johnson the Managing Director of the Muir Mills, saying he "distrusted the management"; that he had prosecuted one of the other Directors for a technical offence under the Companies Act, and refused to seek re-election as a Director; and that the Directors of the Muir Mills Company therefore feared that these transferees being his employees would support him by their votes as shareholders at shareholders' meetings of the Muir Mills Company, that they would be "litigious and cantankerous," and would "harass the management," the meaning of which phrase no doubt is that they would support Mr. McRobert's views as to the advisability of making a change in the management. There was evidence given to show that the Managing Director, Johnson, threatened to resign if McRobert had anything to do with the management, and that the Directors believed that the loss of Johnson's services would be injurious to the interests of the Company. Shortly put, the Directors were apprehensive that any increase in McRobert's voting power would assist him in enforcing his views as to the management, and as the transferees were McRobert's subordinates in another Mill the Muir Mill Directors refused to register the transfers to them. It should be mentioned here (1) that McRobert was, at the time when these transfers were made, the largest shareholder in the Muir Mills Company; (2) that he did not, for the purpose of increasing his own voting power, transfer any of his own shares to his subordinates as his nominees, but on the contrary assisted them in purchasing the shares in open market; (3) that the Cawnpore Woollen Mills Company is in no way a rival in business to the Muir Mills Company which is a Cotton Mill; and (4) that admittedly there is no personal objection to any of the transferees; they are acknowledged to be perfectly proper persons to become members of the appellant Company, and to be unobjectionable in all respects except in that they are subordinates of McRobert at the Woollen Mills.

4. The principles of law applicable to a case of this kind will be found most exhaustively laid down by Mr. Justice Chitty in the case of *In re Bell Brothers, Ltd., ex parte Hodgson*, 7 Law Times Reports, 689, where that learned Judge cites as his authority a large number of reported cases, most of which were referred to in the argument before us, In that case Articles 18 and 34 of the Articles of Association of Bell Brothers, Ltd., somewhat resembled Article 21 of the Articles of Association in the present case, but conferred on the Directors the power of disapproving and rejecting intending shareholders in stronger language than that used in Article 21 of the appellant company here.

5. The learned Judge held that the right of transfer conferred on every shareholder was subject to the discretionary power conferred on the Directors by Articles 18 and 34. So in the present case a right to transfer is assumed by Article 19 to belong to every holder of shares in the Company, subject to the discretionary power given to the Directors by Article 21 of declining to register any transfer of shares to any person of whom they may for any reason disapprove.

6. As to the manner in which that discretionary power is to be exercised, the learned Judge says that it is of "a fiduciary nature and must be exercised in good faith, i.e., legitimately, for the purpose for which it is conferred. It must not be exercised corruptly or fraudulently or arbitrarily or capriciously or wantonly. It may not be exercised for a collateral purpose. In exercising it the Directors must act in good faith in the interests of the Company, and they must fairly consider the question of the transferee's fitness at a Board Meeting." Then as to the power of the Court to interfere with the Directors' decision, the judgment lays down that the Court will not review the Directors' decision when they have in good faith "rejected a transfer on the ground that the transferee is not a fit person to become a member of the Company"; that the Court will not draw unfavourable inferences against the Directors merely because the latter have declined to assign their reason for disallowing the transfers, but that if the Directors do disclose their reasons, "the Court must consider the reasons assigned with a view to ascertain whether they are legitimate or not, or in other words, to ascertain whether the Directors have proceeded on a right or a wrong principle." The judgment then states that the Court will not overrule the Directors' decision merely because the Court itself would not have come to the same conclusion, and then follows this most important passage: "But if they" (i.e. the reasons assigned by the Directors) "are not legitimate, as for instance, if the Directors state that they rejected the transfer because the transferor's object was to increase the voting power in respect of his shares by splitting them up among his nominees, the Court would hold that the power had not been duly exercised. So also if the reason assigned is that the transferee's name is Smith and is not Bell."

7. Now in applying the above principles to these appeals, I find in the voluminous evidence adduced on both sides that the reason, and the only reason, which actuated the Directors in disallowing the respondents' transfers is because the latter were subordinates of McRobert, and the Directors believed that these transferees would at shareholders' meetings vote with McRobert in opposing the directorate, and especially the Managing Director Johnson; that they would "harass the management." Can such a reason be considered to be a legitimate reason for refusing to allow the respondents to become members of the Muir Mills Company. The Directors say their action was taken in good faith in the interests of the Company. They say that if McRobert was able to interfere in the management of the Mills the Managing Director Johnson would resign, and that, they say, would injure the Company. The Directors consider Johnson to be a good man of business, an opinion which Johnson also shares, but it is quite open to McRobert honestly to hold a different opinion, and from his saying that he "distrusted the management," he apparently does not concur with the Directors. Even if McRobert's object in procuring shares for his subordinates was with their assistance to enforce his views on and so interfere with the management, and even if he transferred some of his own shares to his nominees for that purpose, it is not intelligible how such action on his part should be considered to be injurious to the interests of the Muir Mills Company, though no doubt it would be unpleasant to the existing Board of Directors. I can see no pretence for supposing that the acquisition by McRobert of an increased voting power could be injurious to the Company, in which he is the largest shareholder, but in which under Article 55 of the Articles of Association his voting power is not

commensurate with his holding.

8. It seems to me that all through these cases the interests of the Muir Mills Company have been too much mixed up with the personal interests of the Directors. The Directors may well think that unless they continue on the Board the Company will suffer. Other shareholders may legitimately entertain a different opinion, and may, like McRobert, "distrust the management," and desire to make a change in the Board of Directors. Can then that Board legitimately refuse to pass transfers made to persons who, the Board believe, will act in conjunction with a prominent shareholder who "distrusts the management." On the authority of the passages from the judgment cited above, I am of opinion that such a reason is not legitimate. It practically amounts to this, that the Board will not admit any new shareholder who, they believe, will not support or will oppose their management. It is impossible, in my opinion, to regard such an exercise of the Directors' fiduciary discretionary power as being other than one of the most arbitrary and unjustifiable nature, exercised for a collateral purpose, namely, to safeguard the Directors' personal interests against McRobert, and not in the interest of the Company as such. The transfers were refused, not in good faith in the interests of the Company, but to prevent McRobert having at his disposal an increased voting power which the Directors apprehended he might use to "harass" their management. For that reason the Directors' objections, though to that extent personal to the transferees, are not legitimate objections. The constitution of the Company is not such as would justify the Directors in excluding from membership all persons who, they feared, would oppose their management.

9. For the above reasons I am of opinion that the District Judge was right in allowing the applications and in directing the registration of the shares purchased by the applicants respondents.

10. Therefore, in concurrence with my learned brother, I direct that these appeals be dismissed.

Henderson, J.

11. These appeals have arisen out of six applications which were made under Section 58 of the Indian Companies Act, to compel the registration of the applicants as members of the Muir Mills Company, Ltd. There were five applicants claiming to be registered, but one of these, Butterworth, sought to have his name registered in respect of two sets of shares purchased by him at different times, and he made a separate application in respect of each set. In his first application his vendor, Dr. Condon, joined. The other applicants were James Scott, the dyeing master; W. Vickers, the accountant; P. Scott, the weaving master; and H. Thomson, the engineer of the Cawnpore Woollen Mills, and none of them joined in their applications the persons from whom they had purchased the shares in respect of which they sought to be registered. Butterworth was the Mill Manager of the Cawnpore Woollen Mills. One Mr. McRobert was then, and now is, the Managing Director of those Mills.

12. The following particulars with regard to the purchases of the various shares and the refusal to register may here be conveniently noted:

(1) Butterworth purchased three shares from Dr. Condon, the transfer deed was dated the 3rd April 1897, and application for registration was made on the 20th April 1897. On the 23rd April 1897, the application was refused by the Directors, the Directors being Newcomen, Smith, and Arindell.

(2) James Scott purchased three shares from Mrs. Wilson; payment being made on the 17th June and the deed of transfer, dated 23rd June 1897. Application was made for registration of the transfer on the 16th July 1897, and refused by the same Directors on the 11th August 1897.

(3) W. Vickers purchased five shares from one Gillespie, payment being made on the 31st August 1897, and the transfer deed dated 14th September 1897. Application was made for registration on the 14th September 1897, and refused by the same Directors, on the 15th September 1897.

(4) P. Scott purchased three shares from Gillespie, payment being made on the 31st August 1897, and the transfer deed dated the 1st November 1897. Application was made for registration on the 2nd November 1897, and refused by the Directors, Beer and Newcomen, on the 5th November 1897.

(5) H. Thompson purchased five shares from Gillespie, payment being made on the 31st August 1897, and the deed of transfer dated 1st November 1897. Application for registration was made on the 15th November 1897, and refused by the Directors, Beer, Newcomen, and Johnson, on the 18th November 1897.

(6) Butterworth purchased five shares from Gillespie, payment being made on the 31st August 1897, and the transfer deed dated 1st November 1897. Application for registration was made on the 15th November 1897, and refused on the 18th November 1897, by Beer, Newcomen, and Johnson.

13. It should be mentioned that on the 5th January 1898, Butterworth made a second application for registration of the two sets of shares purchased by him, and this application was refused by the Directors Beer, Newcomen, and Johnson on the 28th January 1898.

14. In refusing to register the various transfers the Directors acted under Article 21 of the Articles of Association of the Company. That article is as follows: "The Directors may decline to register any transfer of shares to any person of whom they may for any reason disapprove," or of any share upon which the Company has been and in refusing to register the transfers, except in the

case of Butterworth, they gave no reasons for their refusal except that they did so under Article 21 of the Articles of Association. In Butterworth's case certain correspondence took place on the subject. In that correspondence the reason first given was that the Directors acted under Article 21 of the Articles of Association. In a letter of the 27th May 1897, to Butterworth, it was alleged that the reason for the Directors' refusal to register was that they did not consider it would be in the interests of the Company to register Butterworth as a member; and in a letter of the 28th May 1897, to Dr. Condon, in reply to a letter from him, they stated that they were "taking every precaution to avoid having any shareholders who are, in their opinion, likely to prove ill-disposed towards the management of the Company, or of a litigious or cantankerous disposition."

15. In the applications under Section 58 of the Indian Companies Act, it was alleged, as the ground upon which such applications were based, that the Directors had acted arbitrarily and without sufficient cause, and in a wrongful exercise of their powers in refusing to register the different applications for registration. The Company in answer to the several applications filed written statements, in which it contended that it was not necessary for the Directors in refusing under Article 21 of the Articles of Association to register transfers of shares, to give any reasons, and alleged that the refusals to register had been made bond fide in the interest of the Company, after due consideration and for reasons which were legitimate and sufficient. Upon this the following issue was framed, viz.--Whether the Company had arbitrarily and without sufficient cause refused to register the transfers.

16. By consent all the applications were heard together.

17. Before proceeding to deal with the main contentions raised in these appeals it will be well to dispose of certain questions which were raised during the argument. The first question was as to the competency of the applicants who had not joined their vendors in their applications to apply under Section 58 of the Indian Companies Act. It was contended that they had no locus standi as they were not, and could not be, members of the Company until the transfers to them had been registered. Ex parte Penney (1872) L.R. 8 Ch. 446, was relied upon as showing that the transferor, should make the application, or at all events join in it. In that case the application was made by both transferor and intended transferee, but a reference to the Articles of Association of the Company concerned makes it clear that there could be no transfer without the approval of the Directors. The articles provided that "no person not already a shareholder shall be entitled to become the transferee of any share unless approved of by the Board." In the cases before us Article 21 deals merely with the right of the Directors to decline to register any transfer of shares already made, if they disapprove for any reason of the transferee. The transfers were otherwise complete as between the transferors and the transferees, the purchase money had been paid, and the transfer deeds in each case executed by both transferor and transferee. On a sale of shares the seller contracts to execute a valid transfer and to hand the same to the transferee. *Skinner v. City of London Marine Insurance Co*¹. He does not contract that the Company will register the transfer. *London Founders Association v. Clarke*² It is the duty of the transferee to get himself

registered. *Paine v. Hutchinson*³ Section 29 of the Indian Companies Act, which corresponds verbatim with Section 26 of the English Companies Act, 1867, assumes the right of the transferee to apply for registration and enables the transferor, where the transferee fails to do so, to apply to get the transfer registered. In *ex parte Shaw* (1877) 2 Q.B.D. 463, an application by the transferee alone under Section 35 of the English Companies Act, 1862, was allowed on the ground that the transfer was complete. The reasoning in that case was accepted by Farran, J., in *ex parte Gilbert* (1892) I.L.R. 16 Bom. 398. In my opinion *ex parte Shaw* is an authority for our holding that it is not necessary in the present cases for the transferors to join in the applications.

18. No question was raised as to whether the summary procedure apparently intended by Section 58 of the Indian Companies Act was the proper procedure here. It is sufficient to say that these applications have not been tried summarily. They have practically in all respects been treated as if the parties had proceeded by suit.

19. The second question, which it will be convenient to deal with before discussing the main grounds of appeal, turns upon the constitution of the Board of Directors which refused the applications for registration made by James Scott, Vickers and P. Scott. [His Lordship having pointed out in regard to the applications of James Scott and Vickers that the proper forms had not been complied with in the appointment of Arindell and Smith to act for Cooper and Beer, and that, if the appointments of the two former were to be held valid, there would have been six Directors instead of a maximum of four allowed by the Articles of Association, held that the defect was cured by Article 86 of the Articles of Association which ran as follows: All acts done by any meeting of Directors * * * or by any person acting as a Director, shall be valid and effectual notwithstanding that it be afterwards discovered that there was some defect in their appointment or qualifications respectively.

His Lordship then continued:]

20. In the case of P. Scott the position is somewhat different. There the Board which rejected the application for registration consisted of Beer and Newcomen; who were both qualified Directors, but they formed less than a quorum as required by Article 67 of the Articles of Association. Under that article "the number of Directors to form a quorum for the transaction of business shall be three, including the Managing Director, or such substitute as may be acting for him." It seems to me that the action of a Board so constituted is not validated by Article 86, and that P. Scott is entitled now to say that their action was not binding upon him. What then is the result? His application is in all respects the same as the other applications under Section 58 of the Indian Companies Act. He has treated their refusal as an improper refusal, and has alleged that it was made arbitrarily and without sufficient cause, and the answer to the application by the Company, as in the other cases, was that the Directors had bona fide after due consideration and for sufficient reason refused to register, and the matter has been tried out on that basis. Either there has been no refusal in law and his application, which is based solely and entirely on the

allegation that there has been an improper refusal, is premature, or it may be taken that the defence set up on the application under Section 58 of the Indian Companies Act is a refusal, and the matter dealt with on its merits. I think it is open to us to adopt the latter course rather than dismiss the application as premature. This disposes of the questions which have been raised, other than the questions which go to the merits of the application.

21. I have already referred to the issue raised by the lower Court. Evidence was adduced by both sides upon that issue. Of the applicants, Butterworth was the only one who was examined on their behalf in support of the applications under Section 58 of the Companies Act. They, however, called one Cave who had been in the service of the Muir Mills Company when the registrations had been refused, but who had since left, Beer, one of the Directors already mentioned of the Company, and Dr. Condon. Butterworth admitted that the first 3 shares purchased by him were offered to him by McRobert, the Manager of the Cawnpore Woollen Mills, that he did not inquire if he had money to pay for shares; that his account with the mills was at debit; that he asked McRobert for permission to further overdraw, and that permission was given; that McRobert directed the accountant to make out a cheque for the shares on the Mussoorie Bank in favour of Dr. Condon to pay for the shares; that he (Butterworth) eventually paid back the purchase money by instalments, and that his debit was still from Rs. 2,000 to Rs. 3,000; that most probably McRobert wrote for the shares and sent them to him; that when the transfer deed came McRobert sent it back for alterations to Dr. Condon; that on receipt of the letter intimating that the Directors declined to register he consulted McRobert, who advised him in his correspondence with regard to the refusal. As to the second lot of 5 shares he admitted that they had been paid for on the 81st August 1897; that McRobert had caused his account to be debited with Rs. 1,300, the price; that he could not say why two months had elapsed between the date of his being so debited and the date of the transfer deed: that he had nothing to do with the seller; that he was not sure whether McRobert or he himself had applied for registration; that it was possible that the scrip remained with McRobert up to the time of the application to the Court. He then went on to say that he could not swear that the Directors had not bond fide considered his application for registration. He also said that he knew that McRobert's relations with the Company (The Muir Mills Co.) were not amicable.

22. Cave who had left the Company's service because he had been superseded by another employee, stated that the refusal to register the transfer to Butterworth was because he was employed in the Woollen Mills. The reasons he said were contained in the letter of the 28th May 1897, to Dr. Condon, to which reference has been made. It was thought that a gentleman in the Cawnpore Woollen Mills might be influenced by McRobert to the detriment of the Company. Cave had been present at the meetings at which the different applications had been considered, and he referred to the minutes of such meetings which showed that all the applications had been considered, and in some instances remitted to subsequent meetings for further consideration. "I certainly swear," he said, "that the Directors gave bond fide consideration to the question of registration," and again "whether they acted in an arbitrary manner is a matter of opinion. I think

they had some grounds for what they did. In my opinion they did not act in an arbitrary manner." Cave was apparently called with a view to proving that the refusal to register the transfers was solely on account of Johnson, the Managing Director, and at his instance. This I think he failed to do. Examined on this point by the counsel for the applicants, he said: "I am not aware that Johnson had any voice in the refusal to register Butterworth's and the other shares.

23. Beer who was present at the meetings of Directors which refused to register the transfers to P. Scott, Thompson, and Butterworth, was examined as to the reasons which guided the Directors in their refusals. From his evidence it is clear that the reason was the fear that the transferees being employees of the Mills of which McRobert was Manager, would be under his influence, and would vote just as he wished them to. He stated that while McRobert had been a Director of the Muir Mills, there had been various stormy meetings, and he had evinced hostility on more occasions than one to Johnson, the Managing Director, who had threatened to resign, and start a mill of his own. He said that he believed that McRobert was at the bottom of the transfers; that he would use the transferees for his own ends, and that they would do what he told them; that he (Beer) had been a Director of the Cawnpore Woollen Mills, where there was always a preponderance of votes amongst the staff of that Mill, and he wanted to prevent a similar preponderance of votes on McRobert's part in the Muir Mills. " I considered," he said, " if McRobert gained that preponderance, Johnson (the Managing Director) would sever his connection with the Muir Mills, and it was thus that I considered it was not to the interest of the Company that the shares should be registered. I considered that McRobert evidently wanted to gain that preponderance * * * I don't think McRobert would hesitate to harass the management in order to gain his point. I considered harassment to the management would harm the Company."

24. The evidence of Dr. Condon, the only other witness called by the applicants, is not important. He speaks of a conversation with Johnson, which is denied by the latter.

25. Now although Butterworth was the only one of the applicants who gave evidence in support of their case, the counsel for the Company called the others apparently with a view to show that in purchasing their respective shares they were acting on the suggestion of and through McRobert. None of them had previously purchased shares in the Muir Mills Company, and with one exception all were at the time indebted to the Cawnpore Woollen Mills, but were allowed to further overdraw their accounts to meet the purchase money, and 7% was charged on the overdrafts. In each case the shares were offered to the purchaser by McRobert, were purchased by him, and paid for through him. Except in the case of Vicker's, application for registration was made by McRobert, who was advising them throughout. Each of them stated that he was not prepared to say that the Directors did not fairly and properly consider the matter of their fitness to become members of the Company, but Thompson went so far as to say that while he believed they had not fairly and properly considered his application, he was not prepared to swear to it. In the case of Thompson his shares were purchased during his absence in England for him by McRobert, who without consulting him, had caused his account to be debited with the purchase

money. Vickers in his evidence stated that he knew that there was great antagonism between Johnson and McRobert, and that before he bought his shares he was aware of their hatred.

26. These matters which I have just mentioned, or most of them, only came to light in the course of this litigation, and therefore cannot be said to have influenced the Directors in their refusal to register the transfers. To my mind, however, they show almost conclusively that McRobert was taking much more than an impersonal interest in getting his employees to purchase shares in the Muir Mills Company. What his real object was there is nothing to show, though it may be that the view said to have been taken by the Directors as to his object was correct. It may be noted here that Beer was unable to specify, except in the vaguest terms, in what way McRobert was likely to be able to harass the management of the Company. It is admitted that at the time he was the largest shareholder in the Company, and it is to be presumed therefore that he would be the last person to do anything which would be likely to injure the interests of the shareholders. He had been a Director of the Company, but in February 1897, he ceased to be a Director, and though he was proposed and seconded for re-election as a Director at the Annual General Meeting of shareholders on the 27th February 1897, he declined to submit himself for re-election. It is difficult to see how, as an ordinary shareholder, he could have interfered with or harassed the management, and he could not have submitted himself again for election as a Director until the next Annual General Meeting. Having regard to the constitution and views of the Board, and temporary Board, it was not likely that had a casual vacancy occurred on the Board, he would have been asked to join the Board in the meantime.

27. In his cross-examination Beer referred to a prosecution which had been instituted against him as a Director of the Company under Section 55 of the Indian Companies Act, 1882, this being done apparently with a view to show how in one respect McRobert had harassed the management. The prosecution was instituted under the following circumstances. After an Extraordinary General Meeting of the shareholders which took place in March 1897, it appears McRobert asked to see the register of shareholders, and was told by Beer, who was the Chairman of the Meeting, that he could not be allowed to see it then, as it was required at once at an adjourned meeting of the Directors, but that he could see it the next day. McRobert thereupon left the meeting, but in the course of half an hour was informed that the register was available for his inspection. Notwithstanding this information McRobert instituted the prosecution referred to, alleging that he had been refused inspection of the register. The Magistrate who tried the case acquitted Beer. McRobert thereupon first directly, and then through the Chamber of Commerce, of which he was President, moved the Local Government to appeal to the High Court against the acquittal, which it did. In the result Beer was fined 8 annas, the High Court being of opinion that technically an offence had been committed.

28. The only other evidence which is material is that of Johnson, the Managing Director. He referred to various meetings which he described as stormy meetings at which there had been a difference of opinion between him and McRobert, when the latter was a Director, and especially

to a particular meeting when McRobert had expressed distrust of the management of the Company. He also referred to the prosecution of Beer. As to the reasons for the refusals to register the transfers he said there was a belief that the transferees would in all probability prove themselves cantankerous and litigious, just as their employer (McRobert) had proved himself to be. It WEB considered that as they were his employees, he could rely on them to do whatever he wished them to do; that they would therefore act in any manner he wished or directed because of the ill-will he bore against him (Johnson) personally; and that the Directors wished to guard against anything of this sort. He further said "after that (the criminal prosecution against Beer) all these applications came in. It appeared to me they could only mean one thing, namely, that McRobert was determined to follow up these different incidents by bringing in as shareholders his own nominees to work in whatever way circumstances might direct."

29. The evidence of Johnson leaves no doubt in my mind that the real objections to the various transferees were (1) their connection as employees of the Cawnpore Woollen Mills with McRobert, and the personal animosity existing between Johnson and McRobert, and (2) the desire of the Directors that McRobert should not add to his voting power at the meetings of the Company. It was very candidly admitted by Mr. Moti Lal Nehru who appeared for the applicants that they were under the influence of McRobert, but he denied that they would necessarily vote as he might direct them.

30. The objections, it is to be observed, were not personal to the applicants themselves, and we have to see whether, under the circumstances, they were legitimate objections.

31. In the absence of any such provisions as Article 21 of the Articles of Association in this case, Directors have no discretionary power of refusing to register a transfer of shares--See *Poole v. Middleton* (1861) 29 Beav. 646 p. 650, but where the power of rejecting proposed transferees is reserved to the Directors of the Company, they must exercise it reasonably and in good faith, and with due regard to the interests of the Company and to the right of a shareholder to transfer his shares, and the question of the fitness of the transferees must be fairly considered at a meeting of the Board. The principles to be gathered from the cases in England are summed up in *In re Bell Bros.*: 7 Law Times Reports 689. In that case Chitty, J., said: "According to the constitution of this Company, every shareholder is entitled to transfer his shares to any person not being infant, lunatic, married woman or under any legal disability. This right, which is a right of property, is subject to the discretionary power conferred on the Directors by Articles 18 and 34, of approving of the persons to whom the transfer is made, and of rejecting the transfer on the ground that they do not approve of the transferee. The discretionary power is of a fiduciary nature and must be exercised in good faith, that is, legitimately for the purpose for which it is conferred. It must not be exercised corruptly or fraudulently or arbitrarily or capriciously or wantonly. It may not be exercised for a collateral purpose. In exercising it the Directors must act in good faith in the interest of the Company and with due regard to the shareholder's right to transfer his shares, and they must fairly consider the question of the transferee's fitness at a Board meeting. When the

Court once arrives at the conclusion that the Directors have in good faith rejected a transfer on the ground that the transferee is not a fit person to become a member of the Company, it will not review the Director's decision. The Directors are not bound out of Court to assign their reasons for disapproving. If they decline to do so, or if their decision is challenged in Court and they refrain from giving evidence, upon which a cross-examination may take place as to their reasons, or if, giving such evidence, they refrain from stating their reasons, the the Court will not, merely on that account, draw an unfavourable inference against them: In these articles there is an express provision protecting the Directors against any liability to disclose their reasons. They are, however, at liberty, if they think fit, to disclose them, and if they do, the Court must consider the reasons assigned with a view to ascertain whether they are legitimate or not, or, in other words, to ascertain whether the Directors have proceeded on a right or a wrong principle. If the reasons assigned are legitimate, the Court will not overrule the Directors' decision merely because the Court itself would not have come to the same conclusion. But if they are not legitimate, as, for instance, if the Directors state that they rejected the transfer because the transferor's object was to increase the voting power in respect of his share by splitting them among his nominees, the Court would hold that the power had not been duly exercised. So, also, if the reason assigned is that the transferee's name is Smith, or is not Bell. Where the Directors do not assign any reason it is still competent for those who seek to have the transfer registered to show affirmatively, if they can, by proper evidence, that the Directors have not duly exercised their power." In the same judgment, Chitty, J., said: "In my opinion, the power conferred on the Directors by the articles of this Company does not justify them in rejecting a transfer on the ground that the transferee, against whom they entertained no objection, is the nominee of some person whom they consider objectionable."

32. In *Ex parte Penney* (1872) L.R. 8 Ch. 446, where the Articles of Association provided inter alia that "no person not already a shareholder shall be entitled to become the transferee of any share unless approved by the Board," it was said that the Directors were not bound to disclose their reasons for rejecting a transferee, provided they had fairly considered the question at a meeting of the Board, and that in the absence of evidence to the contrary, the Court would take it for granted that they had acted reasonably and bond fide. But if there was evidence to show that the Directors had exercised their power capriciously or unfairly, the Court would interfere; and Mellish, L.J., pointed out that it would be an abuse of their power to object to register a transfer on any ground not applying personally to the transferee.

33. In *Moffat v. Farquhar*⁴ the Articles of Association provided: "No share in the Company shall be transferred by any proprietor to any person who has not been first approved of by the Board of Directors of the Committee of Directors appointed as aforesaid; and if any transfer of any share or shares shall be made or attempted to be made to any person who has not been approved, the same shall be void." There was a difference of opinion amongst the shareholders as to the mode in which the Company should be managed, and the plaintiff, who was a large shareholder, transferred shares to his own nominees to strengthen his voting powers. The Directors refused to

approve the transferees, not from any personal objection to them, but on the ground that the transfers were colourable and were intended to increase the plaintiff's voting power. It was held the Directors had no power to refuse to allow the transfers except; upon objections personal to the transferees. That case was followed by Farran, J" in *Kaikhosro v. Coorla Spinning and Weaving Co*⁵.

34. In the applications before us, the lower Court has found and in that finding I agree, that due consideration was given by the Directors to the matter of the various transfers, but I am prepared to hold further that in rejecting the applications for registration they acted bond fide and as they believed in what they considered to be the interest of the Company. On the authorities quoted they were not bound on rejecting the applications to give their reasons, and as I have said, except in one case, they did not give their reasons. Evidence, however, has been gone into, and it now appears that the reasons upon which they acted were not personal to the applicants. It was in fact admitted that there was no objection to them personally, apart from their connection with McRobert. The objection was to McRobert, who, it was feared, would, from his position in the Cawnpore Woollen Mills Company, be likely to influence them to vote as he might wish. It should be here mentioned that the Muir Mills and the Cawnpore Woollen Mills were in no way rivals in trade, the one being a Cotton and the other a Woollen Mill. McRobert was not transferring his shares to his own nominees with a view to increasing his voting power in the Company, which, apparently on the authorities, he might have been justified in doing. He was merely influencing his subordinates to take shares which were being offered in the market. As the Directors have now disclosed their reasons, we are entitled to consider those reasons with a view to ascertain whether the Directors have proceeded on a right or wrong principle. The objections, as I have said, were not personal to the applicants, and applying the principles of the English cases, I think we must hold that the reasons now given for refusing to register the transfers were not legitimate. If their reasons had been legitimate, we should not be justified in sitting "as a Court of appeal" to use the words of James, L.J., in *Ex parte Penney* (1872) L.R. 8 Ch. 446 at p. 449, from the deliberate decision of the Board of Directors to whom by the constitution of the Company the question of the determining the eligibility or non-eligibility of new members is committed."

35. In *In re Coal-port China Co.* (1895) L.R. 2 Ch. 404, where the Court refused to interfere, there was no evidence to show that the Directors had exercised their power improperly or with want of bond fides.

36. Although, as I have said, I consider that the Directors of the Muir Mills Company duly considered the applications before them and in rejecting the applications for registration acted bond fide, and as they believed in the interests of the Company, yet the reasons upon which they based their refusal not being legitimate reasons, the Court has power to interfere, and I therefore think that the Court below was right in directing the Company to register the names of the applicants.

37. I would accordingly affirm the decrees of the Court below with costs in this Court in each case.

Cases Referred.

1(1885) 14 Q.B.D. 882

2(1888) 20 Q.B.D. 576

3(1868) L.R. 3 Ch. 388

4(1877) L.R. 7 Ch. D. 591

5(1891) I.L.R. 16 Bom. 80