

(1914) 08 BOM CK 0029
In the Bombay High Court

Hirji Khetsey

APPELLANT

Vs

The Indian Specie Bank Ltd.

RESPONDENT

Date of Decision : 25-08-1914

Acts Referred:

Citation : AIR 1915 Bom 27 : (1915) 17 BOMLR 65

Hon'ble Judges : Macleod, J

Bench : Single Bench

Judgement

Macleod, J.—The applicant contends that he was induced to buy shares of the above Company, owing to the half yearly reports and balance-sheets published by the Company, and applies that the list of contributories should be rectified by striking off his name on the ground that he has now discovered that these reports and balance-sheets were false and contained information regarding the dealings of the Company, contrary to the real facts of the case. As a matter of fact, the Company, instead of having made a profit since 1909, had incurred heavy losses and had speculated heavily in silver, although the balance-sheets showed large profits and the Directors reported, at the general meeting, that there had been no such speculation. It is not disputed that if a share-holder, who has applied for shares on the faith of a prospectus which eventually is found to contain false representation, wishes to have his name struck off the register, he must take steps before the commencement of winding up otherwise he would be too late. Whether a person who has bought shares in the open market on the faith of reports and balance-sheets can succeed in getting his name struck off the register while the Company is a going concern does not appear to have been decided.

2. It seems beyond doubt that he cannot succeed when a winding up order is made before he takes action or a state of affairs has arisen which would enable a creditor to present a petition for winding up. That was laid down by the House of Lords in *Tennent v. City of Glasgow Bank* (1879) 4 App. Cas. 615, a very similar case to this, except that the plaintiff filed his suit for reduction of the transfers

and entries in the Bank books and stock certificates in his favour a day before an extraordinary resolution was passed to wind up the Company permanently. Earl Cairns L.C. in giving his decision, stated, at pp. 621 and 622 : "The case of *Oakes v. Turquand* (1867) 36 L.J. Ch. 949 in this House has established that it is too late, after winding-up has commenced, to rescind a contract for shares on the ground of fraud....But if the company has become insolvent, and has stopped payment, then, even irrespective of winding-up, a wholly different state of things appears to me to arise. The assumption of new liabilities under such circumstances is an affair not of the company but of its creditors. The repudiation of shares which, while the company was solvent, would not or need not have inflicted any injury upon creditors must now of necessity inflict a serious injury on creditors. I should, therefore, be disposed in any case to hesitate before admitting that, after a company has become insolvent and stopped payment, whether a winding-up has commenced or not, a rescission of a contract to take shares could be permitted as against creditors.

3. His Lordship then points out that the Company had stopped payment on the 2nd of October and never resumed business, stoppage having been caused by its insolvency. On the 5th of October the directors convened an extraordinary general meeting of the share-holders by advertisement for the 22nd, for the purpose of considering, and if thought fit, passing extraordinary resolutions under the Companies Act, for the purpose of winding-up the Bank voluntarily. These were steps taken by the Directors as agents of the shareholders, and there was imposed upon the share-holders whatever responsibility might fairly be inferred from the steps so taken.

4. I find, therefore, the applicant is not entitled to have his name struck off. Strictly speaking the applicant should have taken out a summons against the Liquidator, but this omission does not affect the merits of the case and, if necessary, a summons could be issued pro forma to remedy the irregularity.