1916.

*Present* : Shaw A.C.J. and De Sampayo J.

## THE CEYLONESE UNION COMPANY *v.* VYRAMUTTAN.

*343—D. C. Colombo, 42,741.*

*Joint stock company—Application for share—No payment made at time of application—Is allotment invalid?*

According to the articles of association of a joint stock company a shareholder had to pay Rs. 50 on application. The defendant sent a written application for one share (of Rs. 1,000,) but he did not pay any sum to the company either on application or thereafter.

*Held*, that the fact that the defendant did not pay the amount due on application for the share did not make the allotment to him invalid. The company was entitled to recover from the applicant the amount due on account of the share after allotment.

THE facts are set out in the judgment.

*Samarawickreme*, for appellant.

*F. J. de Saram*, for respondent.

*Cur. adv. vult.*

September 27, 1916. SHAW A.C.J.—

The plaintiff company sued the defendant for Rs. 1,000, money payable on an application by the defendant, and on the allotment to him of a share in the company, and for the calls made thereon, and for interest on the amount due since demand for payment.

The company was incorporated in July, 1912, and on November 13, 1912, the defendant made written application to the directors for a share to be allotted to him.

There was considerable delay in the allotment, which was, however, made and notified to the defendant on November 19, 1913. Notwithstanding the delay, the defendant did not repudiate the allotment, and the Judge has found that he acquiesced in it, and specifically promised the secretary of the company to pay the amount due in respect of the share. Although repeated requests were made to him for payment, he never suggested that the money was not due from him until July 10, 1915.

The District Judge has given judgment for the plaintiff company for the amount claimed, and the defendant has appealed.

Only one point was taken in support of the appeal, namely, that in consequence of the defendant not having paid the amount due

on his application for the share, the allotment to him was invalid by reason of the provisions contained in section 85 of the English Companies (Consolidation) Act, 1908.

In my opinion this section has no application whatever to this Island. It contains provisions, re-enacted from section 4 of the English Companies Act, 1900, specifying when directors may proceed to allotment of shares on the first allotment of shares offered to the public for subscription, and, for the purpose of ensuring that a company shall not go to allotment unless a sufficient amount of share capital is subscribed, enacts that no allotment shall be made unless either the whole share capital offered for subscription, or the minimum amount which is fixed by the memorandum or articles of association, has been subscribed for, and sub-section (3) provides that the amount payable on application for each share be not less than five per centum of the nominal amount of the share.

Ordinance No. 22 of 1866 provides "In all questions or issues which may hereafter arise or which may have to be decided in this Colony with respect to the law of . . . . . , joint stock companies, . . . . . , the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted."

I need not discuss whether, in view of the Joint Stock Companies Ordinance, 1861, and numerous amending Ordinances, the English Companies Acts have any application at all to this Island, because section 18 of the Ordinance of 1861 specifically deals with the question as to when a company may proceed to allotment, and provides that it may do so "so soon as a certificate of incorporation has been granted." Section 85 of the English Act cannot, therefore, in any event apply.

Even if the English provisions did apply, they would for several reasons afford no defence to the present action. I need only refer to one, namely, that by section 86 of the English Act an allotment made by a company to an applicant in contravention of the provisions of section 85 is not void, but voidable only, at the instance of the applicant, within one month after the holding of the statutory meeting of the company, and not later. No attempt to repudiate the allotment was made in the present case until July, 1915.

I would dismiss the appeal, with costs.

DE SAMPAYO J.—

I am of the same opinion. After the plaintiff company was incorporated, and before it proceeded to allotment, the defendant on November 3, 1912, applied for a Rs. 1,000 share. According to the articles a shareholder had to pay Rs. 50 on application and

1916.

DE SAMPAYO J.

*The Ceylonese Union Company v. Vyramuttan*

Rs. 100 on allotment, and the balance Rs. 850 on calls. The defendant in his written application purported to transmit Rs. 150, being the amount payable on application and on allotment, but he did not actually so transmit the money or pay it afterwards, and no share was allotted to him when the company made the first allotment. The first statutory meeting of the company took place on July 12, 1913, and the directors on November 10, 1913, allotted to the defendant one share on his original application and placed his name in the register of shareholders, notice of such allotment being given to the defendant; subsequently the company would appear to have made calls to the full extent of the value of the shares. Although demands were from time to time made of him for the payment of the amount due on the share, the defendant did not make any payment, and the plaintiff company now sues the defendant for the whole amount. The District Judge has found on the evidence, not only that notice of allotment and of calls were duly given to defendant, but that, so far from repudiating the allotment of the share, he ratified it by promising to pay for it.

The only point pressed in appeal on behalf of the defendant is that the allotment was bad, as no deposit had been made on application. This contention is entirely based on the provisions of section 85 (1) of the English Companies Act of 1908. Our law with regard to joint stock companies is contained in the Ordinance No. 4 of 1861. The later Ordinance, No. 22 of 1886, no doubt provides that in all questions or issues which may have to be decided in Ceylon with respect to joint stock companies the law to be administered shall be the law of England for the time being, unless other provision is or shall be made by any local Ordinance. But it is difficult in particular cases to adopt the English law to local circumstances, especially where the same machinery for applying it does not exist here. But until some comprehensive law relating to companies is passed locally, we must, when any question is not covered by any provision in our Ordinance, decide the same as far as possible by reference to the English law. Section 18 of our Ordinance, however, provides for a company going into allotment as soon as a certificate of incorporation has been granted, and therefore section 85 (1) of the English Act does not appear to apply. Moreover, it is quite clear that the provision of the English Act has no further purpose than to prevent companies from going to allotment without a certain proportion at least of the capital being paid in, and in order to secure this object section 85 (1) enacts that no allotment shall be made of any share capital of a company, unless a certain amount of capital has been subscribed "and the sum payable on application ..... has been paid to and received by the company." As between the applicant and the company, the allotment, without complying with this condition, is not void, but is declared by section 36 to be voidable, at the instance of the applicant, within one month

after the holding of the statutory meeting of the company, and not later. The defendant in this case did not at any time take proceedings to have the allotment to him of a share avoided. It may, perhaps, be argued that, as the defendant applied for a share before the plaintiff company went to allotment, his application was not available for any subsequent allotment. I do not think, however, that this is a valid defence. The principle stated at page 105 of Palmer's *Company Law (8th edition)* appears to me applicable. It is there observed, on the authority of two English cases, that allotment and notice after incorporation in response to an application is sufficient to constitute a complete contract, inasmuch as in such a case the application operates as a continuing offer and matures on acceptance into a contract.

I therefore agree that this appeal should be dismissed with costs.

*Appeal dismissed.*