

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Bombay-Burmah Trading Corporation, Limited, v. Dorabji Cursetji Shroff, from the High Court of Judicature at Bombay; delivered the 19th December 1904.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether an objection taken to a proxy used at a meeting of the shareholders of the above-named Company can be sustained.

The Company was incorporated in 1863 under the Indian Companies Act XIX of 1857, and in 1895 it was duly registered under the Indian Companies Act 1882. It was formed to carry on trade in timber and petroleum in Burmah, Siam, and other places in the East, and by the Company's Memorandum of Association and by its Articles it was in substance provided that the business of the Company should be carried on by the firm of Wallace & Co., merchants, of Bombay, "of whatever member or members that firm may for the time being consist," or, if they declined to act, by other managers to be appointed by the Company.

As a matter of fact the Company was formed to take over a branch of the business of Wallace & Co., and this firm were the secretaries,

treasurers, and managers of the Company. There never were any others.

By the Company's Articles of Association voting by proxy was allowed. The Articles relating to such voting and to the Chairman of the Company were as follows :—

“ LXII. Votes may be given either personally or by proxy.

“ LXIII. The instrument appointing a proxy shall be in writing under the hand of the appointor, or if such appointor is a Corporation, under their common seal, and shall be attested by one or more witness or witnesses.

“ LXIV. Every instrument appointing a proxy may be in the following form or as nearly therein as may be :—

“ BOMBAY-BURMAH TRADING CORPORATION, LIMITED.

“ I, _____,
 “ of _____, in _____,
 “ being a shareholder in the Bombay-Burma Trading Corporation, Limited, and entitled to _____ vote (or _____ votes), hereby appoint _____,
 “ of _____ as my proxy
 “ 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 thereof (or at any meeting of the Company that may be held in the year _____), (or and at all other general meetings of the said Company until I shall revoke this authority). As Witness my hand this _____ day of _____ . Signed by the _____
 “ said _____
 “ in the presence of _____

“ LXV. No person shall be appointed or have authority to act as a proxy who is not a shareholder in the Company.

“ LXVI. No person shall be allowed to vote or act as a proxy at any meeting unless the instrument appointing him shall have been deposited at the registered office of the Company not less than forty-eight hours before the time for holding the meeting at which the person named in such instrument proposes to vote.

“ LXVII. Unless the instrument appointing the proxy shall otherwise indicate, the proxy thereby appointed shall be deemed to be a continuing proxy, and shall be entitled to act as such until his appointment shall be revoked by instrument in writing, deposited at the registered office of the Company.”

* * * * *

“ LXXI. The senior or only resident partner or representative for the time being of the firm, house, or co-partnership of Messrs. Wallace and Company at Bombay shall, at

“his option, be and continue the Chairman of the Company and of the Board of Directors, notwithstanding any clause or regulation of the Company or in these presents to the contrary.”

In May and June 1902, a special resolution was passed to alter the Memorandum of Association with a view to extend the business of the Company, and in July 1902 the Company presented a petition to obtain the sanction of the Court to the alteration. The Petition was opposed on the ground (amongst others) that the special resolution was not duly passed, and the Court being of this opinion dismissed the Petition without giving any decision on the merits.

The objection taken was that certain proxies held by the chairman and used by him at the meetings at which the special resolution was passed were not in proper form and were invalid. They were not in the form given in Art. 64, but they were in a form which had been in use for many years without objection.

Several proxies were objected to. It will be sufficient to refer to one which may be taken as a type of all:

The proxy objected to was dated the 14th October 1881 and was duly executed by a lady of the Wallace family and properly attested. It was not a mere proxy but a long document and, in fact, a power of attorney not only to vote at meetings but to act generally for the shareholder signing it in all matters connected with the Company and any other company taking over its business. The authority extended to buying and selling shares and receiving dividends. The following extract contains the description of the persons authorised to act:—

“ Know all men by these presents that I
 “ of
 “ do hereby nominate, constitute, and appoint Lewis Alex
 “ Wallace, Alexander Falconer Wallace, John Annan Bryce,
 “ Henry Adair Richardson, and Michael Russell Wyer, and
 “ all persons who at any time during the continuance of this

" power of attorney may be partners in the firm of Wallace and
 " Company, of Bombay, howsoever that firm may be at any time
 " constituted, and Frederick Liddell Steel, and William Robert
 " Macdonell, assistants in the said firm, and in the absence
 " from Bombay of all the said persons then the persons or
 " person for the time holding the procuration of the said firm
 " and managing the said business jointly and each of them
 " severally to be my attorneys or attorney for me and on my
 " behalf to represent me in all my relations as they now exist
 " or as they may at any time during the continuance of this
 " power of attorney exist with the Bombay-Burmah Trading
 " Corporation Limited and to be my proxy
 " to vote for me and on my behalf at any meeting or meetings
 " of the said existing Corporation . . . during the con-
 " tinuance of this power and in respect of all shares which I
 " may at any time hold alone or jointly with others in the said
 " Corporation."

The proxy was used by Mr. Macaulay, who was in the chair. He was then a managing partner of the firm of Wallace & Co., and was a shareholder in the Corporation. But he was neither a member of the firm nor a shareholder in the Corporation when the proxy was signed. Before the meetings his name was entered as usual in a register of proxies kept by the Corporation as the person who would use the proxies at those meetings.

The objections taken to the proxy are (1) that Mr. Macaulay is not named in it; (2) that when it was signed he was neither a partner in the firm of Wallace & Co., nor a shareholder in the Corporation.

The form given in the Articles and the word "named" in Article 66 are relied upon as showing that the person using the proxy must be named in it. No doubt it is convenient that that this should be done. Article 64, which gives the form, is, however, distinctly permissive only; and Article 66 is addressed not to the form of the proxy but to its deposit in the office in time to make inquiries, if necessary. If in this case the officers of the Corporation or any shareholder had objected that the proxy was so framed that the person intended to use it could

not be ascertained, and if this were true, their Lordships are not prepared to say that the proxy might not have been rejected. But no such difficulty in fact existed, nor did any one say it did. The connection between the firm of Wallace & Co. and the Corporation was such that the officers of the Corporation knew perfectly well that Mr. Macaulay was qualified to act and that he was going to act; and any shareholder applying for information could have obtained it at the office without any difficulty. Mr. Macaulay's name was entered in the Office register of proxies as the person who would use the proxy. Although not named in it, in the strict literal sense of the word "named," he was sufficiently described in the proxy for all business purposes, and in their Lordships' opinion the Articles require nothing more.

The next objection is, in their Lordships' opinion, equally untenable. It is founded on Article 65. But to construe this article as requiring the person appointed to be a shareholder when the proxy is signed is to put too narrow a construction on the words. If an unqualified person is named in the proxy the nomination is not an appointment in any effective sense; his nomination does not become an appointment until he is qualified. In order to act something more is required, he must be qualified not only when appointed but when he acts.

Articles 65, 66, and 67 only require that the appointment shall be complete and be in the office 48 hours before the meeting at which it is to be used, and that the qualification shall continue when the proxy is used. Their Lordships are of opinion that Article 65 was complied with in this case.

Their Lordships, therefore, will humbly advise His Majesty to allow this Appeal, and to dis-

charge the Order appealed from, and to remit the Petition on which the Order was made to the High Court of Judicature at Bombay, in order that the Petition may be heard on the merits and that the costs of it may be dealt with by that Court. The costs of this Appeal and of the Motion made on the 4th February 1904 must be borne by the Respondent.
