Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Bank of Africa, Limited, v. *The Salisbury Gold Mining Company, Limited, from the Supreme Court of the Colony of Natal; delivered* 13*th February* 1892.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD HANNEN.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The object of this action is to compel the Respondent Company to register a transfer by one Tristram Woolridge to the Appellant Bank of 400 of its paid up shares. The Company declines to do so until a debt due by Woolridge, the registered owner of the shares, has been satisfied.

By Section 38 of its Articles of Association, the Company has a first and paramount lien upon all the shares registered in the name of each member for his debts to the Company; and Section 52 provides that no shareholder shall be entitled to transfer his shares, without the approval of the Directors, "so long as his "shares are not fully paid up, or afterwards, if "he either alone or jointly with any person or "persons is indebted to the Company on any "account whatever." The validity of a lien conferred in these or similar terms by Articles

69589. 100.—2/92. A

of Association was fully recognized by the House of Lords in *Bradford Banking Company* v. *Briggs & Co.* (12 Ap. Ca., 29).

The Appellants do not dispute that, in the absence of any waiver of its lien, the Company would be justified in refusing to register their transfer. But they maintain that certain transactions which took place between Woolridge and the Company, as well as between the Company and themselves, necessarily imply a surrender of the Company's right to treat the 400 shares in question as a security for the debt due by Woolridge.

It appears that the Company, in December 1888, resolved to increase its capital by the creation of 3,000 new shares of 1*l.* each, of which 750 were kept in reserve, and the remainder offered to the public. George Brown, a broker in Pietermaritzburg, acting under a power of attorney from Woolridge, tendered for the whole 2,250 shares, 1*l.* subscription with a premium of 35*l.* 16*s.* for each of them, payable one fourth immediately, another fourth upon allotment, and the balance upon the 28th February 1889. The tender was accepted, and Woolridge duly paid the first two instalments amounting to 41,400*l.* Before the balance became due, he paid the amount stipulated for 1,250 shares, and obtained certificates for them as fully paid up.

When the 28th February arrived, Woolridge did not find it convenient to pay the balance then due in respect of the remaining 1,000 shares, which amounted to 18,400*l.* On that day, the Company, at his request, agreed to take his promissory note for the balance, payable on the 15th May 1889, in consideration of his consenting that, in the event of the note being dishonoured at maturity, the Company should have full power to dispose of the 1,000 shares, which were either

to be retained in the meantime or transferred to a trustee for the Company.

Under a written agreement between him and the Appellant Bank, made in March 1888, Woolridge was allowed to draw against a mass of securities deposited with the Bank, which he was permitted to reclaim from time to time, on substituting other securities for those withdrawn; his obligation being to keep the amount of the Bank's advances to him fully covered. In March 1889, he deposited with the Bank, in pursuance of that obligation, certificates representing the 400 shares now in dispute.

Before his promissory note matured, Woolridge applied to the company for a further extension of the term of payment. To that request the Company acceded, upon terms which were embodied in an agreement dated the 6th and 10th May 1889. In accordance with these, Woolridge gave a new promissory note for the amount of his debt, to be renewed from time to time if both parties consented. He also agreed to transfer the 1,000 unpaid shares to the Company's solicitor, in trust for the purposes of the agreement, and in security of the debt; and he authorised the trustee, in case of his default, to realize the shares at once, and to pay the proceeds to the Company, "in satisfaction or on account of the said liability."

It was argued by the Appellants that the Company, in February, and again in May 1889, transacted with Woolridge upon the footing that his debt, as then constituted by a promissory note, was to be specially charged upon the 1,000 shares, and must therefore be held to have passed from any lien previously affecting the 1,250 shares for which certificates had been issued.

Their Lordships do not doubt that a right of lien may be discharged by a new arrangement between creditor and debtor, the terms of which are incompatible with its retention, or by any

other arrangement which sufficiently indicates the intention of the parties that the right shall no longer be enforced. An agreement giving the creditor new and special powers with respect to part of the subjects covered by his original lien may be conceived in such terms as to imply that he is not to have recourse against the remaining subjects. But the mere fact of the debtor agreeing to give his creditor authority to sell part of the subjects without notice, upon his making default, is not, in the opinion of their Lordships, sufficient to warrant the inference that the creditor is not to realize the other subjects of his security, if necessary. It indicates the intention of the parties that the burden of the debt shall be cast, in priority, upon the subjects to which the authority relates; but it does not necessarily imply that the security of the creditor is to be restricted to these subjects.

Their Lordships are unable to find in the agreements of February and May 1889, any stipulation or expression calculated to suggest that a limitation of the lien given to the Company by its Articles of Association was in the contemplation of either party. On both occasions Woolridge asked for time and nothing else, and the indulgence was granted in consideration of his authorizing the 1,000 shares to be sold if and when default was made, without the necessity of waiting for 14 days after written notice to him, as prescribed by Section 39 of the Articles of Association.

Upon the 22nd June 1889 the Appellants, by a letter addressed to the Secretary of the Company, intimated that they had a lien over 400 shares registered in the name of Woolridge, and requested that any dividend arising upon these shares should be paid to them. Until receipt of that communication the Company had no notice of the Bank's title to these shares, and had no reason to suppose that any one was asserting an

interest preferable to its own lien. On the same day the Secretary sent a reply, declining to recognize any other person than the registered owner as having right to dividends, and suggesting that the Appellants should obtain an order from Woolridge for payment of dividends to them. No reference was made in that letter to the Company's lien; but, on the 11th July 1889, the Secretary, having meanwhile brought the matter before his Directors, wrote by their instructions to the Appellants, stating "that, acting under and by virtue of the pro- "visions of Clauses 38 and 52 of our Articles "of Association, they cannot in any way re- "cognize the lien held by your Bank over shares "in Mr. Woolridge's name." At the time when this correspondence passed, Woolridge had not executed a transfer of the shares to the Appellants, and, in point of fact, he did not do so until the 30th August 1889.

If the Appellants, during the interval of time between their receipt of the Secretary's letters of the 22nd June and the 11th July, had made fresh advances to Woolridge, in the belief that the Company did not mean to claim any right to the shares, the question would have arisen whether the Company could assert its lien, so as to defeat the security of the Appellants for these advances. But the relative position of the Appellants and their debtor Woolridge remained unaltered during that period. It was also suggested that the Company had lost its lien by giving effect to transfers by Woolridge of other parcels of his 1,250 paid-up shares, and thereby charging an undue proportion of Woolridge's debt upon the shares deposited by him with the Appellants. It is sufficient answer to say that the suggestion is without foundation in fact, because the evidence shows that after the 22nd June 1889, although various transfers by

Woolridge were presented for registration, the transference was in every case suspended, possibly in order to await the result of this controversy.

In these circumstances their Lordships are of opinion that the judgment of the Court below is right, and they will therefore humbly advise Her Majesty to dismiss the appeal. The Appellants must pay the costs incurred here by the Respondents.