

CIVIL ORIGINAL

Before Falshaw, J.

OFFICIAL LIQUIDATOR, THE UNIVERSAL TRANSPORT CO., LTD. (IN LIQUIDATION),—*Petitioner.**versus*S. JAGJIT SINGH AND OTHERS,—*Respondents*

Civil Original No. 45 of 1954

1955
April, 6th*Contributory—Person subscribing to the Memorandum of Association—No allotment of shares made—Whether such person a Contributory and can be settled as such on the list of Contributories.*

Held, that no allotment of shares is necessary to create liability on the part of a person who has subscribed to the Memorandum of Association, and he is a Contributory and can be settled as such in the list of Contributories.

Hall's case, In re United Service Company (1), Sidney's case, In re. Robinson and Preston's Brewery Company (2), Forbes' case, In re Teme Valley Railway Company (3), followed; In re Florence Land and Public Works Company (4), and In re Premier Underwriting Association Limited (5), distinguished; and Synemodelux., Ltd., Tinnevelly V. K. Vanamuthu Pillai (6), dissented from.

BHAGIRATH DASS, for Petitioner.

KUNDAN LAL GOSAIN, for Respondent, Sampuran Singh.

JUDGMENT

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FALSHAW, J. This case has arisen in connection with settling the list of contributories of the Universal Transport Company Limited at Jullundur in liquidation. One of the original directors of the Company, Sampuran Singh, has objected to the inclusion of his name in the list in respect of 50 shares, which according to the records of the Company, he agreed to take at the time when the Company was being formed in which he was to become one of the original directors.

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- (1) (1869-70) 5 Ch. 707
 - (2) (1871-72) 13 Eq. 228
 - (3) (1874-75) 19 Eq. 353
 - (4) (1885) 29 Ch. D. 421
 - (5) (1913) 2 Ch. 81.
 - (6) A.I.R. 1939 Mad. 498

The original Memorandum and Articles of Association of the Company filed with the Registrar of the Joint Stock Companies show that Sampuran Singh along with six other persons signed at two separate and distinct places an undertaking to take 50 shares in the Company, and the Articles of Association show that this was the minimum qualification for becoming a director, and in Article 20 the name of Sampuran Singh is printed at No. 1 in the list of the first directors of the Company.

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The case of Sampuran Singh is that he is not liable to be made a contributory in respect of 50 shares because at the time when he signed the Memorandum and Articles of Association the figure 50 was not written in the appropriate column and he had at the time stated that he had no intention of taking 50 shares. It also appears that in fact 50 shares were never allotted to him and his name does not appear in the list of persons to whom shares in the Company were allotted submitted in due course to the Registrar.

In support of his allegations that when he signed the Memorandum and Articles of Association no figure was present in the appropriate column for the number of shares which the signatories were undertaking to take Sampuran Singh has given evidence himself and has produced two other witnesses, Jagjit Singh and Ganga Singh, who are also signatories.

On the other hand Gurmukh Singh who was also a signatory, and who was in fact the Managing Director of the Company, has deposed on behalf of the Liquidator that the figure 50 appeared in the appropriate column when Sampuran Singh signed the Memorandum and Articles, as it did

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in the case of all the rest, and it appears somewhat unsatisfactory that Sampuran Singh has not produced as a witness Achhar Singh who attested his signatures in both the places where he signed. It can at least be said that the pages of the Memorandum and Articles where the signatures appear have every appearance of having been written at one and the same time except for some of the signatures, which are in different ink, and on the whole I am of the opinion that there is not sufficient reason for not believing that, whether Sampuran Singh ever had any intention of taking any shares or not, he signed an agreement in the Articles and Memorandum that he would take 50 shares which was the minimum qualification for becoming a director. There can in fact be no doubt that he did act as a director although one of his witnesses denied that he ever became a director, since he himself has admitted that he attended some of the directors' meetings and even presided at times.

In support of his contention that once Sampuran Singh signed an agreement in the Memorandum and Articles to take 50 shares in the Company and duly became and acted as a director, he is liable as a contributory in respect of these 50 shares whether he ever had any real intention of taking them or not, and even although no shares were later allotted to him, the official Liquidator has relied on three English cases. The first of these is *Hall's Case, In re United Service Company* (1). In that case Hall had subscribed the Memorandum of Association for 500 shares but only 250 were allotted to him. Subsequently the directors with the approval of the share-holders had agreed to release Hall from all liability with regard to the other 250 shares. In spite of this

(1) (1869-70) 5 Ch. 707

the Court of Appeal upheld the decision of the Master of the Rolls that in the winding-up of the Company Hall must be on the list of contributories for all the shares for which he had signed the Memorandum of Association. *In Sidney's case, In re. Robinson and Preston's Brewery Company* (1), Sidney had agreed to become the director of a company in 1865 and signed the Memorandum of Association for 200 shares and had attended the first meeting of the directors at which he had unsuccessfully opposed a motion regarding the date on which the Company started business. Thereafter he resigned as a director. In 1870 the Company was wound up and it was held by Malins, V. C., that Sidney was not by the lapse of time and by the circumstances of the case exonerated from liability to take the shares for which he had subscribed the Memorandum of Association. Finally, in *Forbes' Case In re. Teme Valley Railway Company* (2), Forbes who had agreed to become a director in the Company but had resigned at the first ordinary meeting in 1867 and when the Company was wound up in 1874 the Master of the Rolls held that Forbes must be settled on the list of contributories for 50 shares although he had never applied for any shares nor were any ever allotted to him, nor was he ever placed on the register of share-holders.

On the other hand in the English cases cited on behalf of the respondent, *In re Florence Land and Public Works Company* (3), and *In re Premier Underwriting Association Limited* (4), the facts appear to be entirely different. In *Synemodelux, Ltd., Tinnevelly v. K. Vannamuthu Pillai* (5), Burn, J., has held that although in the

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case of a person who subscribes to the Memorandum of Association of a Company, no separate application for shares is necessary, yet an express allotment of shares to the subscriber is necessary in order to give rise to liability to pay up the value of the shares, and where there has been no valid allotment of shares to the subscriber liability to pay up the value of the shares does not arise. This certainly appears to support the case of the respondent, but with due respect I find this pronouncement of law of somewhat dubious value since the learned Judge has observed that he nowhere found any authority for the view that no express allotment of shares was necessary in order to give rise to the liability to pay up the value of the shares. Quite evidently the English cases cited by the Liquidator in this case were not cited before him and they are clear authorities on the point that no allotment of the shares is necessary to create liability on the part of a person who has subscribed to the Memorandum of Association.

I accordingly dismiss the objections of Sampuran Singh with costs and order that his name be included in the list of contributories of the Company for 50 shares.

CRIMINAL APPELLATE SIDE.

Before Bhandari, C. J., and Falshaw, J.

ATMA SINGH—*Convict-Appellant.*

versus

THE STATE—*Respondent.*

Criminal Appeal No. 77 of 1955

1955
 April, 6th

Penal Code (Act XLV of 1860)—Sections 300 Exception 4, and 302—Exceptions—Accused claiming benefit—Duty of accused to establish facts supporting his case—Term “fight” in Exception 4—Definition of—Murder—Sudden quarrel—Death caused by spear blows—Sentence