Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Aldridge v. *Cato, from the Supreme Court of the Colony of Natal; delivered June 28th* 1872.

PRESENT:
SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that the decree of the Supreme Court of the Colony of Natal in this case ought to be affirmed.

When the deed which constituted the company now being wound up in that colony comes to be looked at, it is obvious that it was a company for very large transactions in business of a varied kind, including very large liabilities arising from the receipt of trust moneys, from the administration of executorships, general agencies, the receipt of book debts, rents, repairs, and various other matters, (all of which are mentioned in the schedule to the deed, specifying the charges they are to make,) evidently pointing to the receipt of very large funds, in dealing with which the directors were to be authorised to lay them out on mortgages, immoveable property, bonds, bills of exchange, promissory notes, capital stock, government debentures and other securities, under colour of which they did the business of bill discounters. It is obvious that the business was a business which nobody would trust to them if their liability was limited to such a sum as 10,000*l.*, or any such sum as that mentioned as the capital of the company. When one comes

to look at the deed, it does not contemplate any limited liability but leaves them liable to everything, like an ordinary partnership, except in one particular case, which exception proves the general rule. That particular case is the case of policies of insurance as to which they expressly limit their liability to the amount of their capital stock. We start with this, that there was a trust deed which left them an ordinary joint stock partnership with liability of course for payment to their just creditors.

Then there came the application to the legislature of Natal for an ordinance which is said to have altered that and to have given them a corporate character, and as the result a liability limited to the amount of their shares. It would be very strange if the Government of Natal had intended to have done that, if they had intended to have made these gentlemen liable only to the amount of their small capital in respect of the unlimited transactions into which they were about to enter. In truth, the ordinance itself does not in terms profess to incorporate them, it does not profess to give them any liability, it gives them none of the ordinary powers, nor does it make any of the ordinary provisions which are provided in respect of a corporation. It enables them to sue and be sued as a quasi corporate body, in the name of the secretary. The title so describes the ordinance, and their Lordships were referred to some modern cases to show that the title may under some circumstances be looked at. Their Lordships are not disposed to consider that question here.

On the other hand, their Lordships have been legitimately referred to the preamble for the purpose of seeing what the objects of the legislature were. The preamble, no doubt, says, "whereas "the said persons have applied for an ordinance "to incorporate the said co-partnership, and joint "stock company, and in order the better to en-

" able them to carry the said objects into effect," that is to say, the insurance of property and so on, and the administering and managing as executors, tutors, guardians, curators, administrators, trustees, assignees, and so on. And then it recites that the interests of the district would be thereby greatly promoted, that is to say, it would be promoted by the better enabling them to carry their several objects into effect. That was the substance of the recital. When their Lordships look at the ordinance itself, it seems to them utterly inconsistent with the idea that any incorporation in the ordinary sense of the word was intended to be effected. The first thing that is done is, " that it shall and may be lawful for the said " persons who have executed the said deed, and " such others as may become entitled to the " privilege of the ordinance now in statement, " *under and by virtue of the provisions of the said* " *deed*, to be and continue joint stock proprietors " of the said sum of 10,000*l*., and of such sums as " they may hereafter acquire under the pro- " visions of the said deed, and to *constitute* " *and be a company* for the purposes before " mentioned, to be carried on under the style " or firm of 'The Natal Fire Assurance and " Trust Company." It then provides, " That a " copy of the deed executed by the said persons " duly authenticated by the secretary of the said " Natal Fire Assurance and Trust Company, ap- " pointed under the provisions of the said deed, " shall be filed in the office of the Registrar of " the District Court of the said district within " one month of the ordinance now in statement, " and in like manner a return of the names " of the several persons at the time being " members of the said Natal Fire Assurance " and Trust Company, with their respective " places of abode, and the name and place of " abode of the chairman and of each director " thereof, and of the secretary thereof in the " same manner authenticated, shall be at the " same time filed in the said office. That a copy

" of all alterations in or additions to the said " deed, which may at any time be made in " conformity with the provisions therein con- " tained, shall within one month after any such " alterations or additions shall have been duly " made in like manner authenticated, shall be " in like manner filed in the office of the said Re- " gistrar." The plain meaning of these provisions is that they were to continue to exist as a company or co-partnership under a deed which would be perfectly inconsistent with their being made into a corporation existing under legislative enactment. The two things could not co-exist. They could not be a joint stock company or co-partnership continuing to exist under a deed, and according to the constitution of that deed, and at the same time a corporation created with a totally distinct nature for the first time called into existence by the ordinance of the legislature. Of course the ordinance might have incorporated the deed as part of the charter of incorporation or as bye-laws of the corporation, but nothing of the kind was said or intended. The first provisions therefore show that it was not intended in any way to destroy the co-partnership, which would be destroyed if the co-partnership were converted into a body corporate and politic. All the other provisions are provisions which are entirely consistent with the constitution of a joint stock company, and are utterly inconsistent with a corporation. It is to sue and be sued not in a corporate name, but in the name of the secretary. The secretary is to defend not for a corporation, but for the company and for the members thereof. The Natal Fire Assurance and Trust Company is in one section talked of as a plural body, the expression being " and not " against the Natal Fire Assurance and Trust " Company, or any of them, or against the " members or any of them." There are provisions as to suits by or against members of the

company which would be useless if the company had really been made a body politic and corporate. Then there is the 13th clause, to which the attention of their Lordships has been called, and " that is, " that any two directors of the company " may execute any bond or other act on behalf " of the company, and may draw up or execute " any inventory or liquidation, distribution, or " other account, and all such bonds, &c., so " executed shall be equally valid, as if the same " had been done and executed by every one of " the members thereof." That points to the existence of a partnership, and that the partners were all of them to be bound by the acts and deeds of the directors, as their own personal acts and deeds. It would be perfectly inconsistent with the idea that there was to be a corporation, merely with the liability of that corporation in its corporate capacity with respect to corporate funds. This is in truth quite consistent with a very rational meaning of the recital. The company ask to be incorporated the better to enable them to carry their objects into effect, and the legislature is willing to give them so many of the characteristics of a corporation as are convenient for that purpose and none other.

Their Lordships are therefore clearly of opinion that the Judgment of the Supreme Court was right in holding that this was a company properly wound up, and that the call made on the shareholders was a proper call to be made in the winding up and discharge of the liabilities of the company. They will humbly recommend to Her Majesty that the Appeal be dismissed, and it must be with the usual consequences, that the Appeal be dismissed with costs. It is said that this is a representative case. The other persons in the same position as the Appellant may probably think it right to subscribe to pay their quota, but the Respondent, on behalf of the estate and for himself, is entitled to have his costs paid in the usual manner.