IN THE HIGH COURT

OF AUSTRALIA.

BETWEEN:

LIONEL FRANCIS SEYMOUR THOMPSON

Plaintiff
(Appellant)

- and -

PIONEER OMNIBUS COMPANY LIMITED.

Defendant
(Respondent)

J U D G M E N T

Please return

Transcript by:

Hales Reporters,
23 Barrack St.,
PERTH.

B

13 September 1948

IN THE HIGH COURT
OF AUSTRALIA.

B E T W E E N:

LIONEL FRANCIS SEYMOUR THOMPSON

Plaintiff
(Appellant)

- and -

PIONEER OMNIBUS COMPANY LIMITED.

Defendant
(Respondent)

MONDAY, 13TH SEPTEMBER, 1948

CORAM: LATHAM, C.J.
RICH, J.
OWEN-DIXON, J.

J U D G M E N T

LATHAM, C.J.: This is an appeal from a decision of the Supreme Court dismissing an action in which a claim was made for an injunction to restrain the defendant company from issuing and/or allotting any shares in the defendant company in accordance with a resolution passed at a meeting af the Directors of the defendant company held on the 18th day of July, 1947. The actim was brought by Lionel Francis Seymour Thompson as sole plaintiff against the company as sole defendant. The action is not properly constituted in respect to parties. The Directors whose actions are the subject of complaint by reason of the passing of the resolution to which I have referred should have been made parties to the action, and for this reason this action by this plaintiff against this defendant as now constituted should be dismissed. But this conclusion is subject to the direction given to the Supreme Court by order 16, rule 12 of the rules

of the Supreme Court. That rule provides that no cause or matter shall be defeated by reason of mis-joinder or non-joinder of parties, and that the Court may in any matter deal with the matter in controversy so far as regard the rights and interests of the parties actually before it. This rule also gives power to the Court to add parties as may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. It is therefore necessary for this Court in this appeal not merely to consider the question whether the action as constituted could succeed, but also whether if the necessary parties had been added the plaintiff would have been entitled to some form of remedy. If this is a case in which the plaintiff with the proper parties would have been entitled to a remedy, then the result is that the appeal should be allowed and the action should be remitted to the Supreme Court to enable parties to be added so that all questions can be determined. It is therefore necessary for this Court to examine the merits of the case as appearing upon the evidence.

The resolution of the 18th July, 1947, of which the plaintiff complains, is a resolution which put into operation an earlier resolution of the 9th June, 1944. The last mentioned resolution was carried by the Board unanimously, the plaintiff Thompson voting for it; it was a resolution approving of the issue of shares to certain Directors who had guaranteed the company's account at the bank. The issue was to be made as soon as National Security Regulations permitted such an issue. In December, 1946, changes were made in the National Security Regulations which made it possible to give effect to the resolution of June, 1944, and on the 18th July, 1947, a resolution was passed authorising the issuing of 3,700 shares to the guarantors, and another resolution that these shares should be issued at £1. each. The plaintiff voted for the resolution, not only of June, 1944, but also for the resolution of the 18th July, 1947, authorising the issue of the shares, and himself actually moved the resolution that the shares should issue

at £1.. These are the resolutions of which he now complains.

It is not suggested,(and there is no evidence which would support a suggestion if it were made) that there has been any relevant change in the objective facts since the resolutions of the 18th July, 1947 were passed. The only change which is proved to have taken place is that the plaintiff and his supporters have become suspicious of the motivesof other directors in approving a further issue of shares. But the plaintiff imself approved the proposed issue, and if he is to be credited with honesty in his approval it is difficult for him to deny the bonafides of other directors who adhered to the view o f the propriety of the issue of the shares which the plaintiff himself originally held. Accordingly the conduct of the plaintiff himself almost precludes a finding in his favour on the question of fact as to the bonafides of the directors who were opposed to his view.

But apart from this question of fact, the position is that the plaintiff acquiesced in the resolution of which he now complains. There is no change in the circumstances and no circumstances of fraud and the like which can be relied upon for the purpose of destroying the effect of such acquiescence. The plaintiff himself took an active part in the passing of the resolution and he is in the circumstances precluded from challenging it. A director who takes part in an allotment of shares to himself is estopped from alleging the invalidity of the allotment. This was decided in York Tramways Company v. Willows 8 Q.B.D. 685. The appeal should therefore be dismissed and with costs.

JUDGMENT ACCORDINGLY.