Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bateman v. *Service, from the Supreme Court of Western Australia; delivered 23rd February* 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR RICHARD COUCH.

THIS is an appeal from a judgment of the Acting Chief Justice of Western Australia upon a case which was stated for the opinion of the Court. The case states that "previous to and "at and within the terms mentioned in the "particulars of demand, and subsequent thereto, "the Defendant was, with more than ten other "persons, a shareholder in and he was also one "of the directors of a company which was duly "formed, incorporated, or registered in the colony "of Victoria, according to the laws in force in "that colony in that behalf, under the style of "'The Rockingham Jarrah Timber Company, "Limited,' and all the shareholders except "two," who are named, resided, and those two now reside, out of Western Australia, and out of the jurisdiction of the Court; that "the company," as stated in the memorandum of association, was formed in Victoria for the object, amongst others, "to buy, sell, or "otherwise deal in Jarrah timber and other "timber in Western Australia or in any other "part of the world." The case then states the registration of the company in Victoria and its incorporation there, and that the organisation and government of the company were exclusively

Q 5260. 100.—3/81. Wt. 3729. E & S.

in Victoria, where its directors all resided, and where it had its principal place of business: that the company carried on business on a large scale in Victoria, and that its operations in Western Australia were conducted by Mr. William Wanliss, the then local agent and manager of the company, who acted under a power of attorney, but that the company was satisfied with its incorporation and privileges of limited liability acquired in Victoria, and took no steps to procure its incorporation with liability limited in Western Australia, either by Royal charter, letters patent, or Act of the Western Australian Legislature; nor has it ever been registered under the Joint Stock Companies Ordinance of 1858. It also states the mode in which the business was carried on, and that the cheques by which payments were made were in the form: "The Rockingham Jarrah Timber Company, Limited," signed by William Wanliss. It is not disputed that the business was carried on by William Wanliss, in Western Australia, as the agent of a limited company incorporated in Victoria. The transactions were entered into by him as such agent, and the credit was given to such a company. The question in the case was, whether the Defendant, who was a shareholder in the company and one of the directors, could be made liable for the debt which had been contracted by Wanliss as its agent.

In the argument for the Appellant it was conceded that the general principle was, as stated by Mr. Justice Lindley in his work on partnership, "that if a company is incorporated by a "foreign Government so that by the constitu- "tion of that company the members are "rendered wholly irresponsible, or only to a "limited extent responsible, for the debts and "engagements of the company, the liability of

" the members as such would be the same in " this country as in the country which created " the corporation." But it was contended that the Legislature of Western Australia had a right, if it thought fit, to annex any kind of condition to the carrying on business in their own territory, and that, by the construction which should be put upon the Ordinance of 1858, it had enacted that unless a foreign corporation, carrying on business in Western Australia, complied with this ordinance and was registered according to its provisions, its individual members should be liable to be sued for its debts. It was stated, and properly, that the real question in the case was whether the Western Australian Legislature so enacted.

In considering that question, we may first look at the principle which is laid down by Story, and quoted by the Chief Justice in his summary of the argument for the Plaintiff, in these words:—" In the silence of any positive rule " affirming or denying or restraining the " operation of foreign laws, courts of justice " presume the tacit adoption of them by their " own Government, unless they are repugnant " to its policy or prejudicial to its interests." Therefore, we have to see whether, upon the true construction of this ordinance, the Legislature of Western Australia has said that a company incorporated in another colony or in a foreign country, not having complied with its provisions, cannot carry on business or make contracts in Western Australia by its agent without its members being liable individually for its debts or engagements.

Now an examination of the ordinance appears to show that this was not the intention. Its title is, " An Ordinance for the incorporation " and regulation of Joint Stock Companies and " other Associations, and for limiting the liability

" of certain of the same." The preamble shows that one of the objects was that members of joint-stock companies should be enabled to limit the liability for the debts and engagements thereof to which they are or would be subject. The 4th section is:—" If more than ten persons " shall, after the first day of January 1860, " carry on in partnership any trade or business " having gain for its object, unless they " are registered as a company under this " ordinance or are incorporated or otherwise " legally constituted by or in pursuance of some " private ordinance, Royal charter, or letters " patent, every person so acting shall be severally " liable for the payment of the whole debts of " the partnership, and may be sued for the same " without the joinder in the action or suit of " any other members of the partnership." These words are not descriptive of a corporation carrying on business in Western Australia by its agent. You cannot say that a corporation is ten persons or more carrying on business. It may or may not be that the corporation which was formed in Victoria consists of more than ten persons. That is not a matter to be inquired into in Western Australia. The whole enactment appears to be applicable to a case where persons intended to commence business in Western Australia in partnership; and if there were more than ten, then, unless registered as a company, each might be sued for the whole debts of the partnership without joinder of any other members of it. It appears to refer to a company proposed to be formed for the purpose of carrying on business in Western Australia—not to a corporation existing in another place and coming to Western Australia to carry on some business there through its agents. The case of such a corporation does not appear to have been contemplated by this section, and the presumption

certainly would be, according to the authorities before mentioned, that this was not intended. It is not to be presumed that there was an intention, contrary to the comity of nations, to prevent a foreign incorporated company carrying on business at all in the colony, because there would be so many difficulties in the way of a foreign incorporated company registering its members in accordance with the provisions of this ordinance that practically it could not do so. Then the 5th section contains words which show that what was meant is, not an existing incorporated company coming to Western Australia to trade, but a company which was to be formed there. It speaks in several places of the proposed company. And section 18 and other sections which have been referred to by Mr. Benjamin in his argument, show that in many instances it would be impossible for a foreign company to comply with the requirements of this ordinance. Section 18 says that "Once in "every year a list shall be made of the persons "who on the fourteenth day succeeding the day "on which the ordinary general meeting of the "company, or, if there is more than one ordinary "meeting in each year, the first of such ordinary "general meetings, is held, are the holders of "shares in the company," and section 35 provides that there shall be a general meeting of the company held once at least in every year. In this instance there appears to have been no shareholder in Western Australia, and it might frequently occur that there would be no shareholder in the foreign company resident there. Consequently those provisions could not be complied with.

The whole scope of this ordinance appears to their Lordships to be opposed to the view that it was intended to apply to a company which was incorporated elsewhere. Its object was one which

might well be contemplated by the Legislature of Western Australia; namely, that persons there who wished to carry on business in partnership with a limited liability for the debts and engagements thereof, if there were more than ten of them, should be registered, but it was not meant to apply to foreign corporations, or companies incorporated elsewhere and properly and lawfully carrying on business as such.

This is in accordance with the decision of their Lordships in the case of *Bulkeley* v. *Schutz*, in the 3rd Privy Council Appeals, page 764, where it was held that "A railway company and "a partnership complete and existing in a "foreign country is not within the purview of "the English Joint Stock Companies Acts of "1856, 1857, so as to enable H.B. Majesty's "Consular Court in Egypt to issue a sequestration "against such of the members of the company "as were resident within the jurisdiction of that "court for not complying with an order of that "court to register the company as one of limited "liability under the English Acts." The company there, being a complete and existing company, could not be registered as one of limited liability under the English Acts. Applying that decision to the present case, it is an authority that this company, being duly registered under the ordinance of the colony of Victoria, and incorporated there, could not be again registered as a company in Western Australia. It was mentioned in the course of the argument, that it would not be possible so to register it without, as it were, first disintegrating the company, and making it cease to be, as far as Western Australia is concerned, a corporation at all. But it is conceded on the part of the Appellants, and appears from the case, that it was carrying on business in Western Australia, and was dealt with and given credit to, as an

existing company. It appears, therefore, to their Lordships that the contention on the part of the Appellants that this ordinance is to be construed as prohibiting this company from carrying on its business in Western Australia as a corporation, and making the individual shareholders liable, cannot be supported. That was not the intention of the Legislature of Western Australia. It was not intended that where business was carried on in this way by the agent of a corporation, and credit was given to it through its agent, the individual shareholders should be made liable.

Their Lordships, therefore, will humbly advise Her Majesty that the judgment which is appealed from be affirmed, and the Appeal dismissed with costs.