

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
The Bank of Bombay v. Suleman Somji,  
from the High Court of Judicature at  
Bombay; delivered the 2nd June 1908.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD JAMES OF HEREFORD.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

This is an Appeal from a decree, dated the 22nd January 1907, pronounced by the High Court of Judicature at Bombay (sitting in Appeal from its Original Civil Jurisdiction), by which a decree, dated the 6th August 1906, of the High Court (sitting in its Ordinary Original Civil Jurisdiction) was reversed and set aside. By this latter decree the Respondent's action was dismissed with costs.

The Respondent is a holder of one share in the Appellant Company, the Bank of Bombay, one of the Banks incorporated in 1876 by the Indian Statute of that year entitled the Presidency Banks Act, 1876.

It was suggested that the Respondent purchased this share for the purpose of causing annoyance to the Bank owing to the fact that some other litigation to which he was a party had been instituted against the Bank and was

still pending. There was no satisfactory evidence given to sustain this allegation.

From the correspondence which took place between the Respondent and the Bank before the institution of this suit, it is, in the opinion of their Lordships, perfectly plain that the Respondent claimed a right to inspect the register of the shareholders of the Bank, and to be supplied with a list of such shareholders, as absolute and unqualified as is that conferred on the shareholders of joint stock companies in this country by section 32 of the Companies Act, 1862, or in India by section 31 of the Indian Companies Act, 1866, and section 55 of the Indian Companies Act, 1882.

It must be taken that the Appellants refused to recognize this absolute and unqualified right, or to comply with the claim based upon it, but in their letter of the 21st June 1906, which conveyed this refusal, they informed the Respondent that they would be pleased to furnish him with the list he asked for if he would satisfy them that he required it for use in his own interests as a shareholder. It is, therefore, clear that, before action brought, the qualified and restricted right to inspect and take extracts from the register contended for in argument on behalf of the Respondent was never asserted, nor any limited demand based upon it ever made or refused.

In the statement of claim the Respondent, for the first time, endeavoured explicitly to base his right and title to inspect, copy, and take extracts from, the register on some definite matters in which he himself was interested. He alleges therein that he had observed irregularities in the management of the Bank, in the election of its board of directors, in the advancing of large sums of money to its directors, and in other matters, and that he desired an inspection of the

register to enable him to communicate with the other shareholders and, if possible, obtain their assent to certain resolutions for the better management of the affairs of the Bank and the removal of some of the directors, which he intended to propose at the general meeting of the shareholders to take place on the 9th August 1906. But though this is the purpose for which, and the occasion on which, he claimed the right to inspect, copy, and take extracts from the register, the decree of the Court of Appeal contains no restriction whatever. It is couched in the widest terms. It ignores both the occasion and the purpose, and declares expressly that the Respondent, as long as he is a shareholder of the Bank, is entitled at all reasonable times to inspect the register of shareholders of the Bank, and to copy and take extracts from the said register, and it then proceeds to order that the Bank do give such inspection, and do allow the Respondent, as long as he is a shareholder of the Bank, to take copies of and extracts from the register, and then restrains the Bank from preventing the Respondent, as long as he is a shareholder of the Bank, from having access at all reasonable times to the register for the purpose of inspection and perusal, and from preventing the Respondent, as long as he is a shareholder of the Bank, from taking copies of and extracts from the register.

This suit is in truth in its nature, though not in its form, somewhat of the character of an application for a writ of *mandamus*, and the principles regulating the issue of that prerogative writ should, their Lordships think, apply to a great extent to the granting of the relief prayed for in such a suit as this. One of these principles is this, that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right to enforce which he asks for the interference of the Court, that

he has claimed to exercise that right and none other, and that his claim has been refused. Nothing less, therefore, than the absolute right claimed by the Respondent in the correspondence above referred to could justify the decree appealed from in its present wide and unrestricted form. Now by section 231 of the above-mentioned Indian Act of 1866 and section 256 of the above-mentioned Act of 1882, the Appellant Bank is expressly exempted from the operation of each of those statutes.

There is no statute conferring on the members of this corporation a right to inspect, copy, or take extracts from, the register of its shareholders or any other document belonging to it. The only right the Respondent can have, therefore, against the Bank in reference to such matters, is that which at common law belongs to every member of a corporation. Their Lordships have been referred to several authorities in which the nature, extent, and measure of this right is explained and defined. The learned Judges in the Bombay Court of Appeal have referred to others. The result of the authorities is summed up, in their Lordships' view correctly, in "Taylor on Evidence," Vol. 2, par. 1495 (10th edition, 1906) in the words following :—

*Rex v. Wilts and Berks Canal Company,*  
3 A. & E.  
477; *Reg. v. Lewisham Union* (1897,  
1 Q.B. 498).

“ On the application of a member the King's Bench Division will, in general, grant a rule for a *limited inspection* of the documents of the corporation, if it be shown that such inspection is requisite with reference either to an action then instituted or at least to some specific dispute or question depending in which the applicant is interested; but, even in this case, the inspection will be granted to such an extent only as may be necessary for the particular occasion. The rule was formerly sometimes laid down more broadly, and the language ascribed to the Court in one or two cases might almost lead to the inference that members of a corporation have an absolute right, whenever they think fit, to inspect all papers belonging to the aggregate body. But any

such doctrine is now exploded; and the privilege of inspection is now confined to cases where the member of the corporation has in view some definite right or object of his own, and to those documents which would tend to illustrate such right or object."

The strictness with which these limitations on the general and unqualified right of inspection are insisted on may be aptly illustrated by the case of *Rex v. Merchant Tailors' Co.*, 2 B. & Ad. 115. In that case certain members of a corporation claimed the right to inspect all the documents belonging to that body on the grounds (1) that they had heard and believed the revenues of the corporation were misapplied through the malpractices of those who managed the corporation's affairs; (2) that the fines for admitting freemen and liverymen to the corporation had been unnecessarily and improperly raised; (3) that lavish expenditure had taken place (in some instances to the applicants' own knowledge) without the consent of the majority of the members of the corporation; (4) that a clerk of the corporation had, as the applicants had heard and believed, recently misappropriated funds of the company to a large amount, but that no accounts or information had been laid before the freemen or liverymen by which they could have ascertained the amount of the defalcations; and that they (the applicants) could not ascertain, unless they were allowed to look at the documents mentioned, whether the corporate funds had been properly applied and accounted for or not.

Every member of the Corporation in this case obviously had an interest in each of the matters mentioned, but none of the applicants had in any of them any special interest different from that of his fellow members, nor had they any definite purpose, or object, in obtaining

the inspection asked for other than (in the words of Littledale J.) to see "if by possibility the company's affairs may be better administered than they think they are at present." And the writ of *mandamus* was accordingly refused in this case.

At the trial no witness other than the Respondent was produced, and he was only tendered for cross-examination. He stated that he had heard through brokers that the Bank had advanced 6 lacs of rupees to three persons whom he named; that at elections the directors transferred shares to nominees who voted for them (a practice not in itself illegal); that there were now only seven directors, instead of the maximum nine; that he intended to bring in two respectable people, and that he had in the correspondence given his reasons for asking *inspection*. It is clear on this evidence that the Respondent had no special interest in any of the matters he complained of, or any interest other than, or different from, that of each member of the corporation, and that he had no definite right or object of his own to aid or serve in asking for inspection of the register, or right or object which the register would illustrate; but that, on the contrary, his object was similar to that of the applicants in *Rex v. The Merchant Tailors' Co.*, namely, to obtain the inspection in order to communicate with the shareholders with the view of securing their help in bringing about an improvement in the administration of the corporation's affairs.

Their Lordships think that, on this point, the case is covered by the authority of *Rex v. The Merchant Tailors' Co.*, that the Respondent is not in law entitled to the extended right to which the decree declares him to be entitled, that the limited and qualified right contended for at the trial was never put forward, or

insisted on, before action brought, or any claim based upon it ever refused, and they are, therefore, of opinion that the decree appealed from is erroneous and should be reversed with costs, and the Judgment and Order of Mr. Justice Scott restored. They will humbly advise His Majesty accordingly. The Respondent must pay the costs of this Appeal.

---

