
(1923) 03 BOM CK 0017
In the Bombay High Court
Case No : O.C.J. Suit No. 753 of 1923

K.F. Nariman

APPELLANT

Vs

Municipal Corporation of Bombay

RESPONDENT

Date of Decision : 19-03-1923

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 36(p)

Citation : AIR 1923 Bom 305 : (1923) 25 BOMLR 689 : 83 Ind. Cas. 856

Hon'ble Judges : Mulla, J

Bench : Single Bench

Judgement

Mulla, J.—His Lordship, after setting out the rival contentions of the parties, proceeded : The decision of the several questions raised by the third issue depends on the construction of Section 36, Clause (p), of the City of Bombay Municipal Act.

That clause runs as follows:

A councillor shall not vote or take part in the discussion of Any matter before a meeting in which he has, directly or indirectly, by himself or by his partner, any share or interest such as is described in Clauses (g) to (I), both inclusive, of Section 16, or in which he is professionally interested on behalf of a client, principal or other person.

2. It is not alleged that any of the said councillors had any interest "by his partner". Nor is it alleged that any one of them was "professionally interested" as stated in the section. The portion of Section 36, Clause (p), read with Section 16, Clauses (j) and (A), material to the decision of this case, is as follows:

A councillor shall not vote or take part in the discussion of any matter before a meeting in which he has, directly or indirectly, any share or interest in?

(j) any newspaper in which any advertisement relating to the affairs of the corporation is inserted; or

(k) any joint stock company which shall contract with or be employed by the Commissioner on behalf of the Corporation.

3. The only councillor to whom Clause (j) of Section 16 can possibly apply in Mr. Murzban. As to him it is alleged by the plaintiff" that he was on the material date the proprietor of the Jam-e-Jamshed and that advertisements relating to the affairs of the said Company were inserted in that newspaper. This allegation appears in para 7 of the plaintiff's affidavit dated February 22, 1923. It does not appear anywhere in the plaint. Mr. Murzban stated in his evidence that he is not now nor was he on the material date the proprietor of the newspaper, and that his father was the sole proprietor, and that he was the editor of the newspaper on a salary of Rs. 600 per month. He further stated that he had no other interest in that paper. I accept his evidence. But even if he was the proprietor of the paper, the fact that advertisements relating to the affairs of the said Company are inserted in the paper could not bring the case within Clause (j), That clause refers to advertisements relating to the affairs of the Corporation and not any other body.

4. [His Lordship, after discussing a point not material to this report, continued:] I hold on the evidence of Mr. Murzban that he was not on the material date the proprietor of the Jain-e-Jamshed. but was only an editor on a salary of Rs. 600 per month. As such, I think, he had no interest, either direct or indirect, in the Jam-e-Jamshed which disqualified him from voting at the meeting of February 19, 1923. To hold otherwise would be to say that no councillor who happens to be an employee in the office of a newspaper in which advertisements relating to the affairs of the Corporation are inserted can vote at a meeting of the Corporation held to consider the question whether the fares charged by the Bombay Electric Supply and Tram ways Company should or should not be increased. There was no question at the said meeting about tender by the Jam-e-Jamshed for advertisements. In construing Section 36, Clause (p), regard must be had to the "matter" before the meeting. A councillor having an interest in a lease of land within the meaning of Clause (g) cannot be held by reason of his having that interest only to be disqualified from voting on a question relating to a loan to the Corporation contemplated by Clause (h).

5. The next question to consider is whether any of the said eight councillors was disqualified from voting on the ground that he had, on February 19, 11323, directly or indirectly, any share or interest in the said Company. The principal argument on both sides centred round the word "interest". On behalf of the defendants it was contended that the interest must be a pecuniary interest, and this argument was sought to be supported by a reference to the expressions "partner" and "professionally interested" in Section 36, Clause (p) and to Clauses. (g) to (I), all which, it was said, pointed to pecuniary interest. Reliance was also placed on the decision in Todd v. Robinson (1884) 14 Q.B.D. 739 where it was held, on the construction of the words "interested in a bargain or contract" in Section 193 of the Public Health Act, 1875 (38 & 39 Vic. Clause 55), that they

were co-extensive and identical with the words "participates in the profit" occurring in schedule II, Rule 64, of the Act, and consequently that a shareholder in a Gas Company which had entered into a contract to supply gas to a local board was a person interested in the Company within the meaning of Section 193.

6. On the other hand, it was contended for the plaintiff that the interest need not be pecuniary, and that any interest, however small, which created a conflict, between interest and duty, was sufficient to disqualify a councillor.

7. Section 16 of the City of Bombay Municipal Act is almost in the same terms as Section 12 of the Municipal Corporations Act, 1882 (45 & 46 Vic. Clause 50). Both these sections deal with disqualifications for being a councillor. One of the disqualifications laid down in both the sections is where a councillor "has directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council". As regards the disqualifications for voting, the language of the two Acts is dissimilar; for while Section 22, Sub-section (3), of the English Act prohibits a councillor from voting in any matter in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest, Section 86, Clause (p), of the Bombay Act extends the prohibition to such interest as is described in Clauses (g) to (i) of Section 16.

8. I do not propose to define the term "interest" which occurs in Section 36, Clause (p), of the Bombay Act, and in Section 16, Sub-section 1, Clause (c), of the same Act corresponding with Section 12, Sub-section 1, Clause (c), of the English Act. There have been within recent years cases before the House of Lords in which the question arose as to what constituted "interest" within the meaning of Acts in *pari materia* with the Bombay Act, but the House refrained from defining the expression. I do not propose to rush in where the House of Lords would not tread. But I will examine the description of that term as given in the English cases as well as the test laid down in some of them. To begin with, it seems to me, that the interest contemplated by Section 36, Clause (p) and by Section 16, Sub-section 1, Clause (f), of the Bombay Act, must not be too speculative and remote as was the case in two cases before the House of Lords, namely, *Norton v. Taylor* (1906) A.C. 378 and *Laughton v. Port Erin Commissioners* (1910) A.C. 565. Again, it must not be a mere sentimental interest such as that which a father may have in the prosperity of his son, as was said in *England v. Ingli* (1920) 2 K.B. 636. England's case is, so far as I know, the first case in which we find a definition or rather a description of the term "interest" as used in Section 12, Sub-section 1, Clause (c), of the English Act of 1882. In that case Salter J. said:

An "interest" within the meaning of the section must, I agree, be something more than a sentimental interest, such as arises from the natural love and affection of a man for his son; it must be a pecuniary or, at least, a material interest; but I do not see on what principle it must necessarily be a pecuniary advantage, because, if a public man is likely to suffer pecuniary loss by his

interest in any particular contract, his judgment is as likely to be deflected as where he is obtaining a pecuniary advantage from it.

9. It follows from this that where there is a pecuniary advantage or a reasonable expectation of a pecuniary advantage, it must be regarded as an "interest" within the meaning of that section if the interest, in a contract is pecuniary, it is immaterial that the amount involved is trifling : *Nell v. Longbottom* [1894] 1 Q.B. 767, a case u/s 22, Sub-section 3, of the English Act of 1882 ; *Rex v. Rowlands* [1906] 2 K.B. 292, a case u/s 46 of the Local Government Act, 1894. If the interest is not pecuniary, it must at least be a "material" interest.

10. I will now turn to the test so much emphasised at the bar, namely, the test of conflict between interest and duty. That test was laid down for the first time in explicit terms by Lindley L. J. in *Nutton v. Wilson* (1889) 22 Q.B.D. 744. The question in that case was whether if a member of a local board does part of the work which a contractor has entered into a contract with the board to do on their premises, he is within the meaning of the Public Health Act, 1875 (38 & 39 Vic. Clause 55) "in any manner concerned in the contract". It was held that he is. In the course of his judgment Lindley L.J. said:

The expression "in any manner concerned" is a somewhat lax one. Cases may be put in which a person might perhaps be said in one sense to be concerned in a contract entered into by the board, and yet it might be tolerably obvious that he was not "concerned in the contract" in the sense in which the Act uses the words. To interpret words of this kind, which have no very definite meaning, and which perhaps were purposely employed for that very reason, we must look at the object to be attained. The object obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise.

11. This test was accepted by the Court of Appeal in *England v. Inglis* a case u/s 12 of the English Act of 1882, and it was acted upon by Astbury J. in *Holden v. Southwark Corporation* [1921] 1 Ch. 550, a case u/s 46 of the Local Government Act, 1894 (56 & 57 Vic. Clause 73).

12. In most of the cases referred to above the question before the Court was whether a councillor had an interest in contracts with the local board. The question in the present case is whether any of the said eight councillors had a share or interest in the said company on the material date. The principles laid down in those cases afford, I think, a fairly good guide to the determination of the several points raised in this suit. I proceed to deal with those points.

13. It is clear on the language of Section 36, Clause (p), that a councillor, whose name stands as a share-holder on the register of the said company, and who has a beneficial interest in the shares, is disqualified from voting or taking part in the discussion of any matter pertaining to the said company. It is also clear that if the shares stand, not in his name, but in the name of a nominee of his, the beneficial interest being in him, he is similarly disqualified. The shares again may stand in the name of a councillor who holds them not in his own right but as a

trustee for another. Where the shares stand in the name of a person t who has no beneficial interest in them but is a mere trustee, he cannot, it seems, vote at meetings of the company in which he holds the shares in a manner inconsistent with the interests of the beneficiaries. The reason is that he derives the position which he holds as a member of the Company from the legal ownership of the shares. But if such person is also a member of the Corporation, he is not, I think, disqualified from voting or taking part in the discussion of any matter relating to the Company at meetings of the Corporation, the in under no obligation to vote at such meetings in a manner beneficial to the interests of the cestui que trust, for he does not owe the membership of the Corporation to the fact that he is a shareholder of that Company. He commits no breach of the trust, if he votes at meetings of the Corporation in contravention of the interests of his beneficiary. It is no part of his duty as a trustee to vote at meetings of the Corporation in matters affecting the company as the beneficiary would have him to do. If no such duty is imposed upon him by law, it cannot be a case of conflict between two duties. Nor can it be a case of conflict between interest and duty, the interest which he has in the beneficiary being no higher than what a father has in the prosperity of his son.

14. There is no difficulty as regards Mr. Meyer Nissim and Mr. Mahomedbhai Currimbhai Ebrahim owing to admissions most fairly and frankly made by Sir Thomas Strangman on behalf of the Corporation. Mr. Meyer Nissan is the mortgagor of certain shares of the said company. The shares stand in the name of his wife. It was admitted that the shares stood in his wife's name as his nominee, and that he had a beneficial interest in the equity of redemption which disqualified him from Svoting at; the meeting held on February 19, 1923.

15. As to Mr. Mahomedbhai Currimbhai, it was thought at an earlier stage of the proceedings that he had no interest in the shares which stood on the register of the company in the name of his brother Sir Fazalbhai Currimbhai. But inquiries made at a later stage revealed the fact that the said shares belonged not to Sir Fazalbhai, but to Currimbhai & Co. Ltd. The last named company is a private Company, and Mr. Mahomedbhai as one of the share-holders of that Company had an interest in those shares and as such he was disqualified from voting at the said meeting. I accept Mr. Mahomedbhai's statement that he believed that he had no interest in the said shares when he first went into the witness-box.

16. Mr. Miya Mahomed Chhotani was one of the two whose vote was objected to by the defendants. It was at first doubtful whether he had in fact sold the shares which now stand in his name. But entries from his books as well as the brokers books were produced at a later stage of the proceedings which coupled with the evidence of his son Mr. Usman showed that Mr. Chhotani had in fact sold the shares in February 1920 and that he had no interest in them on the material date; and this was frankly conceded by Sir Thomas Strangman. It may here be stated that Mr. Chhotani could not attend the Court and give evidence owing to his illness.

17. Another councillor whose vote was challenged by the defendants was Mr. Hansraj Pragji. In his examination-in-chief he stated that, on November 11, 1922, he made a gift to his wife of several shares, of divers joint stock companies. These were forty-five preference and thirty ordinary shares of the said company, twenty-nine shares of the Indian Manufacturing Company, Limited, eighty-one shares of the Hindustan Manufacturing Company, Limited, and seventy-two shares of the Western India Company. The shares in the last three companies were transferred to the name of his wife on the very day he executed the instrument of transfer in her favour. But the shares in the said company still stand in Mr. Hansraj Pragji's name. Mr. Hansraj Pragji refused to give any information as regards the alleged gift of the said shares to his wife. He said that it was a matter of secrecy and he refused to show his books of account except to the Court. I refused to look into the books unless he was prepared to show the books at least to counsel on both sides, but he refused to do so. Such being the case I hold that the alleged gift is not proved, and the shares belonged to him on February 19, 1923, and that he was disqualified from voting at the said meeting.

18. Dr. Master presided and voted at the meeting of February 19, 1923. He voted as a councillor and he also gave his casting vote as Chairman. Dr. Master has been a councillor for the last twenty-five years. He and his wife held eighteen preference shares and ninety-five ordinary shares of the said company. They were purchased by him with his own money. On December 20, 1922, he and his wife executed instruments of transfer (Exhs. Nos. 14 and 15) of those shares to his wife and daughter. The transfers were by way of gift. The object of the transfer, as Dr. Master said, was to enable him to vote and take part in the discussion of, matters appertaining to the said company, he said that he had no longer any interest in those shares and that they were the absolute property of his wife and daughter. He was asked in cross-examination whether he had ever made a gift before of shares to his wife and daughter. His answer was that he had. That was about a year ago, the gift being of ten shares of the said Company. The gift, he said, was effected by a purchase of ten shares with his money in the name of his wife and daughter. He refused, however, to disclose his income and the Income Tax paid by him. The plaintiff impeaches the bona fides of the transaction and contends that the transfer was nominal. I do not think this contention should prevail. Dr. Master gave his evidence in quite a straightforward manner, and I have no reason to disbelieve his evidence. While under cross-examination he was considerably excited. He seemed to think that no person had a right to impeach or even to test his veracity, and in his excitement he gave some stupid answers. But this does not detract from the truth of his evidence. I am not prepared to disbelieve his evidence merely because of those answers. Nor am I prepared to presume from his refusal to answer the question as to his income that the answer if given would have been unfavourable to him. I accept Dr. Master's evidence without hesitation, and I hold he parted with all his interest in the shares to his wife and daughter on December 20, 1922, and that

he was not disqualified from voting at the meeting of February 19, 1923.

19. The next objection is to the vote of Dr. Cursetji. Dr. Cursetji has been a councillor for the last twenty-two years. He owned five ordinary shares of the said company. They stood in the joint names of himself and his wife Pirojbai. He says that in December 1922 he wanted to dispose of those shares to enable him to vote and take part in the discussion of matters relating to the said company. On December 23, 1922, he signed the instrument of transfer, Exh. No. 17, took his wife's signature on it both as transferor and transferee, and gave instructions to his son Jamshed, who is an LL. B. of the Bombay University, to sign it as a witness and to take the signature of his eldest son Dr. Khurshed as transferee. It appears from the evidence of Mr. Jamshed that he misunderstood his father's instructions, and instead of signing the transfer as a witness and getting the signature of his brother Dr. Khurshed as transferee, he signed it both as a witness and transferee. The share certificates along with the transfer were then lodged with the said company, and the shares were transferred in the register of the company to] the names of Mr. Jamshed and Pirqibai. It appears from the evidence of Dr. Cursetji and Dr. Khurshed that Dr. Cursetji had, in September 1922, borrowed Rs. 400 from Dr. Khurshed. In the middle of January 1923 he borrowed a further sum of Rs. 150 from him, and it was then arranged that Dr. Khurshed should keep the said five shares in discharge of the two loans. In the beginning of March 1923 as a result of inquiries consequent on the present suit the mistake aforesaid was discovered, and steps were taken to rectify the mistake and substitute Dr. Khurehed's name in place of Jamshed.

20. Dr. Cursetji has sworn that he ceased to have all interest in the shares from January 1923. It is contended for the plaintiff that the transfer was nominal and that Dr. Cursetji was on the material date the beneficial owner of the shares. I am not prepared to accede to this contention. I am inclined to believe the evidence of Dr. Cursetji, Dr. Khurshed and Mr. Jamshed. They all seemed to me to be witnesses of truth. Dr. Cursetji showed no desire to suppress anything from the Court. He produced his pass book and allowed the other side free inspection thereof. He frankly admitted that when he signed the transfer on December 23, 1922, he did not intend to part with the beneficial interest in the shares. The first time he parted with it was in January 1923 when the second loan was made. He said that he wanted the first loan to advance Rs. 400 to a female servant in his employ and the second loan for house-hold purposes. Counsel for the plaintiff argued that the whole story was got up to justify the vote which Dr. Cursetji had given, and denounced it as a perjury. He contended that the story was too complicated and too incoherent to believe. The obvious answer to this is that if perjury was meant, Dr. Cursetji could have told a very simple and plausible story, namely, that he had transferred the shares for consideration to his son Jamshed, in whose name the shares stood on February 19, 1923. An advance to an old and trusted servant is not unusual : nor are temporary loans by a Parsi son to his father unknown. I, therefore, hold that Dr. Cursetji ceased to have any beneficial interest in the shares from about the middle of January 1923 and that he was

not disqualified from voting on February 19, 1923.

As to Dr. Master and Dr. Cursetji it was also contended that their votes were invalid as they were the holders of a medallion from the said company. The medallion is Exh. F and it speaks for itself. On one side it bears the words "Member of Tramways Committee of the Bombay Municipality:" and, on the other, the words "Allowed to stand on the back platform of cars when there is no room inside". It was admitted that the holder of a medallion, even though he was entitled to stand when there was no room inside, had to pay the usual fare like any other passenger. Such being the case it is impossible to conceive what share or interest the holder of a medallion could have in the said company. I, therefore, hold that neither Dr. Master nor Dr. Cursetji was disqualified from voting by reason of the fact that they held the medallion from the said company.

21. Another councillor whose vote is objected to by the plaintiff is Sir Temulji Nariman. He has been a member of the Corporation for the last fifteen years. He and two others are executors and trustees of the will (Ex. No. 12) of one H. M. Sethna who died in October 1918. The will has been proved and the estate has been administered, but the trusts created by the testator for the benefit of his wife and his children still continue. The testator held thirteen old preference shares of the said Company which were converted after his death into thirty-nine. On January 26, 1923, Sir Temulji executed an instrument of transfer (Ex. No. 13) whereby the said thirty-nine shares which stood in the names of all the three trustees were transferred to the names of the other two. Sir Temulji said that he did so for the purpose of enabling him to vote on Tramway debates. It is contended for the plaintiff that Sir Temulji being a trustee of the said shares, he had an interest in the said company, and that he was, therefore, disqualified from voting. The broad ground on which the argument is based is that a trustee is under a legal obligation to his cestui que trust to vote as he desires. I will assume for the purposes of this case that all the thirty-nine shares stood in the name of Sir Temulji as sole trustee on February 19, 1923, but even so I fail to see how it is obligatory on Sir Temulji to vote at meetings of the Corporation according to the directions of the beneficiaries. I have already set forth above the principles by which a case such as that of Sir Temulji should be decided. At meetings of the said company he would, no doubt, be bound to vote as the beneficiaries desired, but not at meetings of the Corporation. Sir Temulji was not disqualified from voting at the meeting of February 19, 1923.

22. It was next objected on the part of the plaintiff that Mr. P. Murzban was disqualified from voting as he held a complimentary pass (Ex. A8) from the said company. Mr. Murzban has been the editor of the Jam-e-Jamshed for several years past. The pass entitles the holder to travel on the lines of the said company free of charge. It is not transferable. It appears to have been first issued to editors of Indian newspapers in July 1910. The purpose for which it was issued is stated in a letter dated July 21, 1910, from the said company to the editors of six newspapers including the Jam-e-Jamshed (Ex. No. 10). The said

letter runs as follows:

As the editor of the above large and influential paper, you frequently receive letters from the public regarding the Tramway service in this City and in order to enable you to see for yourself whether the subject-matter of these letters is such as to give your readers a fair and truthful account of the position, I send herewith a complimentary Tramway pass which I should be much obliged if you would kindly make use of.

23. The pass was renewed in the January of every year, the last renewal having been in January 1923. As in previous years, so this year, it was made out at first in the name of the editor, but Mr. Murzban sent it back to Mr. Mahaluxmiwalla, who is the secretary of the said company, with a request to issue it in the name of the "representative" of the Jam-e-Jamshed, and it was done accordingly. The reason why he did so was that about four or five months ago a councillor raised the point whether he was entitled to speak on matters relating to the said company as he held the pass. Mr. Murzban said that he got it changed to put an end to the criticism. He used the pass every day up to the end of 1922. In January 1928 he gave it for use to one of the reporters of the paper Mr. Pavri. Mr. Murzban said that he had not used it even once this year, though as a representative of the paper he could use it if he liked. His father, Mr. Jehangir, stated in his evidence that, he did not know anything about the pass, and that his non-ancient chief of the editorial staff managed all about the pass. On these facts the question arises whether Mr. Murzban can be said to have an "interest" in the Bombay Electric Supply & Tramways Company within the meaning of Section 36, Clause (p). It seems to be one of the plaintiff's grievances that, Mr. Murzban got the pass renewed in the name of the "representative" of the Jam-e-Jamshed to enable him to vote at meetings of the Corporation involving discussion on matters pertaining to the said company. But why should he not Mr. Murzban makes no secret of it. I will, however, approach the consideration of the question on the footing that the pass was renewed in the name of the editor. The pass did not at any time bear Mr. Murzban's name or the name of any other person as editor. It was issued to the editor of the Jam-e-Jamshed as it was to editors of other newspapers. Mr. Murzban is the editor of the Jam-e-Jamshed today; he may sever his connection with the paper tomorrow. It is not suggested that the executive of the Tramway Company ascertains the names of the editors before the pass is renewed, or that it issues the pass only to those editors who happen to be councillors. Mr. Murzban was elected a councillor about four years ago. The pass has been issued to the editor of the Jam-e-Jamshed for the last twelve years. It cannot, therefore, be said, on principle, that a councillor who happens also to be the editor of a newspaper and to whom as editor a complimentary pass is issued by the Tramway Company for the purposes mentioned in the company's letter of July 21, 1910, has an interest in the company within the meaning of Section 30, Clause (p). Nor do the cases cited at the bar warrant any such conclusion. Applying the definition of "interest" as laid down by Salter J. it is impossible to say of such a councillor that he has a "pecuniary" interest or even

"material" interest in the company. He might perhaps be inclined to do a good turn to the company by voting for an increase of fares, but that does not constitute an interest in the company. The pass, if he used it, would save him the fare, but that again is not an interest in the company. A councillor who holds no shares in the Tramway Company, but whose wife or son does, may be interested in voting for the company, but that does not constitute an interest in the company. For the same reasons Mr. Murzban's case cannot be brought within the principle of conflict between interest and duty as enunciated by Lindley L. J. The interest must be one within the meaning of Section 36, Clause (p), and not any interest that might influence the judgment of a councillor in voting for the company. For these reasons I hold that Mr. Murzban was not disqualified from voting at the meeting of February 19, 1923.

24. The result is that if the councillors whom I have held to be disqualified had not voted at the said meeting, there would have been sixteen votes for the amendment, and fifteen against it. The Chairman, therefore, was not entitled to give his casting vote, and he was wrong in declaring that the amendment was lost.

25. The second issue is : Whether the declaration of the Chairman at the meeting of February 19, 1923, as to the result of the poll was conclusive or whether it can be opened ? There is no doubt that the declaration is not conclusive, having regard to the provisions of Section 36, Clause (r) and (s). It will be necessary to refer to these provisions at some length later on.

26. I now turn to the first issue, namely, whether the suit as framed is maintainable. The defendants' contention on this issue is that the suit ought to have been instituted in the name of the Corporation, and reference was made to the provisions of Section 517 of the Bombay Municipal Act which contemplate a suit by the Corporation. This issue, which was kept in the background at earlier stages of the proceedings, was brought to the forefront after it became clear that the defendants must lose on the merits of the case.

27. Before proceeding to examine the legal arguments on issue No. 1, it is necessary to ascertain what precisely was the proposition before the meeting held on February 19, 1923, whether it was a proposition merely for the adjournment of the meeting within the meaning of Rule 40 or an amendment involving the disposal of, a "question" within the meaning of Rule 46. These rules form part of rules framed u/s 36 of the City of Bombay Municipal Act. Rules 14, 38, 39, 40 and 41 relate to adjournments of meetings; Rules 34 to 37 to amendments, and Rules 42 to 45 to voting. It is clear from these rules that a proposition for adjournment need not be seconded (Rule 38); an amendment, however, must be seconded, or it falls through (Rule 34). A proposition for an adjournment, if lost, may again be moved at the same meeting (Rule 40), but an amendment, if lost, cannot be moved at the same meeting. It can be moved, if at all, after the lapse of three months from the date of its disposal as provided by Rule 46, provided the original proposition has not by then been disposed of. The

original proposition in the present case was as follows:

That the fifth report, dated the 4th December, 1922, of the Tramways Committee...regarding the revision of the present scale of Tramway fares, be approved and adopted.

28. To that the following amendment was moved by Mr. Gulabchand Devchand, being the amendment that has led to the present suit:

That further consideration of the fifth report, dated the 4th December 1922, of the Tramways Committee...regarding the revision of the present scale of Tramway fares, be postponed to the April meeting of the Corporation.

29. The amendment was seconded as required by Rule 34. The significance of the April meeting lies in the fact, that the life of the present Corporation ends on March 31, 1923. It seems that the plaintiff and his party were apprehensive that the original proposition, if brought before the present Corporation, would be passed by a majority, and. they were anxious that it should be disposed of by the Corporation as reconstituted in April next. The question involved in the amendment was whether the report of the Tramways Committee recommending an increase in Tramway fares should be disposed of by the Corporation as now constituted or by the Corporation as constituted in April, 1923, and this was the question disposed of at the meeting of February 19, 1923. I do not. think this was a mere matter of adjournment within the meaning of Rule 40. It was a disposal of a "question" contemplated by Rule 46 which could not be brought up again before the Corporation until after the expiration of three months.

30. I now turn to Section 86, Clause (r), upon which Rule 44 is based. That clause provides that a declaration by the Chairman that a proposition has been carried shall, unless a poll be demanded at the time of such declaration, be conclusive evidence of the fact. In the present case a poll was demanded, and the Chairman declared the result of the poll. This declaration, the section says, is not conclusive. But who is to decide whether it is conclusive or not ? Surely a Court and a Court of law alone. That is the tribunal finally to decide questions as to the validity of votes. Neither the Corporation nor the Chairman has any power to do so. The question of the validity of a vote is a question of law, and a Court of law has jurisdiction to entertain it. One of the points raised on behalf of the defendants was that the Court has no power to interfere with the internal management of a Corporation, and reliance was placed on the observations of Lord Davey in *Burland v. Earle* [1902] A.C. 83. On page 93 the noble and learned Lord says:

It is an elementary principle of the law relating to joint stock companies that the Court will not interfere with the internal management: of companies acting within their powers, and in fact has no jurisdiction to do so.

31. But surely questions as to the validity of votes are not question relating to the internal management of a Corporation. They are questions that can be

disposed of only by a Court of law.

32. It was further contended for the defendants that the Court should not grant any relief to the plaintiff, for the relief, if granted, would be rendered nugatory if the President of the Corporation convened another meeting for the purpose. It was also contended that the suit, if it could be sustained at all, could only be sustained by the Corporation. This argument is based on the decisions in *Foss v. Harbottle* (1843) 2 Hare 461; *Mozley v. Alston* (1847) 1 Ph. 790; and *Macdougall v. Gardiner* (1875) 1 Ch. D. 13. But all these were cases of internal management. In *FOSS v. Harbottle*, two members of a company took legal proceedings against the directors and others to compel them to make good losses sustained by the company by reason of the conduct of the directors, and the Court held that as the acts were capable of confirmation by the majority of the members the Court would not interfere; that is to say, it was left to the majority to complain or to condone as they might think best. In that case Sir James Wigram V. C. said:

Whilst the Court may be declaring the acts complained of to be Void at the suit of the present plaintiffs, who in fact may be the only proprietors who disapprove of them, the governing body of proprietors may defeat the decree by lawfully resolving upon the confirmation of the very acts which are the subject of the suit.

33. It is difficult to see how this can be done in the present case, In *Mozley v. Alston*, the complaint was that four out of twelve directors were not entitled to act as directors and that they might be restrained from acting as such. The bill in that case was brought by two share-holders of a company. In that case Lord Cottenham said:

That, if it be an injury at all, is an injury not to the plaintiffs personally, but to the Corporation of which they are members? a usurpation of the office of directors, and, therefore, an invasion of the rights of the Corporation.

34. Such being the case, it was held that the company was the proper party to sue. I do not think that the fact that councillors disqualified from voting at a meeting of the Corporation is an injury to the Corporation. At least it was not viewed in that light in two Chancery cases to which I shall presently refer. In *Macdougall v. Gardiner* also the question was one of internal management. The bill was brought by a single share-holder complaining of several acts. James L. J. said:

The whole question comes back to a question of internal management; that is to say, whether the meeting ought or ought not to be held in a particular way, whether the directors ought or ought not to have sanctioned certain proceedings which they are about to sanction, whether one director ought or ought not to be removed, and whether another director ought or ought not to have been appointed. If there is some one managing the affairs of the company who ought not to manage them, and if they are being managed in a way in which they ought not to be managed, the company are the proper persons to complain of that....But then the plaintiff says, "Give us leave to amend". It is rather late to

ask for leave to amend when the amendments might have been obtained from the Master of the Rolls before any costs had been incurred. But the question is, is there anything substantial in this case on which we should give leave to amend on the part of the company? I can see nothing. I do not think we ought to give leave to amend for the purpose merely of getting a declaration as to what the proper mode of dealing with the adjournment was, because that would be simply to give a declaration without any relief? I am not aware that there could be any practical result following upon a declaration obtained by the company as to the particular mode in which the meeting ought to have been adjourned.

35. I do not think that the present case is at all similar to any of the three cases cited above. It would, I think, be monstrous to say if councillors disqualified from voting at a meeting of the Corporation vote at the meeting, and by so voting create a majority, that the minority has no remedy in a Court of law. Suppose that the amendment was properly lost, and the Corporation had proceeded to consider the original proposition and the proposition was carried by the casting vote of the Chairman ; suppose, further, that the councillors who were disqualified from voting at the meeting recorded their votes, and a suit was brought for a declaration that the Chairman's declaration that the proposition was carried was invalid and for an injunction restraining the Corporation from acting upon the resolution. Could such a suit lie ? According to the defendants' contention the Court should not entertain such a suit, for the relief, if granted, could be rendered nugatory by convening another meeting at which the proposition might be carried by a validly constituted majority. Suppose that a requisition was made to call another meeting on the ground that some of the votes were invalid. Who could decide whether the votes were valid or not? Certainly not the President nor the Corporation. The question of the validity or the invalidity of the votes could only be disposed of by a Court of law. There is, therefore, no substance in the contention that if the declaration asked for in this suit is granted, it will be of no effect. I am not sure whether the minority would not also be entitled to an injunction restraining councillors who are disqualified from voting from voting or taking part in the discussion of any matter pertaining to the said company at subsequent meetings held for that purpose, so long as the disqualification continued. I do not think that the present suit ought to have been brought in the name of the Corporation.

36. It was urged for the defendants that there are two and only two cases in which an action may be brought by two or more members of the Corporation on behalf of themselves and others, being the two mentioned in the judgment of Lord Davey in *Burland v. Earle*. The passage relied upon is as follows:?

Again, it is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should prima facie be brought by the company itself. These cardinal principles are laid down in the well-known cases of *Foss v. Harbottle* (1843) 2 Hare 451 and *Mozley v. Alston* (1847) 1 Ph. 790 and in numerous later cases which it is unnecessary

to cite. But an exception is made to the second rule where the persons against whom relief is sought themselves hold and control the majority of the shares in the company, and will not permit an action to be brought in the name of the company. In that case the Courts allow the share-holders complaining to bring an action in their own names. This, however, is mere matter of procedure in order to give a remedy for a wrong which would otherwise escape redress, and it is obvious that in such an action the plaintiffs cannot have a larger right to relief than the company itself would have if it were plaintiff, and cannot complain of acts which are valid if done with the approval of the majority of the share-holders, or are capable of being confirmed by the majority. The cases in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company.

37. It is clear that the above remarks are made with exclusive reference to joint stock companies, being companies formed for the purpose of making gain. The Municipal Corporation of Bombay is not a corporation for making any gain. There is no question here of redressing a wrong done to the Corporation or to recover moneys or damages alleged to be due to the Corporation. Nor is there any question of any shares controlled by a majority or of the ratification of any resolution. The question is whether the minority of the Corporation is to sit and look on while councillors disqualified from voting at a meeting vote at the meeting and thus create a majority. Is the Court to say to the minority in such a case, "we shall not interfere for our interference may result in nothing". I think that to deny jurisdiction in such a case, or to refuse relief in such a case, would be equivalent to saying that there shall be no justice at all administered. Nor is authority wanting even in Company law for the proposition that when the question is one of the validity of votes, an action could be brought by the share-holders complaining in their own names. In *Young v. South African and Australian Exploration Development Syndicate* [1896] 2 Ch. 268, the action was brought by two share-holders against the company and three directors, for an injunction to restrain the defendants from holding a meeting convened to confirm a resolution passed at a previous meeting of the company, or, in the alternative, for an injunction to restrain them from acting on the said resolution. The plaintiffs contended that the resolution had been passed irregularly on grounds inter alia that it was not passed by three-fourths majority of the share-holders as required by Section 51 of the Companies Act, 1862. Kekewich J. held that one of the nine who voted for the resolution was not entitled to vote with the result that the majority was reduced to eight and as eight did not constitute the necessary three-fourths majority he held that the special resolution was not properly passed. In the course of his judgment the learned Judge said (p. 278):

Renshaw has said it is a useless proceeding to go through all this again, because there is no doubt what the majority will do. However that may be, that is the right of a minority ; and experience tells us that sometimes, when minorities insist on their rights, they ultimately prevail. There must, therefore, be an

injunction to restrain the defendants from acting on the resolution.

38. This decision, it may be observed, was reversed on appeal on another ground in a subsequent case, but with that we are not concerned. In *Arnot v. United African Lands Limited* [1901] 1 Ch. 518, a suit was brought by two of the shareholders on behalf of themselves and all the other share-holders against the company and their directors to restrain them from acting upon some resolutions which purported to have been passed as special resolutions at a general meeting of the company. The resolutions provided for the voluntary winding up of the company. By the writ in the action the plaintiffs claimed a declaration that the resolutions were not in fact passed at the meeting, but that a resolution for the adjournment of the meeting was in fact carried and injunction to restrain the defendants from in any way acting upon the resolutions as if passed. It was held by the Court of Appeal that no poll having been demanded the declaration of the Chairman that the resolutions had been duly carried was conclusive. In this case it was not even suggested that the action should have been brought in the name of the company. Nor is there any reference to it in the judgments.

39. I think that if the present suit had been brought by two or more of the councillors on behalf of themselves and others, the frame of the suit could not have been objected to. But the suit is brought by the plaintiff in his own name and the question is whether the suit must fail for that reason alone. I think it must not, for the defect can be cured by amendment. Order XVI, Rule 17, of the Code of Civil Procedure, gives a wide power to the Court to allow a party to amend his pleading. Mr. Jinnah applied for an amendment of the plaint so as to bring it within Order I, Rule 8. That rule provides that where there are numerous persons having the same interest in one suit, one or more of such persons, may, with the permission of the Court, sue on behalf of all persons so interested ; but the Court shall in such " case give notice of the institution of the suit to all such persons. It has been held by a Full Bench of the High Court of Bombay in *Fernandez v. Rodrigues* ILR (1897) 21 Bom. 784. that the permission under this rule may be given even after the filing of the plaint. In that case Farran C. J. said:

The question raises no point of jurisdiction, and there is nothing which makes it essential that leave should be given before the filing of the suit. It is a point analogous to that of adding of parties. It is clear that where a suit is defective as to parties the requisite parties can be added after suit filed.

40. Tyabji J. expressed the same opinion. This Court, therefore, has ample powers to allow the amendment asked for, and I am prepared, if necessary, to grant leave to amend by adding after the plaintiff's name and description the words "and all other members of the Municipal Corporation". I am also prepared to grant permission to the plaintiff under Order I, Rule 8, to sue in that form, and I should have done so but for the fact that Rule 8 is mandatory so far as notice to the other persons interested is concerned, and it will cause unnecessary delay if the suit has to be adjourned for that purpose, Moreover, this point was not taken by the defendants either in their written statement or in the argument of

counsel. The Municipal Corporation being a party of the suit, there can be no doubt that every councillor whether he has the same interest in the suit as the plaintiff or not had notice of the institution of the suit. Having regard to these facts and to the frame of the suit in Young's case cited above, I do not consider it necessary to direct any amendment and I proceed to pass my orders in the suit.

41. First, there will be a declaration in terms of prayer (a) of the plaint. Next, there will be an injunction restraining the defendants from in any wise acting upon the declaration of the Chairman at the meeting, hold on February 19, 1923. If those whom I have held to be disqualified from voting had not voted at the said meeting, the result would have been sixteen for the amendment and fifteen against it, and the Chairman would have declared the amendment carried, and this would have been recorded in the minute book of the Corporation. The result of such a declaration would have been that the same question could not have been brought up before the Corporation prior to the April meeting of the Corporation having regard to Rule 46. I, therefore, hold that the Chairman ought to have declared that the amendment was carried. As this has not been done, this Court will declare that the amendment be taken as carried and restrain the defendants from doing any act inconsistent with the amendment, that is, from proceeding further with the consideration of the Tramways Committee's Report until April 1, 1923 : see *Harben v. Phillip* (1883) 23 Ch. D. 14.

42. The only question that remains to be disposed of is one of costs. It is alleged in para 6 of the plaint that the transfers by Dr. Master, Dr. Cursetji and Sir Temulji Nariman were fraudulent and nominal, and that they were not entitled to take part in the discussion or vote at the meeting of February 19. It is, indeed, painful to find that the plaintiff, who is a member of the Corporation, should have made reckless charges of fraud against his brother councillors without having made adequate enquiries and without sufficient grounds. Mr. Jinnah said that all that was meant by "fraud" was that the transfers were ostensible, and not real. But you cannot varnish the word "fraud" you cannot put a gloss on it, you cannot clothe it with a glittering surface, and persuade the Court to believe that "fraud" does not mean "fraud". It is to be regretted that the plaintiff should have stooped to make these charges. I cannot overlook these charges, for they affect the question of costs. Further, the inquiry into the case of Dr. Master, Dr. Cursetji, Sir Temulji and Mr. Murzban, occupied a fairly good part of the Court's time. My order as to costs will be that the defendants do pay three-fourths of the plaintiff's costs.