
(1950) 09 MAD CK 0004
In the Madras High Court
Case No : Appeal No. 36 of 1950

S. RM. S.T. Narayana Chettiar and Another APPELLANT
Vs
The Kaleeswarar Mills Ltd. and Others RESPONDENT

Date of Decision : 07-09-1950

Acts Referred:

Companies Act, 1913 — Section 79
Contract Act, 1872 — Section 204, 205, 207, 209
Stamp Act, 1899 — Article 48, 31, 35, 36, 5

Citation : AIR 1952 Mad 515 : (1951) 21 CompCas 351 : (1952) ILR (Mad) 218 : (1951) 64 LW 1072 : (1952) 1 MLJ 18

Hon'ble Judges : Satyanarayana Rao, J;Chandra Reddi, J

Bench : Division Bench

Advocate : K.C. Gopalaratnam and L.V. Krishnaswami Iyer, for the Appellant; K. Rajah Ayyar, K. Krishnaswami Ayyangar and K. Parasaraman, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Rao, J.—This appeal relates to a dispute between two rival groups of share-holders of Kaleeswarar Mills, Ltd., Coimbatore,

each attempting to obtain control over the management of the company. For this purpose, these two factions have engaged themselves in a battle

of wits for a long time with the result that the business of the company has been seriously affected. For the purpose of this appeal, it is not

necessary to advert to the incessant quarrels between the two groups since 1931. It would be sufficient to start from 1948. The two factions are

led by Sathappa Chettiar on the one hand who represents the plaintiffs' group and A.L.A.R. family consisting of three brothers of whom the eldest,

Kalairaja Chettiar is the leader.

(1a) The annual meeting of the company, which is the first defendant in the case,

for the year ending 1947 was held on 30th September 1948. The agenda paper for that meeting contained four subjects: 1. to receive and adopt the directors' report and the audited profit and loss account for the year ended 31st December 1947 and the audited balance sheet as at 31st December 1947; 2. to elect directors in the place of the two directors who retired by rotation; 3. to appoint an auditor or auditors and to fix his or their remuneration; 4. to approve the co-option of Messrs. P. K.

Palaniappa Gounder and A.L.A.R. Aruna-chalam Chettiar.

2. The company was incorporated under the Indian Companies Act, 1882, in or about 1906. Its main object was to manufacture cotton goods.

Among the signatories to the memorandum of association are included the legal luminaries of the Madras Bar at the time, viz., Sri V. Bhashyam

Aiyangar, P. R. Sundaram Aiyar, V. Krishnaswami Aiyar and S. Srinivasa Ayyangar besides business magnates. The articles of association of the

company excluded the application of Table A in the first schedule to the Indian Companies Act; but the regulations framed were modelled more or

less on the regulations contained in Table A. The capital of the company which then consisted of nine lakhs of rupees, was divided into 9000

shares of Rs. 100 each. Sathappa Chettiar's group owned in 1948 as many as 3450 shares while the A.L.A.R. group owned only 2300 shares,

Before the general body meeting of September 1948, however, the A.L.A.R group increased their voting capacity by splitting their shares and

transferring single shares to various individuals. About 450 single shares were registered with that end in view in the name of 450 individuals who

were not members before.

3. The proceedings of the meeting of the 30th September 1948 (Ex. A. 2 in A.S. No. 29 of 1949) show that Palaniappa Gounder, the present fifth

defendant, who was the chairman of the Board of Directors entitled to preside at every general meeting under Article 78 presided at that meeting

and disposed of the various objections raised at that meeting. Before the subjects on the agenda were considered, objection was taken on behalf

of A.L.A.R. group that proxies filed on behalf of the plaintiffs' group were not valid as they were not given particularly for that meeting but they

were general in language. The objection was answered on behalf of the plaintiffs' group by Mr. Lakshmanan, the present second plaintiff, stating

that the proxies were intended only for that meeting which was made clear from the date given in the proxies. On this the Chairman ruled that the proxies were valid. Mr. Lakshmanan also seems to have objected to the validity of about 49 revocations of proxies filed by the opponents but the Chairman overruled that objection. The most important objection that had to be considered, however, raised by the second plaintiff was that shareholders owning less than five shares were not entitled to vote in view of Article 88 which provided that every shareholder not disqualified shall have one vote in respect of every five shares. After due consideration, the chairman overruled this objection.

(3a) The subjects which were on the agenda were taken up for consideration and were put to vote one after the other. On a show of hands, the sense of the meeting was in favour of the resolutions and at each time a poll was demanded and on a poll, 859 votes were cast in favour of the resolutions and 703 votes against. At the end of each poll, the plaintiffs' party demanded a further poll which is styled under the articles, as a "poll of the whole company"; but this was rejected. The result, therefore, of the poll at this meeting was that the A.L.A.R. group was successful and the plaintiffs' party lost. The two plaintiffs in the present suit, who were the sitting directors, were unseated and in their place, defendants 6 and 7 were elected and the co-option of the 4th and 5th defendants was approved.

4. Two of the share-holders thereafter filed on the 7th October 1948 a representative suit on behalf of themselves and on behalf of the share-holders of Kaleeswarar Mills Ltd., (O.S. No. 325 of 1948, Sub-Court, Coimbatore) to declare that the resolutions passed at the general body meeting were illegal and void and that the newly elected and co-opted directors were not entitled to act. There were various objections to the resolutions passed at that meeting which were considered by the learned Subordinate Judge who tried the suit. He dismissed the suit overruling the contentions of the plaintiffs in that action. There was an appeal to this Court against that decision in A. S. No. 29 of 1949 and in that appeal, the plaintiffs confined their objections to the resolutions to three grounds; firstly, that persons who owned less than five shares were allowed to vote when the poll was taken which was contrary to the provisions of the articles of association; secondly, the demand for a poll of the whole company

should have been allowed by the Chairman; thirdly, that Palaniappa Gounder, the present fifth defendant, was not competent to act as Chairman of

the meeting as the confirmation of his co-option as a director was one of the subjects comprised in the agenda for that meeting.

(4a) On the first of the three questions there was a difference of opinion between Horwill J. and Raghaya Rao J. who heard the appeal in the first

instance, the former holding that every share-holder even if he owned less than five shares was entitled to vote but if a share-holder owned five or

more shares, he would be entitled to one vote in respect of every five shares. In other words, a shareholder having between 5 and 9 shares will

have only one vote and those having between 10 and 14 shares two votes and so on; but a person holding less than five shares would be entitled

to one vote. This view, however, was not shared by Raghava Rao J. As there was a difference of opinion on this point, the case was laid before a

third Judge, Viswanatha Sastry J. who agreed with Horwill J. On the other two questions, both the learned Judges concurred. The second poll is

no doubt a unique feature of this company, hut according to the learned Judges such a poll should be taken if demanded in the manner provided by

the articles of association. A poll of the whole company was probably intended, as observed by Horwill J. ""to afford an opportunity, where a

considerable number remain dissatisfied after the show of hands and polls are taken, for the whole company, including those not present in person

or by proxy at the meeting, to express their opinion on the matter."" On the third question also, both the learned Judges were unanimous in holding

that it was an elementary principle of justice that a person should not preside while the meeting is considering a question which personally affects

him. The result was that the learned Judges directed that before the decisions on the various resolutions in which a second poll was demanded can

be considered finally, there should be another poll at the registered office of the company at such time as the fifth defendant should direct and that

he should vacate the chair when a resolution relating to his co-option is to be taken up for consideration. The decree of the High Court (Ex. A-4)

directed, after setting aside the decree of the trial Court dismissing the suit:

1. that before the decisions on the various resolutions in which the second poll was demanded can be considered final, a fresh poll shall be held at

the registered office of the company at such time as the fourth defendant (the present fifth defendant) snail direct;

2. that the fourth defendant (the present fifth defendant) should not preside when the question of his co-option is in question;

3. that at the poll to be held in pursuance of Clause (1) supra, each member will be entitled to vote the number of votes being calculated according

to the provisions of Article 88 of the Articles of Association.

5. The plaintiffs' party were anxious to know the addresses of some of the shareholders comprised in the newly added 450 members with a view

to canvass their support for the second poll. Their complaint was that particulars regarding the share-holders so added were not given in the

register as required by Sections 31 and 32 and form E of the third schedule to the Indian Companies Act. There was some correspondence

between Sathappa Chettiar and Kaleeswarar Mills Ltd. on this point but there was no sign of getting the required information. On the 29th August

1949 three of the directors of the plaintiff's party sent notices calling for a meeting of the directors to be held at the registered office of the

company on the 6th September 1949 at 10 a.m. to consider the matters on which they required information and also to waive under Article 94 of

the Article, the rule relating to deposit of proxies for the purpose of oil. On the same day the fifth defendant published a notice, Ex. A. 8, to the

share-holders of the company intimating that the second poll of the annual general body meeting held on the 30th September 1948 would be taken

on Monday the 5th September 1949 commencing from 3 p.m. at the registered office of the said company. The plaintiffs' party sent a circular to

the shareholders newly added, Ex. A. 12, and obtained revocations of the proxies. On the 4th September 1949 Ex. A. 11 was addressed to the

fifth defendant, the Chairman of the Board of Directors, by four people of the plaintiffs' group in which they impeached the bona fides of the

Chairman and intimated that they lost their confidence in him to act impartially as Chairman at the meeting for conducting the second poll. They also

anticipated that the Chairman had made up his mind to summarily reject all revocations obtained by the plaintiffs' group. Some of these revocations

have been marked as Ex. B. 3 series. It is agreed before us that the total revocations covered proxies in respect of 230 votes which were obtained

by the plaintiffs and which would have the effect of cancelling the proxies already obtained and deposited by the defendants" group before the meeting of the 30th September 1948.

(5a) On the 5th September 1949 at 3 p.m. the share-holders assembled at the registered office of the company and the revocation forms were

handed over to the Chairman. The Chairman, the fifth defendant, then decided that he did not intend to preside at the meeting for two reasons;

firstly, because the High Court had directed that he should not preside at the second poll when the subject of his co-option would be under

consideration and secondly because he had received a communication from some share-holders, apparently referring to Ex. A.11, in which advice

was given to him as to how he should give his rulings. He requested the members to choose a Chairman to take the poll. The names of two

directors were suggested. Messrs. Alagappa Chettiar, the third defendant and K. Srinivasa Ayyar. The former belongs to the A.L.A.R. group and

the latter to the plaintiffs" group. The plaintiffs did not then object that the Chairman had no right to decline to preside at the poll. On the contrary,

they accepted the position that the Chairman was entitled to decline to preside and to put up a candidate of his own for the chairman ship. The

plaintiffs" candidate Srinivasa Ayyar was defeated by a large majority and Alagappa Chettiar was elected Chairman by the share holders.

(5b) Then the proceedings continued and Arunachala Ayyar and Narayanan Chettiar were appointed scrutineers. The revocations received that

day were rejected as unacceptable. The first plaintiff objected that the revocations filed before 30th September 1948 numbering 49 should not be

accepted as they were not stamped; but his objection was overruled. At about 10 p.m. one of the scrutineers who belonged to the defendants"

group filed a memo before the chairman of the meeting raising three objections. The second of it was that the proxies filed by Narayanan Chettiar,

Lakshmanan Chettiar and Ramanathan Chettiar (plaintiffs" group) for the meeting of the 30th September 1948 were not properly stamped as they

were not proxies but were powers of attorney and should have been stamped as such. The other scrutinizer was however of the view that the

objections of Arunachala Aiyar were untenable. The chairman adjourned this question for decision being given before 10 a.m. the next day. The

poll was then taken on all the resolutions which resulted in securing 793 votes in favour of the resolutions and 767 against. On the next day, 6th

September 1949, the Chairman gave his ruling that the proxies were invalid and they should be excluded. Consequently, 661 votes cast against the

resolutions were excluded as a result of which the number of votes against the resolutions were reduced from 767 to 106. There were therefore

793 votes in favour of the resolution and 106 against. The plaintiffs, therefore, lost in this poll and the election and co-option of directors was

upheld and the two plaintiffs were unseated.

6. The unseated directors instituted the suit which has given rise to this appeal objecting to the poll taken on three grounds: firstly, Palanjappa

Gounder the fifth defendant had no right to decline to preside at the poll and that the share-holders had no right to elect the third defendant as

Chairman; secondly, that the revocations should not have been rejected and thirdly, that the proxies were valid and the votes recorded under those

proxies should not have been excluded. The first defendant to the suit is the company, the fourth and fifth defendants are the co-opted directors,

the sixth and seventh defendants the newly elected directors, the third defendant is the Chairman who presided at the poll and the second

defendant is Kalairaja Chettiar, the leader of the defendants' group. In the lower Court, the parties did not lead any oral evidence and contented

them-selves by filing documents. The trial Court rejected the contentions of the plaintiffs and dismissed the suit. Hence this appeal.

7. The same questions have again been argued elaborately before us. The first question for consideration is whether the fifth defendant was bound

to preside at the poll. On this point we have no hesitation in agreeing with the conclusion of the learned Subordinate Judge that the fifth defendant

cannot be compelled to continue to act as chairman notwithstanding the fact that his bona fides were questioned earlier by the plaintiffs and this

Court directed, at any rate, that so far as one of the subjects was concerned he should not preside at the poll.

(7a) The argument before us on behalf of the plaintiffs by the learned advocate was that the decision of the High Court precluded the Chairman

from declining to preside at the poll. No doubt, the judgment of the High Court and the decree proceeded on the assumption that the Chairman of

the Board of Directors would continue to preside even at the poll as the roll was nothing but a continuation of the meeting of the 30th September

1948. The decree directed that he should fix the time for the second poll. This was done by him and there is no other indication in the judgment

preventing him from having the right recognised by Article 78. That Article provides that the Chairman of the Board of Directors should preside

only if he is willing. There is nothing in law to compel a man to do that which he is not willing to do. Express power is recognised in the Article itself

to give up the right if he so chooses. The Chairman of the meeting is not entitled to stop the meeting at his own will and pleasure. If a meeting is

called for a particular purpose of the company, undoubtedly, a person should preside at that meeting and invariably the constitution of the company

provides for the same. It is not open to the Chairman to stop the meeting and dissolve it before the business of the meeting is finished. It is the

privilege and the right of the shareholders assembled at the meeting to decide whether they should continue the business of the meeting on that day

or adjourn it for a subsequent date. If the Chairman unjustly and without the consent of the shareholders stops the meeting and declares it

dissolved, it is perfectly within the powers of the meeting to elect a Chairman and conduct the business remaining unfinished; but there is no

authority in support of the proposition that a Chairman is not entitled to give up his right to preside at a meeting. There is no direct authority on the

question but Article 78 itself recognises that the Chairman of the Board of Directors can preside, over the meeting only if he is willing. That it is not

open to a Chairman of the meeting to stop the meeting or adjourn it at his sweet will and pleasure has been decided by Chitty J. in "National

Dwelling Society v. Sykes", (1394) 3 Ch 159-- See also 3 Halsbury, p. 61, para 108 and 5 Halsbury p. 364 para 592, Halsbury Edn "Catesby v.

Burnett", (1916) 2 Ch 325 is an instance in which also the Chairman of the meeting declared that the business was closed and left the chair and the

hall whereupon the shareholders elected another to the Chair and carried on the business of the meeting. The second poll also is undoubtedly a

part of the meeting and the contention of the appellants that it was not open to the shareholders to elect another chairman, in our opinion,

proceeds on a wrong hypothesis. In support of the contention, a passage in the judgment of Curgenven J. in "Srinivasan v. Watrap Subramania

Aiyar", 61 Mad L J 724 was relied on by the appellants where the learned Judge observed:

The original meeting in law continues until the Chairman has carried out the directions given to him by the share-holders to take a poll. It is a

notional meeting, not dependent for its existence and continuity upon the share-holders being actually in session and business being transacted. The

actual process of holding the poll is not a "meeting" at all. It differs in several of its features from any meeting of share-holders.

(7b) These observations of the learned Judge have to be taken in relation to the facts of that case. In that case, the Chairman of the meeting

directed, when a poll was demanded on a resolution, that it should be taken on a subsequent day between 4 and 6 p.m. and appointed the

company manager, one Mr. Church, as returning officer for the purpose of taking it. The poll, however, was not taken on the 20th as for some

reason Mr. Church was unable to attend to the poll. The question that had to be considered was whether the process of holding the poll was a

detached portion of the general meeting or was, at any rate, a meeting within, the meaning of the articles of association. This, point became material

as it was contended that when the Commissioner, Mr. Church was absent to take the poll, it was open to the shareholders assembled to have

elected a new Chairman for the meeting and as they did not do so, the meeting was at an end. In answer to these objections, it was pointed out

that the original meeting continued in law until the Chairman had carried out the direction given to him by the shareholders to take a poll. The actual

process of holding the poll was not a meeting at all though the result of the poll formed part of the meeting at which the poll was demanded. The

meeting therefore did not come to an end until the RESULT of the poll was ascertained in the manner provided by the Articles. The original

meeting continued therefore for the purpose of taking the poll until the poll was closed. For this position, the decisions in "Harben V. Phillips",

(1882) 23 Ch. D. 14: "The Queen v. Wimbledon Local. Board", (1882) 8 Q B D 459; "Shaw v. Tati Concessions Ltd", (1913) 1 Ch. 292 and

"Spiller v. Mayo (Rhodasia) Development Co (1908) Ltd.", 1926 W N 78 were relied on.

(7c) The decision in "Srinivasan v. Watrap Subramania Aiyar", 61 Mad L J 724, in our opinion, far from supporting the contention of the

appellants, is against them. The meeting of the share-holders on the 5th September 1949 was a continuation of the meeting and it was open to the shareholders to elect a chairman when the fifth defendant declined to, preside at that meeting. The Chairman so elected was not like the

Commissioner, Mr. Church in the case in "Srinivasan v. Watrap Subramania Aiyar", 61 Mad L J 724. His function was not merely to supervise the recording of the votes. He was entitled to exercise all the functions of a Chairman at the meeting. For these reasons we think that the objections of the appellants on this point are not well founded and must be rejected.

8. The next point that has to be considered is whether the Chairman was justified in rejecting the revocations. Until recently, both in England and in

India, a member had no right to vote by proxy unless the Articles provided for such a right as common law did not recognise voting by proxy. The

Articles, however, generally conferred such a right subject to such conditions and limitations as are prescribed thereunder. This right has now been

recognised by the statute both in England from 1947 now enacted as Section 136 of the Act of 1948 and by Section 79 of the Indian Companies

Act, as amended in 1936. As the Articles generally recognised a right to vote by proxy, it is a contractual right as the Articles of Association

undoubtedly constituted a contract between the company on the one side and the members on the other. Independently of the contract, therefore,

until the statute altered it there was no right of voting by proxy. The reason why the right to vote by proxy was not recognised seems to be that

when persons agreed"" as pointed out by Bowen L. J. in "Harben v. Phillips", (1882) 23 Ch. D. 14

to act together in the conduct of a business the way in which that business is to be carried on must depend on each case on the contract, express

or implied, which exists between them as to the way to carrying it on.

The decision on every question relating to the business of an incorporated company should essentially be that of the shareholders, having regard to

their interest in the company. Unless, therefore, there was a contract between the company and the shareholders, they could not delegate this

power of expressing their opinion at a meeting of the company to another. These propositions are so well established as not to require citation of a

number of authorities in support of them, it is summarised in Palmer's Company

Law, 19th Edn. at page 153.

(8a) A proxy is defined by Lord Hanworth M. R. in "Cousins v. International Brick Co.", (1931) 2 Ch. 90 as "'a person representative of the

shareholder who may be described as his agent to carry out a course which the shareholder himself has decided upon'" and the Lord Justice in the

same case defined a proxy as an agent of the shareholder who, as between himself and the principal, was not entitled to act contrary to his

instructions in the matter. It cannot therefore be seriously disputed that the relationship brought about between the shareholder and his proxy is that

of a principal and agent. The argument of the respondents is that unless the power of revocation is expressly conferred by the Articles under which

a right of voting by proxy is recognised, the Power of revocation does not exist and that the contract creating the agency is exhaustive of the rights

and duties of the proxy. This contention proceeds upon a wrong view of the incidents of a contract of agency. When once the relationship of

principal and agent is created by contract, the incidents of that contract of agency are governed and have to be determined by applying the law of

contracts. In India such law is to be found in the Contract Act.

(8b) The argument on behalf of the respondents amounts to this that all the rights and liabilities which flow from a contract by reason of the

application of the general law of Contracts do not attach themselves to a contract unless they are enumerated in the contract itself. In other words,

if there is a contract of sale of goods unless all the rights and liabilities of the seller and buyer which are to be found in the Sale of Goods Act are

specifically enumerated in the contract itself, they have no application. When once there is a contract all the legal incidents of such a contract are

governed by the law of contracts whether it is in the form of a statute-as in India or is ascertainable from judicial decisions as in England. It will be

an intolerable state of affairs if one is obliged to embody in every contract the provisions of the Contract Act or the Sale of Goods Act as the case

may be relevant to such a contract. When once the relationship enters the region of contract, the law of contract alone must determine its incidents.

On the argument of the respondents, the relationship of agent and principal brought about by the execution of the proxies cannot be terminated

even by death though they are forced to concede that such a termination follows

and that even when the principal is present in person at the meeting, the right of the proxy to exercise his vote on behalf of the principal must yield to the right of the principal to exercise the vote personally. It so much is conceded, it is difficult to see why the principal should be denied his right to re-yoke a contract which brought about the relationship of principal and agent. The Articles might make the proxy irrevocable or impose restrictions or circumscribe the limitations within which the power of revocation should be exercised. But all these are matters within the region of contract between the parties and in the absence of anything to the contrary, there is no reason to exclude the right of revocation which is recognised u/s 203 of the Contract Act.

(8c) There are other limitations imposed by the Contract Act on the exercise of the power of revocation, e.g., if the revocation is made after the authority had been partly exercised, Section 204 of the Act preserves the validity of such acts and obligations and makes the revocation effective only in respect of future acts. If the agency is limited to a period of time and with-sufficient cause it is revoked before the expiry of the period u/s 205, the agent is entitled to compensation. The principal is bound to give reasonable notice of revocation as otherwise he would be liable to pay damages to the agent which result from such act of his. As regards third persons, u/s 208, the termination of authority of the agent does not take effect before it becomes known to them so that if third persons are sought to be affected by revocation of the authority of the agent, the principal must give due notice of the same. Termination of the authority by death of the principal is recognised u/s 209. On an examination of the authorities cited at the Bar, it will be seen that the some principles have been applied for the revocation of proxy by a shareholder.

9. The subject of revocation of proxy is dealt with by Palmer in his book on Company Law. 19th Edn. page 154 and he summarises the law on the subject in these terms:

The appointment of a proxy, unless made irrevocable for valuable consideration, can be revoked. The revocation must, however, conform to any provisions in the articles.

If the shareholder, after appointing a proxy, himself attends the meeting, he can vote in person. The right of the shareholder to vote in person is

paramount to the right of the proxy. The presence of the shareholder does not avoid the instrument of proxy; but if he votes before his proxy has voted for him, he impliedly revokes the proxy.

The death of a shareholder who has appointed a proxy, in the absence of the provisions in the articles, revokes the authority of the proxy.

This summary by the learned author is based on the decisions in "Spiller v. Mayo (Rho-Desia) Development Co. (1908) LTD", 1926 W N 78;

"Cousins v. International Brick Co." (1931) 2 Ch. 90; "Knight v. Bulkeley", (1859) 5 Jur. 817. The subject is also discussed and the same

principles more or less have been recognised in Hals-bury, Laws of England, Vol. 5, pages 364 and 365 where voting by proxy and revocation of

proxy are discussed; 8 Halsbury 61 paragraph 108 discusses the subject of proxies; Buckley on Companies Acts, 12th Edn. pages 324 and 325;

Shackleton on Law relating to Meetings, 1934 Edn. at page 62.

10. In "Spiller v. Mayo (Rhodesia) Development Co. (1908) Ltd.", 1926 W N 78, one of the articles provided that ""a vote given in accordance

with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death of the principal or revocation of the

proxy, or power of attorney, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation,

or transfer shall have been received at the office before the meeting.

After a poll for the election of a director the scrutineers discovered that a proxy was revoked by the principal before the poll. The votes recorded

on the strength of that proxy were excluded from the poll. If such votes were allowed, the plaintiff in the action would have been successful in the

election as a director and the respondent would have been defeated. The question that had to be decided was whether the exclusion of the votes

from the poll by the Chairman was justified. The Article clearly provided that the notice of revocation should be received at the office before the

meeting, i.e., before the commencement of the meeting. The revocation in that case that had been received was communicated to the office only

before the poll and not before the meeting. The communication, therefore, was ineffective to make the revocation operative. It was, therefore, held

by Russell J. that the votes were improperly rejected. In the course of the judgment, the learned Judge stated the law in these terms:

(10a) ""The matter really turned upon Article 88, which he had been told was also in common form, but, if so, in his view it was a somewhat unfortunate common form. Omitting for the moment the proviso, it seemed quite clear, upon the construction of that article, that a vote given by proxy was by contract between the shareholders, to be valid notwithstanding that the shareholder had died before the vote was taken, and notwithstanding that the shareholder had revoked the proxy, before the vote was given; but that contractual result, which might in certain instances be somewhat startling, could be avoided if the proviso was complied with. It could be avoided apparently if an intimation in writing of the death or revocation was received at the office "before the meeting".

(10b) Two points had been urged by Mr. Gordon Brown on behalf of the plaintiff why these votes should not have been objected to. The first point was there had been in fact no intimation of any revocation at all. In his Lordship's opinion that could not be sustained. The second point was in his view a more formidable one. It was said that no intimation of the revocation was received before the meeting.

(10c) In his Lordship's opinion, if English language meant anything, the article required that in order to invalidate the vote, intimation in writing of the revocation must be received at the office before the meeting, and in his view that must mean before the commencement of the meeting. It was well settled that the taking of a poll was not a meeting of the company in the strict sense, but was in law a mere continuation of the meeting at which the poll was directed to be taken. For the particular purpose in question therefore the meeting must be held to have begun on December 15 and to have come to an end at the declaration of the poll, a week later. The intimation of revocation, however, had been received between those two dates.

(10d) In his opinion it was impossible to say on the true construction of the particular article that the proviso has been complied with, namely, that intimation in writing of the revocation had been received before the meeting. In his Lordship's view it was received after the meeting had commenced, it had been received during the meeting. Accordingly the proviso did not operate, and the original part of the article must be held to operate, namely, that the vote given by the proxy was valid notwithstanding the

revocation of the proxy during the meeting.

11. If the articles lay down the limitations within which a power to vote by proxy can be exercised, it should be strictly observed. The follows from

the fact that the right to vote by proxy is founded on contract. For this reason, it was held in "Harben v. Phillips", (1882) 23 Ch D 14, that where

the articles required that the proxy papers should be attested in a particular manner and if this condition is not satisfied, they should be rejected.

"Mclaren v. Thomson", (1917) 2 Ch 41, also illustrates the same principle. The article in that case required that the instrument appointing a proxy

should be deposited at the registered office of the company not less than two clear days before the day of the meeting. The proxies were lodged

between the dates of the original meeting and its adjournment. It was held that the adjourned meeting when held was really a continuation of the

meeting at which the adjournment took place and as the proxies were not deposited before the date for holding the meeting as required by the

article they were invalid and were therefore rejected. Astbury J. says at page 46:

There is no inherent or equitable right in any share-holder to vote by proxy; such right if it exists, must be found in the contract binding the share-

holders generally, that is in the company's regulations or constitution, and it then exists only in the form and subject to the limitations therein

appearing. There is no room for contending that an appointment of a proxy, irregularly made, is within the spirit or equity of any inchoate right so to

vote existing in the share-holder; he has either complied with the terms of the contract upon which alone the right is based or he has not. Prima

facie a provision that a proxy must be lodged before the day for holding or before the time for holding a meeting means that it must be lodged

before the beginning and not before the end of the gathering.

(11a) These and similar observations in other decisions were relied on on behalf of the respondents as establishing the proposition that unless the

right of revocation is expressly conferred by the articles, there is no right of revocation. The restrictions on the power to vote by proxy are

undoubtedly absolute but the power of revocation is an incident of the contract of agency and wherever a power to vote by proxy is conferred, the

power of revocation unless excluded under the articles, exists as the relationship of principal and agent is governed by the law of contracts. The

right to vote by proxy and the right of revocation are distinct powers. In "Cousins v. International Brick, Co.", (1931) 2 Ch D 90, there were two provisions in the articles of association, one providing that the instrument appointing a proxy should be deposited at the office not less than 48 hours before the time of holding the meeting at which it should be used and the other regulation that a vote given in accordance with the terms of the instrument of proxy will be valid notwithstanding the previous revocation of the proxy provided no intimation in writing of the revocation shall have been received at the office before the meeting. Some shareholders purported by notice in writing to revoke the proxies given by them previously, while others without giving notice to revoke the proxies voted personally at the meeting. The revocation of the proxies was not in accordance with the articles of association as the intimation in writing of the revocation was not received at the office before the meeting. The case therefore was directly governed by the decision in "Sfuller v. Mayo (Rhodesia) Development Co, (1908) Ltd", 1926 W N 78. The further question was whether the shareholders were entitled to vote personally without revoking the proxies given by them. The Court of Appeal accepted the view of Russell J. on the question whether the revocation was effective; on the second question, it was held that the person by giving a proxy was not thereby deprived of exercising the vote personally, before the proxy had exercised the vote. Lord Hanworth, M. R. pointed out in the course of his judgment that it is open to provide by articles to exclude the right to vote personally when a proxy was given; but if this is not done and there are no clear words taking away the shareholder's personal right to vote after he has put in force the proxy system the personal right remains and the shareholder is entitled to attend and give his vote according to his choice. The proxy is not entitled to prevent him for exercising the vote. Lawrence L. J. and Romer L. J. put it also on the ground that "every proxy is subject to an implied condition that it should only be used if the shareholder is unable or finds it inconvenient to attend the meeting. The proxy is merely the agent of the share-holder, and as between himself and his principal is not entitled to act contrary to the instructions of the latter. A proxy is always subject to an understanding that the share-holder giving it does not elect to give his vote in person and when he in fact gives a

vote in person he is not revoking the proxy but taking a step which obviates the necessity, of the proxy being used at all"" (per Romer L J at p. 103).

(11b) From these observations it follows that the exercise of a personal vote by the shareholder after he had adopted the proxy system does not

revoke the proxy but only prevents the exercise of the vote by the proxy. The decisions in "in Re Haven Gold Mining Co.", (1882) 20 Ch D 151

and "Colonial Gold Reefs Ltd. v. Free State Rand Ltd", (1914) 1 Ch. 382 also illustrate the same proposition that the various matters relating to

the Poll are matters of contract as provided by the articles. It is unnecessary to deal with those decisions in detail and none of the decisions,

therefore, relied on on behalf of the respondents, supports the proposition that the shareholder has no right to revoke a proxy once given unless

such a power is expressly conferred by the articles.

12. Articles 91 to 97 of the Articles of Association of the first defendant company relate to proxies. None of these articles exclude the power of

revocation nor do they lay down any restrictions as to the manner in which the power of revocation should be exercised as in "Spiller v. Mayo

Development Co", 1926 W N 78 and "Cousins v. International Brick Co", 1931-2 Ch. D. 90. The power of revocation, therefore, is unfettered

and if it is communicated in due time to the company, there is no reason for holding that it does not take effect. The requirement as to notice to the

company of the revocation is to be derived from the provisions of the Contract Act, Section 208 which enacts that the termination of the authority

of an agent does not take effect so far as third parties are concerned before it becomes known to them.

13. The next line of argument adopted by Mr. Rajah Aiyar learned advocate for the respondents is based on the language of Article 96 which

states:

Any instrument appointing a permanent proxy or attorney to vote may be registered with the company once for all and shall be in force until the

same shall be revoked."" It was suggested that this article specifically confers a power of revocation in respect of a permanent proxy or attorney

and as express mention of specific power is made in the case of a permanent proxy, the power of revocation in the case of specific power must be

deemed to have been excluded on the maxim "expressio unius est exclusion altering" (the express mention of one thing implies the exclusion of another) which has been applied in the construction of written instruments. In the first place the article does not expressly confer a power of revocation. On the contrary it assumes that the power was existing and therefore lays down that the instrument appointing a permanent proxy will hold good until the same is revoked. The maxim, therefore, has no application at all. Further the subject-matter of Article 96 is a permanent proxy and not a specific proxy. If power of revocation of a limited nature is recognised in respect of a specific proxy by any article then it would be possible to contend that by reason of the express mention of the limited power any other power is excluded. The argument proceeds on a misconception of Article 96 and on a wrong appreciation of the scope of the maxim.

14. It is next contended that a proxy can be revoked only before its use and as in the present case, the proxies were used to exercise the vote at the first poll of the same meeting, it is too late to revoke the proxies. In other words, a proxy cannot be revoked between one poll and another and these two polls at the same meeting should be treated as one act and not as a series of acts. The power to revoke an authority given to an agent, after the authority has been partially exercised, has been recognised by Section 204 of the Contract Act. The revocation cannot have the effect of invalidating acts and obligations already done in the exercise of that authority as an agent. The first poll of the meeting at which the proxies were exercised became final and the effect of revocation of the proxies cannot in any manner affect the declaration of the result of that poll; but the second poll which is styled as the whole company's poll is a different act in a series of acts done at the meeting. There is no reason nor is there any authority in support of the contention that at that point of time a proxy could not be revoked or authority of the agent could not be terminated. On the principle underlying Section 204 of the Contract Act, it is difficult to accept the contention of the learned advocate for the respondents.

15. Lastly, it is urged that there was no notice by the principal to the agent and therefore the revocation was not valid. There is undoubtedly notice to the third party, i.e., the company. But it is not suggested on behalf of the appellants that there was any notice of revocation to the proxy. The

effect of the want of $\frac{1}{2}$ notice to the agent does not invalidate the revocation or the termination of the authority but makes the principal liable for

any damage that results to the agent by reason of such want of notice. There is no complaint here by the persons in whose favour the proxies were

given that they had suffered any damage nor is it relevant for the purpose of this case. The contention, therefore, that the revocation is invalid on

this ground must be rejected.

16. From the foregoing discussion it follows that the rejection of the revocations by the Chairman was wrong.

17. The next and the more difficult question for decision is whether the rejection of the proxies by the Chairman was justified. The proxies were

rejected on the ground that they were insufficiently stamped. According to the respondents, the proxies are in the nature of powers of attorney

under Article 48 of the Indian Stamp Act and should have been stamped as required by that Article and that they were not proxies within the

meaning of Article 52 to justify a stamp of two annas. The first defendant company was incorporated under the Indian Companies Act, 1882 and

the Articles of Association were modelled on the Articles contained in Table A of that Act. The Indian Act of 1882 was framed on the lines of the

English Companies Act, 1862 (25 and 26 Vict. Ch. 89). In Ex. A. 2, the Articles of Association of the defendant company, the form of the proxy

is provided by Article 97. This form word for word is the same as the form in Article 51 in Table A of the Indian Act, 1882 and Article 51 of

Table A of the English Act, 1862, though there are a few alterations particularly at the end where the words

or, generally as the case may be in the same manner as I myself could vote if personally present provided he be then a member of the company

and be entitled or admitted to vote.

are found. The addition of the expression ""generally as the case may be"" at the end of the sentence ""(or at any meeting of the company that may be

held within the period of... from the date hereof, or generally as the case may be)"" is an innovation. The form also states that the stamp payable is

one anna which was the stamp duty payable at that time as it is only in 1923 by an Amending Act that a duty of two annas was made payable in

Article 52 of the Stamp Act.

18. The stamp duty fixed under the Articles was presumably on the footing that it was a proxy within the meaning of Article 52 of the Stamp Act

and not a general power of attorney under Article 48. It must be remembered in this connection that the question whether it is a proxy of the

specific meeting or it was a general power was specifically raised at the time of the poll on the 30th September 1948 (Ex. A. 2 in A. S. No. 29 of

1949) by Arunachala Ayyar and the objection was met by "Mr. Lakshmanan" on the ground that the proxy objected to was intended only for the

meeting of the 30th September 1948 as was clear from the date given in the proxies. No doubt this objection was not based on insufficiency of

stamp but if it is held to be a specific power, it follows that the proxy was properly stamped. The then Chairman of the meeting, the fifth defendant,

overruled the objection and allowed the proxies as valid. Under the above circumstances, the question that naturally arises is whether the Chairman

of the meeting of the 5th September 1949 was entitled to reopen the question.

19. As pointed out by the Earl of Selborne, L. C. in "In re Indian Zedone Co", (1884) 26 Ch. D. 70 the duties of the Chairman who presides at

a meeting are:

has to receive the poll and declare its result, has prima facie authority to decide all emergent questions which necessarily require decision at the

time, his decision of those questions will naturally govern, and properly govern the entry of the minute in the books; and, though in no sense

conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minute book, following the decision of the

Chairman, that the result of the poll was different from that there recorded.

(19a) If the Chairman in the exercise of his powers comes to a decision whether the votes which are in question shall be disallowed or not and if

that decision is not vitiated by fraud or misconduct on the part of the chairman that decision is binding--see the observations of Pollock M. R. in

"Wall v. Exchange Investment Corporation Ltd.", (1926) 1 Ch 143 . There is no decided case, however, how far and to what extent a ruling or a

decision given by a chairman on a question raised at one stage of the meeting would bind himself or his successor at a later stage of the same

meeting. Article 82 of Ex A. 2 no doubt provides in the case of resolutions that a declaration given by a Chairman at a meeting that a resolution has

been carried thereat is conclusive. But there is no provision in the Articles giving finality to the rulings of the chairman at a meeting. There is no reason, however, to hold that the ruling of a chairman given at one stage of a meeting is not final and binding on the chairman or his successor at a later stage. If such a finality is not recognised, the proceedings of the meeting cannot be conducted in an orderly manner and will very often end in confusion and disorder. The chairman is expected to act impartially uninfluenced by party politics. He has to hold the scales even between the majority and the minority parties and his decision on all the questions must be unbiased and impartial. It is not suggested that the ruling of the fifth defendant on the 30th September 1948 was vitiated by fraud or misconduct and there is no reason to hold it as not being final. What would have happened if the objection on the ground of insufficiency of stamp was raised in a Court of law and the Court decided at one stage of the suit that the disputed instrument was properly stamped u/s 36 of the Stamp Act if the instrument is admitted in evidence overruling the objection concerning stamp duty, such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. No doubt, a chairman is not a person authorised by law or consent of parties to receive evidence within the meaning of Section 35 of the Stamp Act. But there is no reason for not applying the same principle of finality to the ruling of the chairman on the nature of the instrument in dispute.

20. There is another aspect from which the matter may be considered. The articles of association prescribe the form of the proxy by Article 97 and on the footing that it is a proxy within the meaning of Article 52 stated that the stamp duty payable was one anna under the law as it then stood and these articles, we are told, were drafted by eminent lawyers of the Madras bar. If a shareholder complies with the requirements of that article & pays stamp duty of two annas under the law as altered on the footing that it is a proxy and not a general power of attorney, the chairman has no option but to accept the proxy even if he comes to a conclusion that the stamp duty was not proper. If the proxies conform to the articles in all respects they cannot be rejected by the chairman "(see Shackleton, Law of Meetings, page 98)". The articles constitute a contract binding on the

company and the members in all matters. The chairman, therefore, was not entitled to go behind the articles and to reject the proxies on the ground that they were not duly stamped.

(20a) Insufficiency of stamp does not affect the validity of the instrument but makes it inadmissible -- See "Joyma Bewa v. Easin Sarkar", 53 Cal

515, except in the case of instruments requiring one anna stamp. The policy underlying the provisions of the Stamp Act is as far as possible to give

an opportunity to the person concerned to make good the stamp except in the case of instruments required to be stamped with one anna. u/s 35, in

the case of instruments insufficiently stamped, the instrument may be admitted in evidence on payment of penalty and the deficit stamp duty. If an

instrument is impounded u/s 33 of the Act, the Collector gives an opportunity to the person concerned to make good the deficit stamp duty and

also pay penalty--S. 41. The final authority under the Act to decide the questions relating to stamp duty is the Collector (See Section 31)--who

however has the right in case of doubt to refer the matter for the opinion of the chief controlling revenue authority and the chief controlling revenue

authority in his turn has the right u/s 57 to refer the matter to the High Court for opinion. All these provisions clearly indicate that the instrument

could always be validated by paying the deficit stamp duty at a later stage together with penalty and the sole authority vested with the power of

finally deciding the question of stamp duty is the Collector acting u/s 31 of the Act. If a person votes or attempts to vote under any proxy not duly

stamped he is liable for punishment with a fine which may extend to Rs. 500 u/s 62(1)(c) of the Act. But as indicated in the proviso to Section 43,

the intention must be one of evading payment of the proper duty.

(20b) In the present case, it is difficult if not impossible, to hold that there was an intention on the part of persons holding the proxies to evade the

stamp duty as they had acted bona fide and followed the articles of association and paid two annas stamp on each proxy. The fifth defendant gave

his ruling at the meeting of the 30th September 1948 that it was a specific power. On the 6th September 1949, when the chairman, the third

defendant, gave his ruling that the proxies should be rejected as invalid, the plaintiffs' party filed a memo, Ex. A. 13 dated 6th September 1949 in

which it was pointed out that the form used by them was the exact one

prescribed by Article 97 and the stamp duty paid was two annas instead of one anna under the altered law. They also offered that if the objection is to be sustained, it would only involve payment of extra stamp duty with penalty which may be fixed by the Collector and that they were prepared to pay it if and when it is decided that it is payable in the present case.

Even at that stage, if the Chairman acted fairly and in a judicial manner, it was open to him to have referred the matter to the Collector for decision u/s 31 of the Stamp Act particularly as the plaintiffs' party offered to pay the stamp duty and penalty if so decided by the Collector. The chairman could have postponed the declaration of the result of the poll until the decision of the Collector was obtained if he really was acting in an impartial manner. The objection itself was taken at a very late stage at about 10 p.m. in the night when the votes were being scrutinised by the scrutineer and there was hardly any time for the plaintiffs' party to ascertain the opinion of the Collector and to make good the deficit stamp duty if really such stamp duty was required. The chairman, in our opinion, acted very unfairly to the minority and was wrong in rejecting the proxies without giving an opportunity to the plaintiffs to make good the deficient stamp duty after ascertaining the opinion of the Collector in the matter.

21. The argument most strenuously pressed before us on behalf of the respondents is that a person in the position of a chairman was not bound to accept a document which was insufficiently stamped. In support of this proposition, reliance was strongly placed on the decision of the Court of Appeal in England in "Maynard v. The Consolidated Kent Collieries Corporation Ltd.", (1903) 2 KB 121, which related to a transfer of shares in a company. The instrument of transfer in that case was stamped in accordance with the consideration stated in the face of the document but it was discovered that the consideration appearing on the face of the document was far less than what it really is. The directors thereupon refused to register the transfer. An action was brought to recover damages for wrongful refusal of the registration of the transfer. It was decided by the Court of Appeal that it was the bounden duty of the plaintiff in the action who claimed the right to register the transfer to tender a transfer which was right in all respects and which would be available to the directors of the company in a Court of law if it became necessary to enforce the rights under the

document against the transferee or if they were called upon to defend themselves against a hostile attack levelled against the transfer on the faith of which they acted. Similarly, if a vendor offers to the purchaser a sale-deed not duly stamped, it is argued that he was not bound to accept it.

(21a) This position regarding the right of a person who would be entitled to claim rights under an instrument cannot be questioned as he is entitled

to get from the other party a deed valid in all respects and enforceable in a Court of law. But does that apply to a proxy under which a person is

entitled to vote. The company, and much less the chairman of the meeting, claims no rights of property under the instrument. All that he is entitled

to do under the instrument is to exercise the vote. No question of establishing rights in a Court of law under the document or defending the rights

on the basis of the document ever arises under the proxy. So long as a shareholder complies with the formalities laid down by the Articles

regarding stamp duty on the basis enacted in the Articles, it is the bounden duty of the chairman to accept the proxy and he is not entitled to reject

it. We are not now concerned with a situation similar to the one that came up for consideration in "In Re: The Tata Iron and Steel Co. Ltd., ,

where the proxies were unstamped. The contention, therefore, that the chairman was entitled to reject the proxies in the circumstances ,on the

ground that they were not duly stamped cannot be accepted.

(21a) We may dispose of a contention urged on behalf of the appellants based upon the decision of the House of Lords in the well-known case of

"Kenneth Matheson v. Alexander Ross", (1849) 2 H L C 286 : 9 E R 1101. The argument was based upon the assumption that the proxy

contains two powers one a specific power to vote at the meeting of the 30th September 1948 and the other a general power to vote at any other

meeting. It is argued that the two can be separated and that the chair-man should have allowed the proxies as valid to the extent of voting at the

specific meeting of the 30th September 1943 which was adjourned to 5th September 1949. There was a judicial conflict of opinion regarding the

applicability of the principle of that decision under the Indian Stamp Act having regard to the language of Section 35 of the Act. u/s 35 no

instrument chargeable with duty shall be admitted in evidence "for any purpose" by any person having by law or consent of parties authority to

receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly

stamped. Notwithstanding the clear language that the instrument shall not be admitted in evidence for any purpose whatever, some decisions have

taken the view that the instrument could be used for what is styled as a collateral purpose. This conflict, however, has now been set at rest by the

Judicial Committee in "Ram Rattan v. Parma Nand", (1946) 1 Mad L J 295. Sir John Beaumont observed at page 296 as follows:

As already noted, Section 35 of the Indian Stamp Act enacts that no instrument chargeable with duty shall be admitted in evidence for any

purpose. Mr. Rewcastle as part of his argument for the respondent adopted the note on the words "for any purpose" in Section 35 contained in

the 4th edition of Sir Dinshaw Mullah's book on the Indian Stamp Act, 1899. He pointed out that the words "for any purpose" first appeared in

India in the Stamp Act of 1879, and in England in the Stamp Act of 1891, and that under the earlier Acts there were decisions in both countries

that an unstamped document might be admitted in evidence for a collateral purpose, that is, to prove some matter other than the transaction

recoded in the instrument, and he submitted that these cases applied even under the later Acts. Their Lordships do not take this view. A document

admitted in proof of some collateral matter is admitted in evidence for that purpose, and the statute enacts that it shall not be admitted in evidence

for any purpose. Their Lordships see no reason why the words "for any purpose" in the Indian Act of 1879 should not be given their natural

meaning and effect. Such words may well have been inserted by the Legislature in order to get rid of the difficulties surrounding the question of

what amounted to a collateral purpose.

It must be remembered that the decision of the House of Lords was pronounced before the English Stamp Act of 1891. It is, therefore, impossible

for the appellants to maintain that the document could be split up in the manner contended for. Especially in a Court of law it would not have been

permissible to so dissect the instrument into two parts and use the unobjectionable part in evidence. u/s 5 of the Stamp Act, an instrument which

comprises or relates to several distinct matters is chargeable with the aggregate amount of the duties with which separate instruments, each

comprising or relating to one of such matters, would be chargeable under this Act. If, therefore, the proxy contains the specific power as well as

the general power, it would be admissible only if the aggregate amount of the duties in respect of two such separate instruments is paid, as under

the charging section, Section 3, the Instrument should be charged with the duty indicated in the schedule. Of course, the schedule must be taken

along with the sections in order to determine the proper stamp duty. u/s 6 if an instrument falls within the several descriptions of Schedule I and the

duties are different, it should be chargeable only with the highest of such duties.

22. Whether the proxies are general powers of attorney within the meaning of Article 48 of the Stamp Act or specific powers under Article 52 is a

difficult question and does not seem to us as easy to decide as the chairman the third defendant, thought. One specimen form of proxy seems to

have been marked for identification; but as we did not find it in the records sent to this Court, we called for the proxy forms and we find that they

are similar in language as in Article 97 of Ex. A-2. For easy reference the language in the form is quoted herein.

Every proxy shall be in the following form, or shall contain words to the following effect. (stamp 1 anna). ""The Kaleeswarar Mills Limited.

Coimbatore, I being a member of ""The Kaleeswarar Mills Ltd."" , and entitled to vote, do hereby appoint of as my attorney or substitute to vote for

me and on my behalf at the (ordinary or Extraordinary, as the case may be) General Meeting of the company to be held on the day of and at any

adjournment there of (or at any meeting of the company, that may be held within the period of from the date hereof, or generally as the case may

be) in the same manner as I myself could vote if personally present provided he be then a member of the company and be entitled or admitted to

vote. As witness my hand this day of ""signed by the said in the presence of.

It consists of two parts

do hereby appoint as my attorney or substitute to vote for me and on my behalf at the (Ordinary or Extraordinary, as the case may be) General

Meeting of the company to be held on the 30th September 1948 and at any adjournment thereof.

The second part is ""(or at any meeting of the company, that may be held within the period of one year from the date hereof, or generally as the

case may be." It is not disputed that so far as the first part is concerned, notwithstanding the words, " Ordinary or Extraordinary " within brackets,

it authorises the person only to vote at the meeting of the 30th September 1948 or at any adjournment there-of. The words "as the case may be

clearly indicate that the word "or" in the expression "Ordinary or Extraordinary" is disjunctive and if the instrument had stopped with this clause, it is

not disputed that the instrument was duly stamped. The trouble arises by the existence of the second clause. It is argued that the word "or

occurring at the beginning of the expression "or at any meeting of the company" is not disjunctive but is used as meaning "and" Having regard to the context, we are not inclined to accept the interpretation that the word "or" in the context means "and". It is a coordinating particle indicating an alternative.

23. The question then is even if "or" is disjunctive whether the expression "at any meeting of the company that may be held within the period of one

year from the date hereof, or generally as the case may be" means only at any one meeting of the company or at all the meetings of the company

that may be held within a period of one year. There is also the question as to the meaning to be given to the expression "generally as the case may

be." The construction suggested on behalf of the respondents is that it means at any meeting of the company within a period of one year or

generally without any limitation as to time. The meaning of the expression, to our mind, is clear and it cannot be said that the contention urged on

behalf of the respondents is unreasonable.

24. Even then does the word "any" mean all the meetings or at any "one" meeting of the company. If the latter, the object of the instrument is

undoubtedly to give an option to the person concerned to vote either at the meeting of the 30th or at any other one meeting of the company. If the

former, it means the person is entitled to vote either at the meeting of the 30th or its adjournment or at his option at all the meetings of the company

to be held within one year or without any limitation as to time. If the latter construction is to be adopted, undoubtedly as it gives a power in the

alternative, in the first instance specifically and in the second instance, in the alternative generally, it would fall within Section 5 of the Stamp Act

and require to be stamped in accordance with it or at any rate under S. C and the stamp duty will be one rupee in the latter case. If, on the other

hand, it is confined to any one meeting of the company, the stamp duty paid is proper.

(24a) The decisions under the English Act are of no assistance as the language is not similar. Section 80 of the English Stamp Act, (1891, 54-55

Victoria Chap 39) requires that every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting

paper, hereby respectively charged with the duty of one penny, is to specify the day upon which the meeting at which it is intended to be used is to

be held, and is to be available only at the meeting so specified, & any adjournment thereof & the first schedule to that Act referring to letter or

power of attorney and commission, factory, mandate or other instrument in the nature thereof for the sole purpose of appointing or authorising a

proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more,

the duty payable is one penny. In other cases, it is ten shillings . The Act both in the section and in the schedule requires that it should be for the

sole purpose of voting at any one meeting and the day upon which the meeting is to be held is also to be specified.

(24b) The language of Article 52 of the Indian Act is ""proxy empowering any person to vote at any one election of the members of a district or

local board, or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate

whose stock of funds is or are divided into shares and transferable.

(The rest of it is omitted as being irrelevant). It need not be for the sole purpose of voting at one meeting, but it must be sufficiently clear that the

proxy is intended to exercise the vote at any one meeting of the company. If, therefore, on a fair reading of the instrument, it is possible to come to

the conclusion that it is intended to authorise the person to vote at any one meeting, though the power is given in the alternative as ""at the meeting

of the 30th September or at any other meeting"" the stamp duty payable would be two annas. That there is some indication that the parties intended

that the sole object of the proxy is to enable the person to vote at any one meeting may be inferred to some extent from the fact that they fixed the

stamp duty as one anna in the articles of association and the proxy holders also sent a covering letter (dated 25-9-1948, page 140, Vol. I) along

with the proxies that they were intended to be used at the meeting of 30th September 1948. The word "any" as pointed out in Webster's

dictionary has also the meaning of one of three or more and in the Oxford dictionary, its meaning is given as "an indeterminate derivative of one, or

rather of its weakened adjectival form, a, an, in which the idea of unity is subordinated to that of indifference as to the particular one or ones that

may be selected." (Vol. I page 378); so that on a fair reading of the instrument, we have come to the conclusion, though with hesitation, that the

instrument is a proxy within the meaning of Article 52 and the proper stamp duty payable is two annas. No doubt, as pointed by learned counsel

for the respondents, in some context "any" may be read as "or" as in the case of the "Isle of Wight Railway Co. v. Tahour-Din", (1884) 25 Ch. D.

320 relied on in Stround's Judicial Dictionary, Vol. 1, page 92. We have to consider the context in which the word is used and interpret it and no

invariable rule can be laid down.

(24c) We felt some difficulty in deciding whether assuming that the proxy is a general power of attorney, the clauses in Article 48 of the Stamp

Act, apply to the present case. The clauses which have to be considered are clauses (d), (e) and (g) of Article 48. As pointed out in Donoughs

Indian Stamp Law, 9th Edn. at p. 707, Clause (g) has to be read with Clause (e). When so read, it means that if there are more than ten persons

authorised to act jointly or severally in more than one transaction or generally, then stamp duty payable is according to the number of persons and

it is one rupee to each person authorised. Clause (d) applies when the authority is given to not more than five persons and relates to more than one

transaction or generally. In Referred Case No. 15 of 1905 cited in the Stamp Manual, this Court decided that a document of the present

description would fall under Clause (g). We do not see any reason to differ from that view as otherwise a power of attorney in favour of one

person in respect of more than one transaction would escape stamp duty altogether.

25. Lastly, Mr. Gopalaratnam, learned counsel for the appellants, argued that in any event the direction of the lower Court that the plaintiffs should

pay separate sets of costs to the first defendant, second defendant, third defendant, fifth defendant and defendants 4 and 7 is not justifiable. The

learned Judge did not give any reasons in his judgment for allowing separate sets of costs to each of the defendants. They had no separate interest

in the suit and the questions that were considered were common questions. Merely because the defendants chose to engage separate advocates,

that will not justify the course adopted by the learned Subordinate Judge. We think that this direction regarding costs is not justified.

26. Our conclusion in the result is that the rejection of the revocations affecting 230 votes and of the proxies relating to 661 votes was not Justified.

The defendants' party, according to the chairman, after these exclusions obtained 793 votes in favour of the resolutions while the plaintiffs' party

obtained only 106. If the excluded proxies are added, the votes in favour of the plaintiffs' party will be 767, i.e., 106 plus 661 while the votes

obtained in favour of the resolution by the defendant's party would be 793 minus 230 leaving a balance of 563. The resolutions, therefore, must be

taken to have been defeated. It follows from this result that the plaintiffs are entitled to the declarations asked for and they were also entitled to a

permanent injunction restraining the first defendant company from giving effect to the said resolutions and defendants 4 to 7 from acting as directors

of the first defendant company. The appeal, therefore, must be allowed and the decree of the learned Subordinate Judge dismissing the suit must

be set aside and there should be a decree in favour of the plaintiffs as prayed for with costs here & in the Court below.