[1980–87 Gib LR 120]

IN THE MATTER OF TRENT LIMITED

SUPREME COURT (Davis, C.J.): January 28th, 1983

Companies—compulsory winding up—"just and equitable"—just and equitable to wind up quasi-partnership company if breakdown in directors' relationship precludes confidence between them—whether to be wound up on just and equitable ground only to be decided on facts existing at time of hearing but without mutual trust, other change of facts immaterial

Companies—compulsory winding up—"just and equitable"—petitioner to come to equity with "clean hands"—director's departure from Gibraltar insufficient to preclude his petitioning court on just and equitable ground—actions of other director attempting to manipulate shareholdings, refusing to accept valid proxy of quasi partner, etc. incompatible with mutual confidence and sufficient to justify winding up

The petitioner sought an order under the Companies Ordinance (*cap.* 30), s.156(f), that it was "just and equitable" that Trent Ltd. be wound up.

B and G had been business associates for 20 years before incorporating Trent Ltd. in Gibraltar. They, together with F, were the directors of the company, but F subsequently resigned and Trent Ltd. became, in effect, a quasi-partnership between B and G based on their long-established relationship of mutual trust and confidence. This relationship, however, deteriorated, the partners ceased their joint commercial activities and G went to work abroad. Following his departure, B removed him from the board of directors of Trent Ltd. and reinstated F. B's wife was then appointed co-signatory of the company's bank mandate and later as a director. At a number of meetings, B refused to accept the proxy of G and proceeded to pass resolutions (not all of which were implemented) without his knowledge, including ones which substantially diluted G's shareholdings and transferred the assets of the company to his own business. G sought an order that it was "just and equitable" that the company be wound up.

He submitted that Trent Ltd. should be wound up as (a) B's behaviour in attempting to manipulate the company's shareholdings so that his one-half share was diluted to one-fifth, refusing his valid proxy, *etc.*, had been contrary to the relationship of quasi-partners; (b) his removal as a director and F's reinstatement were invalid, they breached the company's articles of association and consequently all later purported actions of the company were null and void; (c) his departure from Gibraltar did not

constitute misconduct by a partner so as to prevent him from seeking the winding up of Trent Ltd. on the just and equitable ground; and (d) he would be unable to accept a one-third share of the company, as he now lacked any confidence or trust in B. B submitted in response that (a) it was not his behaviour, but G's abrupt departure from Gibraltar which had caused the breakdown in confidence between them; (b) F was reinstated as a director as he had not conveyed any intention to B that he wanted to resign, and that this occurred two days after G's departure was merely coincidental; (c) G could not petition the court to wind up the company on the just and equitable ground, as his abrupt departure meant that he had not come to the court with clean hands; and (d) whilst at the date the petition was filed it might have been just and equitable that the company should have been wound up, this was no longer the case as B was prepared, on consultation with F, to admit G as a third participant in the shareholding of the company.

Held, ordering the compulsory winding-up of Trent Ltd.:

(1) Trent Ltd. would be wound up on the "just and equitable" ground stated in the Companies Ordinance (*cap.* 30), s.156(f). G's departure from Gibraltar had been an inconvenience to B, but it did prevent him from petitioning on the "just and equitable" ground. Following F's resignation, Trent Ltd. was, in effect, a quasi-partnership between G and B based on their long-established relationship of mutual trust and confidence. B had lacked the capacity to remove G as a director and reinstate F, which rendered the acts of the company since G's removal, null and void. B's actions in attempting to manipulate the shareholdings of G, refusing to accept G's valid proxy, *etc.* had been incompatible with the functioning of the company. Their original understanding and the lack of mutual confidence between the parties meant that their corporate relationship should be ended (para. 87; paras. 95–99; para. 102).

(2) That B had offered to allow G to pay for a one-third share in the company had no bearing on the winding up of the company on the "just and equitable" ground. While the question of whether a company could be wound up on this ground could only be answered on the facts existing at the time of the hearing, without the requisite relationship of mutual trust between the parties, the change of circumstance was immaterial (paras. 100–101).

Cases cited:

(1) *Davis & Collett Ltd., In re*, [1935] Ch. 693, considered.
(2) *Ebrahimi* v. *Westbourne Galleries Ltd.*, [1973] A.C. 360; [1972] 2 W.L.R. 1289; [1972] 2 All E.R. 492, considered.
(3) *Fildes Bros. Ltd., In re*, [1970] 1 W.L.R. 592; [1970] 1 All E.R. 923, considered.
(4) *Latchford Premier Cinema Ltd.* v. *Ennion*, [1931] 2 Ch. 409, followed.
(5) *Lundie Bros. Ltd., In re*, [1965] 1 W.L.R. 1051; [1965] 2 All E.R. 692, considered.

(6) *Munster* v. *Cammell Co.* (1882), 21 Ch. D. 183, considered.
(7) *Yenidje Tobacco Co. Ltd.*, *In re*, [1916] 2 Ch. 426, considered.

Legislation construed:
Companies Ordinance (Laws of Gibraltar, *cap.* 30), s.156(f):
"A company may be wound up by the court if—
. . .
(f) the court is of the opinion that it is just and equitable that the company should be wound up . . ."

H.K. Budhrani for the petitioner;
A.V. Stagnetto for the respondent.

1 **DAVIS C.J.:** This is an application for the winding-up of Trent Ltd. The winding-up petition was presented by Framar Securities Ltd., a contributory of Trent Ltd., on May 6th, 1982. The petitioner prays for an order that it is just and equitable that the company be wound up under the Companies Ordinance (*cap.* 30), s.156(f). The petition is opposed by De Vegas Securities Ltd., another contributory of Trent Ltd. Both Framar Securities Ltd. and De Vegas Securities Ltd. ("Framar" and "De Vegas") were incorporated in Gibraltar in March 1976 for the purpose of representing, in the case of Framar, Mr. Gillespie's family's interests and, in the case of De Vegas, Mr. Barlow's family's interests. In the return of directors filed in relation to Framar dated May 6th, 1982, Mr. Gillespie and his wife Betty are shown as two of the four directors, and in the return of directors dated June 1st, 1982, filed in relation to De Vegas, Mr. Barlow's wife Muriel is shown as one of the four directors. It is not disputed that these two companies are beneficially owned, in the case of Framar, by Mr. and Mrs. Gillespie and, in the case of De Vegas, by Mr. and Mrs. Barlow.

2 Mr. Gillespie and Mr. Barlow have been business associates for about 20 years. Mr. Gillespie is a chartered quantity surveyor, and it appears that the two men first went into business as partners together in the field of quantity surveying. Mr. Barlow had a number of other business interests and in 1967 the two men established themselves in Douglas in the Isle of Man at No. 6 Hill Street. They incorporated a company in the Isle of Man called Gilbar Holdings Ltd., to which No. 6 Hill Street was conveyed.

3 Gradually, tax planning and property development overtook the quantity surveying side of the partnership business and the partners established a private bank in the name of Barlow & Co. Changes in the legislation relating to banking in both England and the Isle of Man finally prevented Barlow & Co. operating as a bank in those countries, but by registering the name Barlow & Co. as the business name of their partnership under the Business Names (Registration) Ordinance (*cap.* 16) in Gibraltar, Mr. Gillespie and Mr. Barlow were able to open and operate a bank account in

England in the name Barlow & Co. and to continue their private banking business.

4 Having come to Gibraltar, Mr. Gillespie and Mr. Barlow found that there was considerable scope for their business activities here. They incorporated their family companies, Framar and De Vegas and, it seems, other companies. One of these was Trent Ltd., incorporated on February 11th, 1976. This company however, was established in the beneficial interest not only of Mr. Gillespie and Mr. Barlow, but also of a Mr. David Finch, for the purpose of purchasing flat No. 710 Ocean Heights.

5 It appears that Mr. Gillespie and Mr. Barlow had been associated with Mr. Finch in property business since about 1968 or 1969, and the three men were the beneficial owners of a company called Arrow Holdings Ltd., holding property in Wigan. In 1976, the three men decided to purchase flat No. 710 in a block of flats known as Ocean Heights in Gibraltar. This was arranged through their solicitors, Messrs. Isola & Isola, and the flat was acquired in the name of Trent Ltd. The nominal share capital of the company was 100 shares. Only two shares were issued, being taken up as to one each by the first two directors of the company Mrs. Harnamji and Mrs. Edwards, two ladies in the employment of Messrs. Isola & Isola.

6 It appears that at a meeting, held between Mr. Barlow, Mr. Gillespie and Mr. Finch on March 21st, 1977, it was decided that the first directors should be Mr. Barlow and Mr. Finch. At a further meeting between the three men held on May 30th, it was decided that Mr. Gillespie should be appointed an additional director. Minute 3 records: "(Mr. Barlow) to make arrangements to make returns concerning three new directors." And in the return signed by Mr. Barlow dated August 11th, 1977 in the Trent Ltd. file in the Registry of Companies, Messrs. Barlow, Gillespie and Finch are named as directors of the company and Mrs. Harnamji and Mrs. Edwards are shown as having resigned as directors on August 10th, 1977. Mrs. Harnamji and Mrs. Edwards, however, remained the sole shareholders, holding their two shares in trust for the three directors, the beneficial owners of the company.

7 The purchase price of flat No. 710, Ocean Heights was £16,000, of which £11,650 was advanced on mortgage by the Phoenix Assurance Co. Ltd. with Mr. Gillespie standing as guarantor for the payment of principal and interest. It is not disputed that the balance of the purchase price was advanced by the private bank operated by Mr. Gillespie and Mr. Barlow originally registered in Gibraltar in the name of Barlow & Co., but which subsequently went through a number of changes in name until it became the Iberian Mercantile Banking Co. In para. 5 of his affidavit, Mr. Barlow deposes that the private bank Barlow & Co. was wholly owned by Gilbar Holdings Ltd. which had its registered office at Douglas in the Isle of Man and of which he and Mr. Gillespie were only minority shareholders. In

evidence under cross-examination, however, Mr. Barlow stated that Gilbar Holdings Ltd. ceased to operate in the Isle of Man in the mid-1970s and he accepted that throughout this period up to November 20th, 1981, the bank was a partnership of Mr. Gillespie and himself registered in Gibraltar under the Business Names (Registration) Ordinance (*cap.* 16), and that they were the two directors of the bank.

8 Mr. Gillespie alleges that some time in 1979 Mr. Finch resigned from the board of Trent Ltd. and ceased from then to have any interest in the company. He alleges that the company was thenceforth, in substance, a partnership between himself and Mr. Barlow. This is denied by Mr. Barlow. He alleges that the fact of Mr. Finch's resignation was only entered in the company file in the Companies Registry as a result of incorrect information given to Mr. Barlow by Mr. Gillespie, and that on his discovering that the information given to him by Mr. Gillespie was incorrect he had had Mr. Finch reinstated as a director. It will be necessary at a later stage to examine the divergence in the evidence of Mr. Gillespie and Mr. Barlow as to Mr. Finch's resignation which, in a return of changes in directors filed in relation to Trent Ltd. in the Companies Registry on March 16th, 1981, is shown as having occurred on March 1st, 1981.

9 It appears from the Trent Ltd. file in the Companies Registry that by resolution on November 26th, 1979, Trent Ltd.'s share capital was increased to £5,000, divided into 5,000 shares of £1 each. At a meeting of directors held on November 29th, 1979, from which it appears that Mr. Finch was absent, it was resolved to allot 1,000 shares of £1 each to Framar and 1,000 shares to De Vegas. A return of allotments to this effect was duly filed in the Companies Registry on December 13th, 1979. This shows that the amount paid on each share was £1. The annual return of Trent Ltd. dated March 14th, 1980 and filed on March 25th, 1980 shows the directors of Trent Ltd. to be Messrs. Barlow, Gillespie and Finch; it shows the nominal share capital of the company to be £5,000 divided into shares of £1 each; it shows that as at March 14th, 1980, the total number of shares taken up was 2,002; that £1 had been called up on each share and that the total amount of calls received amounted to £2,002. The shareholders are shown in the returns to be Mrs. Harnamji—1 share; Mrs. Edwards—1 share; Framar—1,000 shares, and De Vegas—1,000 shares.

10 In evidence, Mr. Gillespie said that he and Mr. Barlow agreed that the payment of £2,000 for these shares should be effected by entries in the accounts of Murray Lancing & Co. and Trent Ltd. and in the books of Barlow & Co., the private bank operated by Mr. Gillespie and Mr. Barlow in partnership. Mr. Gillespie produced what he stated were pages from the ledger of Barlow & Co. relating to Trent Ltd.'s account with the bank which showed that on June 1st, 1979, Trent Ltd. was credited with the sum of £2,000. He said that Murray Lancing & Co. was a company beneficially owned by Mr. Barlow and himself and that an entry was made in its

account with Barlow & Co. debiting it with £2,000. Mr. Barlow did not dispute that Murray Lancing & Co was beneficially owned by Mr. Gillespie and himself, nor did it appear that he rejected as spurious the pages relating to Trent Ltd., allegedly from the ledger of Barlow & Co. produced by Mr. Gillespie.

11 Trent Ltd.'s annual return dated March 13th, 1981, filed on March 16th, 1981 differs only from the return for 1980 in that it shows the directors as being only Mr. Barlow and Mr. Gillespie. By a return of changes in directors filed on March 16th, 1981, Mr. Finch is shown as having resigned as a director on March 1st, 1981. This return was filed as a result of Mr. Barlow's letter to Mr. P.J. Isola of Messrs. Isola & Isola, dated March 10th, 1981 in which it is stated: "A change of directors occurred on March 1st, 1981 when Mr. David Finch tended [*sic*] his resignation which was accepted with regret."

12 It appears in evidence that on August 31st, 1980, the freeholds in two properties in Liverpool, England, were transferred to Trent Ltd. by a company called Carran Ltd. The properties were 117 Errol Street and 25 Clarendon Road. The consideration for these two properties is stated to be £18,000 for 117 Errol Street and £19,000 for 25 Clarendon Road. It is not disputed that these sums have not been paid to Carran Ltd. Mr. Barlow in para. 10 of his affidavit deposes that the transaction was an internal matter and that Trent Ltd. was never required to pay any money. Mr. Gillespie in evidence stated that he believed the purchase price was still due to Carran Ltd. by Trent Ltd. The two properties are occupied by tenants and Trent Ltd. acquired the properties subject to existing tenancies. Mr. Gillespie in evidence explained how Trent Ltd. leased its two Liverpool properties to a company called Windylane Ltd., owned beneficially by a Mrs. Brabbins, who managed the properties, received the rents from the tenants in occupation of the properties and paid to Trent Ltd. a rent which, according to Mr. Gillespie, for the year ending in August 1982, Mr. Barlow and he had agreed should be £600.

13 It is not disputed that by April 1981, Mr. Barlow and Mr. Gillespie had ceased their joint commercial activities. According to Mr. Gillespie relations between him and Mr. Barlow had deteriorated. They continued, however, as directors of Trent Ltd., an asset-holding company on which, it appears, neither of them relied for an income.

14 It is not disputed that between April and November 1981, Mr. Gillespie had intimated to Mr. Barlow that he was thinking of taking up employment overseas. On November 20th, 1981, Mr. Gillespie left the United Kingdom to take up employment in Saudi Arabia. He wrote to Mr. Barlow the same day telling him that he was leaving the country and what he had done with certain books and documents relating to his and Mr. Barlow's joint activities. Prior to leaving, on November 12th, 1981, Mr.

Gillespie had written to the manager of the Midland Bank Ltd. at Stockton Heath, Warrington, at which there was a bank account in the name of Trent Ltd., asking that the bank mandate be varied to require that "all cheques, drafts, instructions, *etc*. should bear the two signatures contained in the mandate." The signatures referred to were those of Mr. Barlow and Mr. Gillespie, either of which had previously been sufficient on cheques signed on behalf of Trent Ltd. On November 13th, 1981, the Midland Bank Ltd. confirmed that all future cheques of Trent Ltd. would need to be signed by both directors pending agreement as to a new bank mandate. This letter was copied to Mr. Barlow.

15 In evidence, Mr. Gillespie said that along with a copy of this letter of November 12th, 1981 to the manager of the Midland Bank Ltd., he sent a memorandum to Mr. Barlow suggesting that, to facilitate the operation of Trent Ltd.'s account, a third party should be introduced into the bank mandate in order that any two of the three signatories might sign cheques, but that this proposal was not taken up by Mr. Barlow.

16 Mr. Barlow stated that Mr. Gillespie's departure to Saudi Arabia had caused him great distress. He conceded that Mr. Gillespie's departure did not affect the administration of Trent Ltd.'s Liverpool properties, as arrangements had been made with Mrs. Brabbins to look after these. Mr. Barlow stated that up until Mr. Gillespie's departure, Mr. Gillespie had been keeping the books of the private bank in which he and Mr. Gillespie were the sole partners. This bank, originally named Barlow & Co. was, in November 1981, called the Iberian Mercantile Banking Co. As already stated, the name Iberian Mercantile Banking Co. was merely the business name of the partnership required to be registered under the Business Names (Registration) Ordinance (*cap.* 16), but the partners operated an account in that name with a bank in England. Mr. Barlow said that on Mr. Gillespie's departure, he was deprived of all the records relating to deposits made in the account of the Iberian Mercantile Banking Co. and both the current and past cheque books and paying-in books relating to the bank account in England in the name of the Iberian Mercantile Banking Co. Mr. Barlow confirmed that Mr. Gillespie, in notifying him of his departure, had said that he had left various books and documents with his solicitor, but Mr. Barlow said that when he had collected these, he found that they comprised only irrelevant correspondence and a ledger from which most of the pages had been removed.

17 The following minutes appear in Mr. Barlow's evidence:

"*Present:*

Mr. T. Barlow

Mr. D. Finch

Mr. David Finch expressed his pleasure at being re-appointed a director of the company with immediate effect and he noted that the company lawyers were being notified accordingly.

The minutes of the meeting held on July 10th, 1980, were taken as written.

The situation created by the dramatic departure overseas of Mr. F.W. Gillespie was given most careful consideration. Arising therefrom, no reason could be found for allowing that gentleman to remain a member of the board of directors of this company and any action taken in this respect would be ratified accordingly.

Arising from the previous minute, resolved to establish a new bank mandate accordingly with existing bankers.

The company's indebtedness to the Iberian Mercantile Banking Co. was considered in depth and to avoid an impending recall of the loan for the money which could not be made available, it was resolved to transfer to the Strait Shipping Co. Ltd. the following properties in accordance with the wishes of the bank:

117 Errol Street, 25 Clarendon Road.

The meeting was closed.

Chairman: Mr. Thomas Barlow."

18 In para. 15 of the petition, the petitioner alleges that the reappointment of Mr. Finch as a director of Trent Ltd. and the proposal that Mr. Gillespie's appointment as a director should be terminated due to his departure overseas, were invalid as being in breach of art. 2 of the company's articles of association. This provides that if the number of directors shall be less than four, a quorum should comprise not less than two directors. As at November 22nd, 1981, the only directors of Trent Ltd. according to the returns in the Companies Registry, were Mr. Barlow and Mr. Gillespie. Regulation 83, Table A, Schedule 1 of the Companies Ordinance, which applies to Trent Ltd. by virtue of art. 1 of its articles of association, provides that where the number of directors falls below that of the minimum quorum by reason of a vacancy in the number of directors, the continuing director may increase the number of directors so as to form a quorum, or may summon a general meeting. The petitioner alleges that Mr. Finch's reappointment as a director was invalid in that at the time (and this is not disputed), Mr. Gillespie was still a director of Trent Ltd. and reg. 83, Table A, did not therefore apply. Nor, it is alleged by the petitioner, was it open to Mr. Barlow and the invalidly-appointed Mr. Finch to resolve that Mr. Gillespie's appointment as a director of the company should be terminated.

19 The reappointment of Mr. Finch as a director of Trent Ltd. referred to in minute 1 of meeting No. 16 of November 22nd, 1981 was, in my view, clearly invalid as being contrary to the articles of the company. There was at that date no vacancy in the body of directors and accordingly reg. 83 of Table A did not apply (see in this connection *Munster* v. *Cammell Co.* (6) (21 Ch. D. at 187)). Nevertheless, by virtue of s.135 of the Companies Ordinance (*cap*. 30), Mr. Finch's subsequent acts as a director of the company were valid notwithstanding the invalidity of his appointment.

20 The petitioner disputes the validity of the resolution contained in the minutes of the meeting above to obtain a new bank mandate. Although the meeting of November 1981 purported to reappoint Mr. Finch as a director of Trent Ltd., it was not Mr. Finch, but Mrs. Barlow, who was not then a director of the company, who was authorized as co-signatory in the new bank mandate.

21 Mr. Barlow conceded that he did not approve of the wives of directors playing any part in their husband's business affairs and that he had opposed Mrs. Gillespie's attempts to do so. He denied that Mrs. Barlow's appointment as a co-signatory with him of the company's bank mandate and her subsequent appointment as a director of Trent Ltd. was an attempt by him to obtain control of the company and to deprive Mr. Gillespie of control over the company.

22 In para. 23(a) of the petition, the petitioner alleges that minute 5 of the meeting of November 22nd, 1981 was evidence of Mr. Barlow's intention to appropriate to his own use assets of Trent Ltd. In evidence Mr. Barlow did not dispute that he was the beneficial owner of Strait Shipping Co. Ltd., being the principal shareholder and having supplied most of the company's capital. Mr. Barlow stated that while it was true that the resolution contained in minute 5 had been passed, circumstances had changed and the resolution had never been implemented. He said that had a point been reached where implementing the resolution was seriously considered, the directors would probably have called an extraordinary general meeting of the company as he believed that the directors would have been exceeding their powers in this disposing of valuable assets of the company.

23 In the documents attached to Mr. Barlow's affidavit there appear the minutes of meeting No. 18 of the directors of Trent Ltd. held on December 26th, 1981. In minute 3 it was resolved that Mrs. Barlow should be appointed a director of Trent Ltd. with immediate effect. In minute 5 it was resolved to take possession of the property in Wigan of Arrow Holdings Ltd. on consideration that Trent Ltd. would guarantee the debts of Arrow Holdings Ltd. amounting to £50,000. In minute 9 it was resolved to charter, for a period of 5 years, the *M.V. Chica* owned by Strait Shipping Co. Ltd. In minute 14 it was resolved to increase the authorized

capital of Trent Ltd. to £10,000, divided into 10,000 ordinary shares of £1 each "to enable the company to meet the pressing demands of its mortgagor [*sic*] plus present and immediate future creditors."

24 Mr. Gillespie, in evidence, said that as a guarantor of the Phoenix Assurance Co. Ltd. mortgage, he had received no notification that that company was pressing for payment, and he produced in evidence a confidential note sent to him by Mr. Barlow headed "Trent Ltd. Internal Audit Report; March 31st, 1981" showing that Trent Ltd.'s income covered its annual payments of principal and interest amount to £1,710 on the mortgage.

25 In minutes 15 and 16 of meeting No. 18 it was resolved as follows:

> "Resolved to make allotments of ordinary £1 shares for cash or other acceptable consideration as follows:
>
> *Framar Securities Limited*: 1,500 in exchange for consultancy services to Trent Ltd., as and when requested. The allotment is totally contingent on formal acceptance of the offer not later than March 31st, 1982, clearly addressed to the company secretary, at the company's registered office.
>
> *De Vegas Securities Limited*: 1,999 in exchange for consultancy services similar in every respect to Framar.
>
> *Belmont Holdings Limited*: 1,499 in exchange for consultancy services similar in every respect to Framar.
>
> *Capt. D. Huysmans*, *6 Hill Street*, *Douglas*, *Isle of Man*: 500 in exchange for consultancy services already given and provided the allotment is renounced by March 31st, 1982, if not acceptable.
>
> *M. Barlow*, *Willowburn*, *Goostrey*, *Cheshire*: 2,002 in exchange for cash, when called forthwith on increase of authorized capital to £10,000."

26 In para. 17 of the petition, the petitioner complains that Mrs. Barlow was appointed a director of the company without his knowledge or consent. In para. 18 of the petition the petitioner complains that 2,500 shares of £1 each in Trent Ltd. were allotted to Mrs. Barlow at par and considerably below their value, thus giving Mr. & Mrs. Barlow a majority interest in the company.

27 In his confidential note to Mr. Gillespie in respect of Trent Ltd. headed "Internal Audit Report; March 31st, 1981," Mr. Barlow valued the 2,002 shares issued at £20,000. In a balance sheet up to March 31st, 1981, prepared at Mr. Barlow's direction under the name Allied Accountants Association, Isle of Man, and dated November 22nd, 1981 there appears under the heading "Less Current Liabilities," the item "Preferential

Guarantee Indemnity to Shareholders on Asset Realization; £60,000," indicating that 2,002 shares then issued were valued for audit purposes at £60,000.

28 From the figures given in these documents, it would appear, as claimed by the petitioner, that the 2,002 shares in Trent Ltd. allotted to Mrs. Barlow at par, were sold at much below their value. Mr. Barlow in evidence stated that there was at the time a "cash flow problem," that cash was needed urgently and that Mrs. Barlow was able to make an immediate payment into the company of £2,002 in return for which she was allotted 2,002 shares. Be that as it may, it would seem from the figures that the petitioner has good cause to feel aggrieved at the allotment to Mrs. Barlow of 2,002 £1 shares at par. In cross-examination Mr. Barlow said that similar allotments could be made to Mr. Finch and Mr. Gillespie if they so wished. This would, however, depend on an increase in the company's share capital. At present 4,502 shares out of the company's share capital of 5,000 shares had been taken up, 3,500 of which (70%), had been taken up by De Vegas and Mrs. Barlow, giving the Barlow family a clear majority interest in the company.

29 In para. 23(c) of the petition, the petitioner complains that on December 26th, 1981 it was resolved that Trent Ltd. should guarantee debts amounting to £50,000 of the insolvent Arrow Holdings Ltd. In evidence, Mr. Barlow stated that, for reasons of economy it was intended to amalgamate Trent Ltd. and Arrow Holdings Ltd., as the two companies were beneficially owned by Mr. Finch, Mr. Gillespie and himself. He said that it was still intended to amalgamate the two companies but that the original offer had now been withdrawn, the consideration for taking over the Wigan properties being that Trent Ltd. should guarantee the debts of Arrow Holdings Ltd. now amounting to £85,000. Mr. Barlow maintained that the value of the Wigan properties exceeded this sum, but he produced no valuation of the properties to support this statement. He said that Mr. Gillespie in evidence had undervalued the Wigan properties. Mr. Gillespie in his evidence had given the value of the Wigan properties as not more than £40,000.

30 In para. 23(d) of the petition, the petitioner complains that at the meeting of December 26th, 1981, it was resolved to charter the *M.V. Chica* owned by the Strait Shipping Co. Ltd. for a period of five years, to Trent Ltd. The petitioner alleged that the terms of the charter were never disclosed to Trent Ltd., and that in any case Trent Ltd. had no use for the vessel. In evidence Mr. Barlow stated that whilst it was true that the resolution had been passed, it had never subsequently been put into effect.

31 In para. 23(e) the petitioner complains that in minute 15 of the meeting of December 26th, 1981, it was resolved to allot for alleged consultancy services 1,999 shares to De Vegas; 1,499 shares to Mr.

Finch's nominee company (Belmont Holdings Ltd.), and 500 shares to Capt. Huysmans, in addition to 1,500 shares to Framar and 2,002 to Mrs. Barlow, on the grounds that this would reduce Framar's 50% shareholding in the company to 25%, while increasing that of De Vegas and Mrs. Barlow jointly to 55%. Mr. Gillespie, in evidence said he knew of no consultancy services provided to Trent Ltd. by Capt. Huysmans, Framar or De Vegas. In his own evidence, Mr. Barlow said that the director's intention in minute 15 had been to reflect the individual interests of the various shareholders comprising Arrow Holdings Ltd. and Trent Ltd. and that this seemed the best way of achieving that end. In cross-examination he suggested certain matters on which consultancy services could be required from Framar, De Vegas or Capt. Huysmans, but it was clear from his evidence that no such services had ever been received from Framar, De Vegas, Capt. Huysmans or Belmont Holdings Ltd.

32 In evidence, Mr. Barlow stated that the resolution contained in minute 14, to increase Trent Ltd.'s capital to £10,000 had never been proceeded with. Accordingly, the allotments of shares set out in minute 15 had never materialized, other than that of 2,002 shares to Mrs. Barlow which it had been possible to accommodate from the existing authorized share capital of £5,000 provided for in 1979. He alleged that had the increase in capital been proceeded with, it would have been open to any of the other shareholders to bring their shareholding up to that held by De Vegas and Mrs. Barlow. This in fact would not have been possible as the shareholding and allotments to De Vegas and Mrs. Barlow amounted to 55% of the shareholding in the company. Without the increase in the capital of the company, the shareholding of De Vegas and Mrs. Barlow had increased to 3,500 shares as a result of the allotment to Mrs. Barlow of 2,002 shares, giving them again a majority shareholding in Trent Ltd.

33 In para. 23(b) of the petition, the petitioner alleges that Mr. Barlow caused the rents of Trent Ltd.'s Liverpool properties, 25 Clarendon Road and 117 Errol Street to be diverted from Trent Ltd. to his own company Strait Shipping Co. Ltd. In para. 25 of his affidavit, Mr. Barlow deposed that Strait Shipping Co. Ltd. affirmed that it had no knowledge of this and that it had not received any rents from the properties. In examination-in-chief, Mr. Barlow asserted roundly that the allegation contained in para. 23(b) of the petition, was a lie. He agreed that Strait Shipping Co. Ltd. belonged to him as the majority shareholder. He said he knew of nothing that would give substance to this allegation. In cross-examination Mr. Barlow again denied the allegation. On being shown a letter dated November 24th, 1981, from him to Mrs. Brabbins, in which he asked Mrs. Brabbins to arrange to obtain from the tenants of 25 Clarendon and 117 Errol new standing orders in favour of Strait Shipping Co. Ltd., Mr. Barlow, while not denying the genuineness of the letter, stated that he had cancelled it. He proceeded to retract his earlier evidence that he was the

beneficial owner of Strait Shipping Co. Ltd. In cross-examination in this connection he said he could not now remember whether, when he wrote to Mrs. Brabbins on November 24th, 1981, he was still the majority shareholder in Strait Shipping Co. Ltd.

34 On February 15th, 1982, the directors of Trent Ltd. gave notice of an extraordinary general meeting to be held in Gibraltar on April 9th, 1982. This was for the purpose of passing resolutions in respect of matters arising from the meeting of the directors held on December 26th, 1981, and to review the financial structure of the company "particularly with reference to the present authorized capital of the company in relation to liabilities which are expected to arise in the foreseeable future." On December 3rd, 1981, Mrs. Gillespie had written to Mr. Peter Isola of Messrs. Isola & Isola solicitors, asking him to stand proxy for Framar at any extraordinary general meeting of members of Trent Ltd. that might be called and enclosing a form of proxy.

35 The minutes of this meeting show that the form of proxy held by Messrs. Isola & Isola for Framar was rejected as not being in the form prescribed by the Companies Ordinance (*cap.* 30), nor in a form approved by the director. Yet it appears that a form of proxy was accepted in respect of Mr. Finch, although it is quite clear from Trent Ltd.'s file in the Companies Registry that Mr. Finch was not then, or ever, a member of the company. His proxy therefore was worthless. It also appears that forms of proxy were accepted which were signed by Mrs. Barlow as a director in respect of De Vegas and as a member in respect of Trent Ltd. It appears, however, from the file relating to De Vegas in the Companies Registry that Mrs. Barlow was not a director of that company at the date on which she signed the proxy having only been appointed a director at a later date. Further, from the file relating to Trent Ltd., it appears that Mrs. Barlow's membership of that company on the allotment to her of 2,002 £1 shares on March 22nd, 1982, was only registered on April 20th, 1982, so that she was not a member of the company on February 28th, 1982, the date on which she signed the form of proxy. In my view neither of these proxy forms was valid. Framar's form of proxy on the other hand was properly signed by Mrs. Gillespie as a director of that company with effect from November 17th, 1981, and while not complying exactly with the discretionary form of proxy set out in reg. 61, Table A, Schedule 1 of the Companies Ordinance (*cap.* 30), it quite clearly complied with all the requirements for the appointment of a proxy. It would appear therefore, as submitted by Mr. Budhrani for the petitioner, that the resolutions passed at the meeting of April 19th, 1982, were invalid for lack of a quorum of two members of the company as required by art. 5 of the company's articles of association.

36 In minute 3 of the minutes of the extraordinary general meeting, the chairman is recorded as having produced evidence that the sums of £1,000

and £2,002 had been received by the company in the form of share capital from De Vegas and Muriel Barlow respectively. The minute goes on to say that as evidence could not be produced of the payment of £1,000 in respect of the shares allotted to Framar, the chairman declared that in accordance with the Companies Ordinance (*cap.* 30), Table A, cl. 57, Framar was not entitled to vote at the meeting. There is a further reference to this in minutes 4 and 5 of meeting No. 20 of the directors of Trent Ltd. of April 20th, 1982. In these minutes it is categorically stated that—

> "there can be no doubt that the number of shares on which the full amount has been paid and have been issued under the undisputed hand of authorized company officials is as follows—
>
> De Vegas Security Ltd.—1,000."

37 In minute 5 it is resolved "to acknowledge that the only member entitled to vote at meetings of members without question of validity prior to April 19th, 1982, is De Vegas Securities Ltd." It is difficult to see how, when Framar's proxy had been rejected, the company or its proxy could have produced evidence as to payment of the 1,000 shares in Trent Ltd. allotted to it.

38 Mr. Gillespie's evidence as to the payment of the 1,000 shares each allotted to De Vegas and Framar in 1979 was that this had been effected in the books of Barlow & Co., the private bank operated by Mr. Barlow and Mr. Gillespie. This bank held the accounts of Trent Ltd. and of another company beneficially owned by Mr. Barlow and Mr. Gillespie, Murray Lancing & Co. He said that he and Mr. Barlow agreed to transfer £2,000 from the account of Murray Lancing & Co. to the account of Trent Ltd. in the books of Barlow & Co. relating to these two accounts.

39 According to para. 9 of Mr. Gillespie's affidavit, he and Mr. Barlow, having invested £1,000 each in Trent Ltd., on December 29th, 1979 caused Trent Ltd. to allow 1,000 shares both to De Vegas, as nominee for Mr. Barlow, and the petitioner, Framar, to whom Mr. Gillespie had transferred his interests in Trent Ltd.

40 Paragraph 9 of Mr. Barlow's affidavit as to this reads as follows:

> "That para. 9 of the petition is incorrect in that in June 1979, neither I, nor Gillespie, paid into the company the sums of £1,000 each. However, the 1,000, ordinary, £1 shares were issued irrespectively to the petitioner and to De Vegas Securities Ltd., subject to the provision of the memorandum and articles of association of the company. Subsequent to the issue of shares, De Vegas Securities Ltd., have contributed the payment in full for the above-mentioned shares."

And in paras. 34 and 35 of his affidavit Mr. Barlow deposes as follows:

"34. Mr. Gillespie has never been a contributory shareholder to Trent and has never subscribed any capital money.

35. Framar Securities Ltd. have never subscribed any capital money."

41 The return of the allotments of shares filed in the Companies Registry on December 13th, 1979, shows the shares allotted to these two companies to have been fully paid for as at that date. Similarly, a balance sheet for Trent Ltd. dated November 22nd, 1981, which Mr. Barlow admitted had been compiled at his direction and correctly reflected the state of Trent Ltd.'s affairs as at March 31st, 1981, shows under "Share Capital," 2,002 shares in the company to have been "issued and fully paid." In cross-examination, Mr. Barlow said that this did not mean that the shares had been paid for, but merely that it was intended that they would be paid for. He said that he had had no knowledge of the payment by Murray Lancing & Co. for the 2,000 shares allotted to De Vegas and Framar until the present trial. He did not dispute that Murray Lancing & Co. was a company beneficially owned solely by himself and Mr. Gillespie, nor did he ever deny that £2,000 had been debited from the account of Murray Lancing & Co. and credited to that of Trent Ltd. in Barlow & Co.'s books. He said that there was nothing to show that Murray Lancing & Co. ever authorized such a debit from its account and pointed out that De Vegas and Framar, the allottees of the shares, had nothing to do with Murray Lancing & Co.

42 I found Mr. Barlow's evidence on the question of payment for the 2,000 shares allotted to De Vegas and Framar evasive and very difficult to follow. It appears to me that the evidence of the return of allotments as to these shares filed on December 13th, 1979 in Trent Ltd.'s file in the Companies Registry showing them to have been paid for, and the evidence of the balance sheet drawn up at Mr. Barlow's direction dated November 22nd, 1981 showing 2,002 shares as "issued and fully paid" strongly indicate that the 1,000 shares issued to Framar had been paid for, albeit, as stated in evidence by Mr. Gillespie, by means of a book entry in Barlow & Co.'s books. I accept Mr. Gillespie's evidence as to this. It appears to me that the £1,000 which Mr. Barlow stated he had paid to Trent Ltd. for the shares allotted to De Vegas is a superfluous payment made to give credence to minute 3 of the extraordinary general meeting of April 19th, 1982, and minute 4 of meeting No. 20 of the directors of Trent Ltd. of April 20th, 1982.

43 Minutes 12 and 14 of the directors' meeting of April 20th, 1982 reveal what Mr. Barlow in evidence referred to himself as a "peculiar situation." Minute 12 records that Mr. Finch expressed great concern that Trent Ltd. appeared to have no record of £3,300 subscribed by him.

44 In examination-in-chief, Mr. Barlow said that he had not been aware that Mr. Finch had made any such payment. He said he had thought to himself that it must have been "one of these book entries" and that he had better protect his own and Mr. Gillespie's interests by indicating that if Mr. Finch had made such a payment then similar payments had been made by his own and Mr. Gillespie's company. He explained that if Mr. Finch had indeed made the payment he alleged, then Mr. Gillespie would certainly have had knowledge of this and he was confident that Mr. Gillespie would have covered his and Mr. Barlow's interests. Accordingly, he said that the allotment proposed in minute 14 was to maintain the equal shares in the company of himself, Mr. Gillespie and Mr. Finch. He said that Mr. Gillespie would ultimately have got a copy of the minutes of the meeting of April 20th, 1982 and would have consulted him about this. In the meantime, he said it avoided an unpleasant scene with Mr. Finch, and that was all there was to it.

45 In cross-examination, Mr. Barlow stated that he had been unable to find any record of any payment of £3,000 by Mr. Finch. Certainly no record of any such payment appears in any of the balance sheets of Trent Ltd. for 1979, 1980 or 1981. Mr. Barlow stated that he intended to tell Mr. Finch that he must have been mistaken and that he must have put the money into some other company. He said he believed that Mr. Finch would accept this. Nevertheless minute 14 records that the chairman (Mr. Barlow) stated—

> "that similar amounts to that subscribed by David Finch had been subscribed by Framar Ltd. and De Vegas Ltd. and to regularize the position, when the authorized capital is increased accordingly, the following Shares will be issued—
>
> David Finch—3,300 Ordinary £1 Shares
>
> De Vegas Ltd.—3,300 Ordinary £1 Shares
>
> Framar Ltd.—3,300 Ordinary £1 Shares."

46 Mr. Barlow agreed that it would have been more prudent simply to have told Mr. Finch he would look into his complaint rather than to record minute 14 which Mr. Barlow did not deny is clearly completely bogus. In explanation, Mr. Barlow said that this peculiar situation had arisen because of the indication given by Mr. Gillespie to have Trent Ltd. wound up. He said that had the directors subsequently discovered that Mr. Finch had been mistaken in his allegation that he had subscribed £3,300 to Trent Ltd. there would have been no need to do anything further and minute 14 could have been rescinded. He denied, however, that minute 14 indicated a stratagem to dilute Framar's shareholding in the company.

47 Mr. Barlow's reference, in this evidence, to Mr. Gillespie's indication that Trent Ltd. should be wound up, would appear to relate to two letters

each dated March 30th, 1982 and addressed to the secretary of Trent Ltd. These letters requested an extraordinary general meeting of the company to be held on May 5th, 1982 to consider (1) a resolution that an inspector be appointed to investigate the company's affairs with particular reference to the conduct of Mr. Barlow as a director, and (2) a resolution that the company be voluntarily wound up. One of these letters is signed by Mr. Gillespie in his capacity as a director of Trent Ltd. The second is signed by Mrs. Gillespie in her capacity as a director of Framar.

48 In these circumstances, Mr. Barlow's suggestion in examination-in-chief that Mr. Gillespie, on ultimately receiving a copy of the minutes of the directors' meeting of April 20th, 1982 would have been able "to consult" Mr. Barlow about minute 14, and that the minute was simply recorded "to avoid an unpleasant scene" with Mr. Finch would hardly appear to ring true. It seems clear to me, as suggested by Mr. Budhrani for the petitioner, that minute 14 is further evidence of an intention to reduce the petitioner's shareholding in Trent Ltd.

49 On April 20th, 1982 the Secretary of Trent Ltd. replied to Mr. Gillespie's letter of March 30th, 1982 informing him *inter alia* that his name was not included on the current list of directors and indicating implicitly that his request for an extraordinary general meeting of the company was out of order. In fact it appears from the company's records that Mr. Gillespie was still listed as a director of the company on March 30th, 1982. While the resolution recorded in minute 4 of the extraordinary general meeting of April 19th, 1982 purported to remove Mr. Gillespie from his directorship and to replace him with Mrs. Barlow, as already pointed out, this resolution would appear to have been invalid for lack of a quorum at the meeting.

50 Evidence was not adduced as to what reply, if any, was sent to the petitioner in reply to Mrs. Gillespie's letter on its behalf. At the extra-ordinary general meeting of April 19th, 1982, however, as we have seen, the proxy held by Messrs. Isola & Isola on behalf of Framar was rejected as not being in proper form and minute 3 of that meeting recorded that Framar was not entitled to vote for lack of evidence of payment for its shareholding of 1,000, £1 shares in Trent Ltd.

51 On April 19th, 1982, Mr. Barlow for the directors of Trent Ltd. gave notice of the annual general meeting of the company to be held on the April 27th, 1982. The notice gave the agenda for the meeting as "election of directors—to adjourn the meeting pending the unavailability of the company's annual accounts for the year ending March 31st, 1982."

52 Item 2 of the agenda appears to relate to minute 16 of the directors' meeting No. 20 of the following day (April 20th, 1982) which is in the following terms:

"The secretary reported that the large black suitcase containing many items, including office equipment, books of account and all the papers and records of the company prior to September 1981, still cannot be located in Ocean Heights. This situation was brought to the attention of the managing director of Ocean Heights who is unable to account for this state of affairs. The non-availability of the books and papers is delaying the production of the annual accounts for the year ended March 31st, 1982."

53 Messrs. Isola & Isola continued to hold Framar's proxy and a member of the firm attended the annual general meeting on April 27th, 1982. In evidence Mr. Gillespie said that he received a report from Messrs. Isola & Isola to the effect that they were not allowed to exercise their proxy vote for Framar on the grounds that (a) Framar had not paid for its 1,000 shares in Trent Ltd., and (b) Mrs. Gillespie, who had signed the proxy as a director of Framar, was not a director and that the proxy was therefore invalid. The Companies Registry file relating to Framar shows, in a return of changes in directors filed on April 21st, 1982, that Mrs. Gillespie was appointed a director of Framar on November 17th, 1981. On December 3rd, 1981, at the time of writing to Messrs. Isola & Isola enclosing a form of proxy on behalf of Framar, she would appear to have been a director of that company. In para. 22 of the petition, the petitioner complains that at the annual general meeting of Trent Ltd. on April 27th, 1982, Mr. Barlow, as well as rejecting the petitioner's proxy, neglected or refused to account to members of the company as to its affairs.

54 In cross-examination, Mr. Barlow admitted that the balance sheet for Trent Ltd. as at March 31st, 1981, dated November 22nd, 1981, had been made at his direction and correctly reflected the state of the company as at March 31st, 1981. He conceded that this balance sheet had never been tendered to shareholders of the company and that it had not been presented to members either at the extraordinary general meeting of April 19th, 1982 or at the annual general meeting of April 27th, 1982. He said he thought this must have been an administrative lapse, that the directors must have overlooked the fact that these accounts were in their possession and that no-one had brought the matter up. It is to be observed that at the meeting of April 19th, 1982 it would appear that it was only Mr. Barlow who could have brought the matter up, Framar's proxy in the hands of a representative of Messrs. Isola & Isola having been rejected. No evidence was given as to who was present at the meeting of April 27th, 1982, but it is perhaps significant that item 2 on the agenda was to adjourn the meeting pending the availability of the company's annual accounts for the year ending March 31st, 1982 and that Framar's proxy should again have been rejected having regard to Mr. Gillespie's letter on behalf of Framar to the secretary of Trent Ltd. of March 30th, 1982. This letter requisitioned an extraordinary general meeting to consider two special resolutions. Ground

(iii) to resolution no. 1 that an inspector be appointed to investigate the company's affairs with particular reference to the conduct of Mr. Barlow in his capacity as a director was that Mr. Barlow was in breach of the Companies Ordinance (*cap.* 30), s.114 (relating to the keeping of accounts).

55 I revert now to the disputed question of Mr. Finch's resignation from Trent Ltd.'s board of directors. Mr. Gillespie in evidence said that in 1979 it was resolved that the directors of Trent Ltd. (Mr. Barlow, Mr. Finch and himself) should take shares in Trent Ltd. In June 1979, as a result of the transfer of £2,000 from the account of Murray Lancing & Co. to the account of Trent Ltd. in the books of Barlow & Co., 1,000 ordinary shares of £1 each were allotted each to De Vegas and Framar. But Mr. Finch had still made no investment in Trent Ltd. and, according to Mr. Gillespie, it was clear that he was not going to invest in the company. In the circumstances, he said, it was considered that Mr. Finch should no longer continue as a director. According to Mr. Gillespie, Mr. Barlow persuaded Mr. Finch to resign his directorship on his showing Mr. Finch that Trent Ltd.'s liabilities exceeded its income and that the company was in deficit to the extent of over £8,000. (I pause here to observe that in cross-examination in this connection Mr. Gillespie referred to Trent Ltd.'s balance sheet as at March 31st, 1979. He said that the figure of £12,660 against "Bank Loan (Secured)" under "Loan Capital" in the balance sheet related to Trent Ltd.'s indebtedness with Barlow & Co. This figure is reflected in the figure of £12,659.14 as at March 20th, 1979 in Trent Ltd.'s account in Barlow & Co.'s ledger.)

56 Mr. Gillespie said that Mr. Finch was brought into Trent Ltd. as a director in consideration of his having introduced Mr. Barlow and Mr. Gillespie to the purchase of property in Wigan in which the three of them had participated, through their company Arrow Holdings Ltd. Mr. Finch had subsequently involved himself with Mr. Barlow and Mr. Gillespie in other companies in Gibraltar which had involved him in expenditure and accordingly he was quite prepared to sever his connection with Trent Ltd.

57 Mr. Gillespie said that he was present when Mr. Barlow persuaded Mr. Finch to relinquish his directorship in Trent Ltd. He said that this meeting took place at Stockton Heath, Warrington. He said that Mr. Finch agreed to pay £300 to both Mr. Barlow and Mr. Gillespie in order to sever his connection with Trent Ltd. and his share in its liabilities.

58 Mr. Gillespie said he had been unable to find any record of Mr. Finch's payment of £300 in the accounts of Barlow & Co. He also said that he had no letter of resignation from Mr. Finch as required by reg. 72(f), Table A, Schedule 1 of the Companies Ordinance (*cap.* 30) as applied to Trent Ltd. by art. 1 of its articles of association. He said that it was left to Mr. Barlow to arrange for a return to be made notifying the

Registrar of Companies in Gibraltar of the change in directors caused by Mr. Finch's resignation. Such a return was not entered in the Companies Registry until March 16th, 1981. This gave the date of Mr. Finch's resignation as March 1st, 1981 and followed from Mr. Barlow's letter to Mr. P.J. Isola of Messrs. Isola & Isola of March 19th, 1981 informing Mr. Isola of Mr. Finch's resignation.

59 Mr. Gillespie said that Mr. Finch had in fact agreed to resign from the board of Trent Ltd. quite a long time before March 1st, 1981, some time, he thought, in 1979. He said that both he and Mr. Barlow were busy with their own affairs and administrative letters were frequently left until it was convenient to deal with them.

60 Mr. Barlow's evidence as to Mr. Finch's resignation is rather different and is far from clear. In the middle of para. 7 of his affidavit Mr. Barlow deposes as follows:

> "However, Mr. Finch did not withdraw from the venture (*i.e.* Trent Ltd.) and the formal recording of his resignation from the company arose as a result of Mr. Gillespie's verbal assurances to Barlow that Mr. Finch had resigned. Barlow accepted this and caused the appropriate notice to be given to the Registrar of Companies."

61 Mr. Gillespie in evidence, both in-chief and in cross-examination, denied that he had given any such assurances to Mr. Barlow. He said that Mr. Barlow was present when Mr. Finch agreed to resign and that this agreement was given in response to Mr. Barlow himself persuading Mr. Finch to resign.

62 Paragraph 7 of Mr. Barlow's affidavit continues as follows:

> "However, at a subsequent meeting between Barlow and Finch, the latter emphatically denied ever addressing a letter of resignation of directorship of the company, and Barlow can confirm that Finch did not on any occasion convey such an intention to him. As a consequence, Barlow assured Finch that he would endeavour to have him reinstated as a director of Trent as soon as possible. Therefore, at meeting No. 16 of the directors of Trent Ltd. as per minute No. 1 of November 16th, 1981, Mr. Finch was accordingly reappointed a director of Trent Ltd. and the Registrar of Companies was notified."

63 In evidence-in-chief, Mr. Barlow repeated what he had deposed to in his affidavit. In evidence, however, Mr. Barlow said that he had asked Mr. Finch why he had not consulted him before he sent his letter of resignation. To which, Mr. Barlow said, Mr. Finch, rather than "emphatically denying" ever having written a letter of resignation, as stated in the affidavit, had said that he could not remember ever having written a letter of resignation. Mr. Barlow said that he had found no letter of resignation on the company file and that he had never seen a letter of resignation from

Mr. Finch. And, indeed, it seems quite clear both from the evidence of Mr. Gillespie and Mr. Barlow that there never was any letter of resignation from Mr. Finch. If Mr. Gillespie's evidence is to be believed, Mr. Finch's resignation was given orally and it would appear that no steps were ever taken to comply with the company's articles requiring written notice of the resignation of a director.

64 Mr. Barlow went on to state that he knew nothing about Mr. Finch's having paid £300 to get out of Trent Ltd. He said he was astonished that any sensible person would be so stupid as to pay anything for getting out of a company of which he was not a member. However, he then went on to say that on some social occasion in England he remembered that Mr. Gillespie had told him something about Mr. Finch having given Mr. Gillespie £300 and he asked Mr. Finch whether the payment had been made by cash or cheque. Mr. Finch told him he had paid £300 in cash to Mr. Gillespie. Mr. Barlow said he asked Mr. Finch if this was a present to be shared by him and Mr. Gillespie, to which Mr. Finch had replied that it was not a present but that he had given the money as a gesture for expenses that had been met by Mr. Barlow and Mr. Gillespie and as a demonstration of his continued interest in the company.

65 Mr. Barlow said that he thought Mr. Gillespie had told him about Mr. Finch's payment of £300 *en passant*; that he had not attached any significance to it at the time and had just absorbed it as he did with other information which was communicated to him from time to time. Asked what was his reaction to Mr. Gillespie's evidence that Mr. Finch had paid the £300 to get out of Trent Ltd., Mr. Barlow said he found it very difficult to accept as the truth, but he added that as he had not been present he could not say dogmatically whether or not it was the truth.

66 In cross-examination, Mr. Barlow said that he could not say when he first heard of Mr. Finch's resignation. He thought it was shortly before he wrote to Messrs. Isola & Isola asking them to notify the registrar of companies of Mr. Finch's resignation as having occurred on March 1st, 1981. He had written to Messrs. Isola & Isola on March 10th, 1981 and he thought it was just a few days before that he had learned on the telephone from Mr. Gillespie of Mr. Finch's resignation. He said he did not go out of his way to find out from Mr. Finch about his resignation, and that it was two or three weeks after he had heard about it from Mr. Gillespie that he spoke to Mr. Finch about it. When Mr. Finch told him that he had not resigned and that there must be some misunderstanding, Mr. Barlow said he told Mr. Finch that he would do his best to get him reinstated. Mr. Barlow agreed that he did nothing to have Mr. Finch reinstated as a director until November 22nd, 1981 when Mr. Finch attended meeting no. 16 of the directors of Trent Ltd. Minute 1 of the meeting records that Mr. David Finch expressed his pleasure at being re-appointed a director of the

company with immediate effect and that he noted that the company lawyers were being notified accordingly.

67 Mr. Barlow said that Mr. Finch had telephoned him frequently after their conversation as to his resignation and that he had often brought up in these telephone conversations the question of his reinstatement as a director of Trent Ltd. On September 29th, 1981, Mr. Barlow wrote a note to Mr. Gillespie on Trent Ltd. The first two paragraphs of this note read as follows:

> "Further to mine of June 5th, I have ascertained during my recent visit to Gibraltar that the number of ordinary shares issued at the present time is as follows:
>
> Yolanda Harnamji—1
>
> Mary Theresa Edwards—1
>
> Framar Securities Ltd.—1,000
>
> De Vegas Securities Ltd.—1,000
>
> Total—2,002.
>
> The directors of the company are shown as T.H. Barlow and F.W. Gillespie. You may rely on my informing the auditor accordingly."

68 Mr. Barlow said that judging from that note, he must have called on Messrs. Isola & Isola during his visit to Gibraltar and looked at the records relating to Trent Ltd., possibly at the Companies Registry. He agreed that while he was in Gibraltar in September 1981, he did nothing about notifying Messrs. Isola & Isola or the Registrar of Companies that the notice of Mr. Finch's resignation filed in March 1981 had been issued in error, even though in checking the company's directors either at the offices of Messrs. Isola & Isola or at the Companies Registry he could not have failed to have been reminded of Mr. Finch's resignation. He denied that he omitted, while in Gibraltar, to take any steps towards having Mr. Finch reinstated as a director because he knew perfectly well that Mr. Finch had in fact resigned from the company. He agreed that it was remiss of him not to have taken any steps towards Mr. Finch's reinstatement but stated that he was under no pressure from Mr. Finch to have him reinstated. This appeared inconsistent with his earlier evidence, that Mr. Finch had frequently referred in telephone conversations to the question of his reinstatement.

69 Mr. Barlow denied that Mr. Finch's reinstatement as a director at the meeting of November 22nd, 1981, two days after Mr. Gillespie's departure from England, was anything but coincidental. I found Mr. Barlow's evidence that his knowledge of Mr. Finch's resignation came merely from a telephone call from Mr. Gillespie unconvincing, particularly in the light

of his evidence as to his knowledge that Mr. Finch had made a payment of £300 and his failure to do anything to have Mr. Finch reinstated until after Mr. Gillespie had left the country.

70 Minute 1 of the directors' meeting no. 16 of November 22nd, 1981 makes no mention whatsoever of the mistake in the acceptance of Mr. Finch's resignation alleged by Mr. Barlow, but merely records Mr. Finch's pleasure at being re-appointed a director and that the earliest reference in the minutes of the company to Mr. Finch's illegal removal appears in minute 6 of the extraordinary general meeting of April 19th, 1981. This lends some support, in my view, to the petitioner's contention that Mr. Finch's purported appointment as a director at meeting No. 16 was an entirely new appointment and not, as Mr. Barlow maintained, a reinstatement as a result of a mistaken removal from the board of directors. Mr. Finch himself, who might have been able to throw further light on the matter, has not given evidence. In all the circumstances, I find, on the balance of probabilities, that I am satisfied that Mr. Finch did resign from his directorship of Trent Ltd., albeit only orally and therefore not in compliance with the company's articles. It is quite clear, however, that his resignation was accepted and registered in the Companies Registry and in my view Mr. Finch's resignation, though not in writing, was nevertheless perfectly valid. See *Latchford Premier Cinema Ltd.* v. *Ennion* (4).

71 According to Mr. Gillespie, Mr. Finch severed all connection with Trent Ltd. on his resignation. Some support is given to Mr. Gillespie's evidence that Mr. Finch resigned from Trent Ltd. in 1979, in that allotments of 1,000 shares each in the company were made to Framar and De Vegas in November 1979 but not to Mr. Finch or any company of his. If, as Mr. Barlow alleged, no "real" money was paid for the shares allotted in November 1979, it is odd that no allotment of 100 shares was made to Mr. Finch, or a company of his, at the same time, were it indeed the case that he was still actively connected with Trent Ltd. as Mr. Barlow maintained. In any event, from March 1st, 1981, the date of Mr. Finch's resignation in Trent Ltd.'s file in the Companies Registry, until March 22nd, 1982, the date according to the return of allotments filed on April 20th, 1982 when 2,002 £1 shares in Trent Ltd. were allotted to Mrs. Barlow, the beneficial owners of Trent Ltd. were Framar, de Vegas, Mrs. Harnamji and Mrs. Edwards, each holding one share on behalf of the company's beneficial owners. It appears therefore that from at least March 1st, 1981, if not earlier, Trent Ltd. was beneficially owned by Framar and De Vegas, and controlled to all intents and purposes by Mr. Gillespie and Mr. Barlow.

72 Mr. Gillespie, through the petitioner, complains that because of the deterioration in relations between him and Mr. Barlow in the latter part of 1981, no sooner had he left England to take up employment in Saudi Arabia than Mr. Barlow purported to appoint Mr. Finch as a director in his

place. This prevented Mr. Gillespie from exercising any further control over the company. He was also replaced as a signatory of the company's bank mandate by Mrs. Barlow who was subsequently appointed a director of the company and allotted 2,002 £1 shares at par in the company, thus giving her and De Vegas, the Barlow's family company, a substantial majority shareholding in the company. He further complains that at the general meetings of the company on April 19th and 27th, 1982, Mr. Barlow as chairman rejected the petitioner's proxy and refused to let it exercise a vote at the meetings. At Mr. Barlow's instigation, the board of directors of the company resolved on an increase of the company's capital and hence a further dilution of the petitioner's shareholding in the company. Finally, he complains that Mr. Barlow refuses to account for the company's finances and intends to appropriate for his own use the assets of the company. He claims that in the circumstances it is just and equitable that Trent Ltd. should be wound up.

73 Mr. Barlow denies that he has ever been asked by Mr. Gillespie or the petitioner to account to them or either of them. No evidence of any such request has been adduced other than the requests by Mr. Gillespie, as a director of Trent Ltd., and the petitioner for an extraordinary general meeting of Trent Ltd., but these do not really constitute requests for accounts. Mr. Budhrani for the petitioner argues, however, that Mr. Barlow's second unjustified rejection of the petitioner's proxy at the company's annual general meeting of April 27th, 1982 and the adjournment of the meeting "pending the availability of the company's annual accounts for the year ending March 31st, 1982" constituted a clear refusal to account. It was to be borne in mind that the balance sheet dated November 22nd, 1981, for the year ending March 31st, 1981, although available had, as Mr. Barlow admitted, never been laid before the company at a general meeting. In all the circumstances it appears to me that this constitutes sufficient evidence to support the allegation of refusal to account contained in para. 22 of the petition.

74 As to the allegation that Mr. Barlow intends to appropriate the assets of the company for his own use, Mr. Gillespie referred to the resolution of the directors in minute 5 of meeting No. 16 of November 22nd, 1981 to transfer Trent Ltd.'s two Liverpool properties to Mr. Barlow's company Strait Shipping Co. Ltd. Mr. Gillespie adduced in evidence Mr. Barlow's letter to Mrs. Brabbins of November 24th, 1981, requesting that the tenants of Trent Ltd.'s Liverpool properties pay their rent to Strait Shipping Co Ltd. He referred to the directors' resolution in minute 5 of meeting no. 18 of December 26th, 1981 to take over Arrow Holdings Ltd.'s Wigan properties in return for guaranteeing that company's debts amounting to £50,000, and to minute 9 of the same meeting in which it was resolved to charter the *M.V. Chica* from Strait Shipping Co. Ltd. for five years from January 1st, 1982. Mr. Gillespie alleged that Arrow

Holdings Ltd. was an insolvent company, and that Trent Ltd. had no use for the *M.V. Chica.*

75 Mr. Barlow, in evidence stated that the resolution to transfer Trent Ltd.'s Liverpool properties had never been proceeded with; he had cancelled the instructions to Mrs. Brabbins contained in his letter; and that the charter by Trent Ltd. of the *M.V. Chica* had never been proceeded with. As regards the proposed increase in the company's capital, the subject of minutes 7, 14 and 15 of the directors' meeting No. 18 of December 26th, 1981, and the proposed allotment of 3,300 shares each to Mr. Finch, De Vegas and Framar on the company's capital being increased, Mr. Barlow stated that the company's capital had never been increased as proposed and that the allotments of shares proposed in those minutes had never been made.

76 I am satisfied that Mr. Finch's appointment as a director on November 22nd, 1981, and the proposal set out in minute 3 of meeting No. 16 of that date to remove Mr. Gillespie from the board of directors, were a clear indication of Mr. Barlow's intention to alter the underlying basis of Trent Ltd. as a partnership between himself and Mr. Gillespie. The appointment of Mrs. Barlow, rather than Mr. Finch, the newly appointed director, as an alternate signatory to Mr. Barlow in the new bank mandate in relation to the company's bank account, Mrs. Barlow's appointment as a director of the company and the subsequent allotment to her at par of 2,500 shares in the company all in my view indicated an intention by Mr. Barlow to obtain control of Trent Ltd. and deprive Mr. Gillespie of any control in the company's affairs and his company, Framar, of its half-share in the company.

77 In my view, the rejection by Mr. Barlow, as chairman of the extraordinary general meeting of the company, of Framar's proxy, for failing to comply strictly with the form of wording prescribed by the company's articles, while accepting invalid forms of proxy from Mr. Finch and Mrs. Barlow, and his further rejection of Framar's proxy at the annual general meeting, give a clear indication of Mr. Barlow's exclusion of Framar from having any say in the company's affairs. Mr. Barlow stated that he had acted as he did as he believed Mr. and Mrs. Gillespie intended to destroy Trent Ltd. and his wish was to protect the company. In my view, this was no justification for acting as he did.

78 I am also satisfied that the resolution to transfer to Strait Shipping Co. Ltd., Trent Ltd.'s two Liverpool properties, the subject of minute 5 of meeting No. 16 of November 22nd, 1981 and Mr. Barlow's letter to Mrs. Brabbins of November 24th, 1981 asking her to obtain from the tenants of Trent Ltd.'s Liverpool properties new standing orders in favour of Strait Shipping Co. Ltd., clearly indicated an intention on Mr. Barlow's part to

transfer assets from Trent Ltd. to his own company Strait Shipping Co. Ltd.

79 It appears to me that the resolution to charter the *M.V. Chica* owned by Strait Shipping Co. Ltd. to Trent Ltd. recorded in minute 9 of meeting No. 18 of December 26th, 1981 may well, as the petitioner alleges in para. 23(d) of the petition, have been inspired by the same intention on the part of Mr. Barlow to transfer assets from Trent Ltd. to his own company. Similarly, it may well be, in the absence of any evidence to the contrary, that the resolution recorded in minute 5 of the same meeting, to guarantee the debts amounting to £50,000 of Arrow Holding Ltd., which the petitioner in para. 23(c) of the petition alleges was insolvent, was intended as a method of divesting Trent Ltd. of its assets.

80 Insofar as the resolutions contained in minutes 7 and 15 of meeting No. 18 are concerned, to increase the company's share capital and to allot shares to De Vegas, Belmont, Framar, Mrs. Barlow and Capt. Huysmans, clearly would have had the effect, if carried out, of reducing the petitioner's overall share in the company from 50% to 25% while increasing that of the Barlows to 55%. In the course of this evidence, Mr. Barlow stated that whatever might have occurred since Mr. Gillespie's departure from England, he had no wish to deprive Mr. Gillespie of his due share in Trent Ltd. He said that if Mr. Gillespie were to offer payment for a full one-third share in the company, he would have no objection in principle to admitting Mr. Gillespie as full participant in the company.

81 Mr. Gillespie's claim, however, is for a half-share in the company. He claims, through the petitioner, that what was the petitioner's half-share in the company has now been diluted to a fifth as a result of the allotment, without his or the petitioner's consent, of 2,500 shares in the company to Mr. Barlow. In any event, he claims that Mr. Barlow's actions and his manipulation of the affairs of Trent Ltd., have been such since his departure from Gibraltar in November 1981 as to destroy all the previous confidence and trust he had in his former partner.

82 In these circumstances, Mr. Gillespie says it is impossible for him to consider Mr. Barlow's offer, even if it were an offer, to give him a one-third share in Trent Ltd. as confidence on his part in his fellow partner, a prerequisite of such acceptance, is now totally lacking. The only possible solution, the petitioner claims, is that the company be wound up and all its acts, whether by directors or shareholders at a general meeting, from November 20th, 1981, be declared unlawful, null and void

83 Mr. Stagnetto for De Vegas submits that to wind up Trent Ltd. will solve nothing. The company is likely not to be able to pay its debts, and in any event the allegations contained in the petition have not been proved. He submits that it is not open to the petitioner to petition the court for the winding up of Trent Ltd. having regard to the fact that it was Mr.

Gillespie's misconduct in suddenly leaving for Saudi Arabia that caused the breach in confidence between him and Mr. Barlow and caused the latter to take the actions he has.

84 Mr. Stagnetto drew my attention to the following passage in the speech of Lord Cross in *Ebrahimi* v. *Westbourne Galleries Ltd.* (2) ([1973] A.C. at 387):

> "A petitioner who relies on the 'just and equitable' clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his misconduct he cannot insist on the company being wound up if they wish it to continue."

85 Mr. Stagnetto also referred to Plowman, J.'s judgment in *In re Lundie Bros. Ltd.* ([1965] 1 W.L.R. at 1055–1056) citing a paragraph from the judgment of Lord Cozens-Hardy, M.R. in *In re Yenidje Tobacco Co. Ltd.* ([1916] 2 Ch. at 430):

> "All that is necessary is to satisfy the Court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it."

"As I understand those last words," Plowman, J. added ([1965] 1 W.L.R. at 1056), "they mean that such impossibility has not been caused exclusively by the person seeking to take advantage of it."

86 Mr. Budhrani submitted that Mr. Gillespie's departure to Saudi Arabia did not constitute misconduct by a partner so as to debar him from coming to equity, and that in any event his departure did not justify the proposed depletion of Trent Ltd.'s assets as revealed by the minutes of the directors' meetings.

87 I have come to the conclusion that Mr. Gillespie's departure to Saudi Arabia was not an act of misconduct so as to debar the petitioner coming to equity. It is not disputed that Mr. Gillespie wrote to Mr. Barlow on the day of his departure telling him he was leaving and informing him what he had done with certain papers relating to the private bank in which he and Mr. Barlow were partners. Mr. Barlow stated that on picking up the papers he found nothing but irrelevant correspondence and a ledger from which most of the pages had been removed. He said that there were many other documents relating to the bank, such as paying-in books and old cheque books, which he had still never received in spite of requests that they be returned to him. Quite clearly, as Mr. Budhrani has conceded, this was unfair on Mr. Barlow and clearly caused him great inconvenience. However, Mr. Barlow also stated that well before November 1981 Mr. Gillespie had intimated to him that it was possible he would be leaving

Gibraltar, and this had been confirmed by Mrs. Gillespie saying that she had no intention of living in the United Kingdom or Gibraltar.

88 Mr. Barlow said that he had written to Mr. Gillespie in June 1981 asking him what provision he was going to make for a successor to the various offices he held, but that he had received no reply to his inquiry. He said that although Mr. Gillespie had written to him once or twice before he left, none of these letters had said anything about his actual departure. As regards the affairs of Trent Ltd., Mr. Barlow deposed that Mr. Gillespie had done little to develop and expand the interests of the company and in evidence he said that Mr. Gillespie's departure made no difference to the administration of Trent Ltd.'s Liverpool properties, as it had been arranged before his departure that Mrs. Brabbins should take over the administration of those properties.

89 It appears, therefore, that Mr. Gillespie's departure had little effect as far as Trent Ltd. was concerned, but that it did affect, in particular, the working of the Iberian Mercantile Banking Co. in which he and Mr. Barlow were in partnership and the books of which Mr. Gillespie was at that time keeping, and consequently his relationship with Mr. Barlow. In these circumstances, and having regard to the fact that it is not disputed that the relations between the two men had been deteriorating since at least April 1981, and that Mr. Barlow was aware of the possibility of Mr. Gillespie leaving Gibraltar from June 1981, it does not appear to me that Mr. Gillespie's departure, sudden as it was, can be regarded as an act of misconduct on the part of Mr. Gillespie to preclude his company coming to equity and petitioning this court to wind up Trent Ltd. on the grounds that it is just and equitable to do so.

90 I turn now to what appears to me to be the relevant authorities. In *In re Yenidje Tobacco Co. Ltd.* (7), two men trading separately as tobacconists agreed to amalgamate their businesses and in order to do so formed a private limited company in which they were the only shareholders and directors. Differences arose between the directors leading to one of them bringing an action against the other. They became so hostile that they would not speak to one another, though the company continued to transact business and to make large profits. One partner finally presented a petition alleging that a complete deadlock had arisen, that the substance of the company had gone and that it was "just and equitable" within s.129 of the Companies (Consolidation) Act 1929, that the company should be wound up. It was held that had the case been one of a partnership, there would clearly have been ground for dissolution and that the same principle ought to be applied where there was in substance a partnership in the guise of a private company. Lord Cozens-Hardy, M.R. said ([1916] 2 Ch. at 432):

> "I think that in a case like this we are bound to say that circumstances which would justify the winding up of a partnership between

these two by action are circumstances which should induce the Court to exercise its jurisdiction under the just and equitable clause and to wind up the company."

91 In *In re Davis & Collett Ltd.* (1), the petitioner and respondent were equal shareholders and the sole directors of a private company. The respondent irregularly caused to be appointed two further directors and to have himself appointed managing director of the company, and finally turned the petitioner out of the room he was occupying in the company's offices. The petitioner sought the winding up of the company on the ground that it was just and equitable that it be wound up. Crossman, J., applying the principle laid down in *In re Yenidje Tobacco Co. Ltd.*, held that this was a case where it was just and equitable that the company should be wound up. He said ([1935] Ch. at 702): "I find that this is a case where, if it was a case between partners, I should be bound to come to the conclusion that there ought to be a dissolution of the partnership."

92 In *In re Lundie Bros. Ltd.* (5), the petitioner was one of three directors in a printing company, each having a shareholding and voting rights, the company being in substance a partnership of three. The petitioner, who was the chairman with a casting vote, was ousted from his position of chairman by the other two directors. Subsequently his employment as a working director was terminated, and following on that a fresh mandate was given to the bank in regard to cheques drawn on the company's account, making it unnecessary for such cheques to have the petitioner's signature. Plowman, J., applying the principles laid down in *In re Yenidje Tobacco Co Ltd.* (7) and *In re Davis & Collett Ltd.* (1), said ([1965] 1 W.L.R. at 1056–1057):

"Bearing in mind those principles, if this were a partnership and not a company I should have no hesitation in concluding that the petitioner is entitled to an order for dissolution on the ground that the termination of his employment as a working partner was an unjustified exclusion of him from the partnership business . . . I am satisfied that the petitioner has made out a case for saying that he is entitled to a winding up order on a just and equitable ground."

93 In *Ebrahimi* v. *Westbourne Galleries Ltd.* (2) the House of Lords confirmed the principles laid down in *In re Yenidje Tobacco Co. Ltd.* and the succeeding cases in which those principles were applied. In this case the appellant and a Mr. Nazar carried on in partnership a business as carpet dealers. As partners they had an equal share in the management and profits. In 1958 they formed a company to take over the business. They became its first directors and each had an equal shareholding of 500 shares. Soon afterwards Mr. Nazar's son, George, became a director, and the appellant and Mr. Nazar each transferred 100 shares to George Nazar. Differences arose between the appellant and the Nazars, and in 1968, at a

general meeting, the Nazars, by an ordinary resolution which was legally effective under s.184 of the Companies Act 1948 and the company's articles, removed the appellant from the office of director and thereafter excluded him from any share in the conduct of the company's business. The appellant petitioned *inter alia* for an order that the company be wound up on the ground that it was just and equitable to do so.

94 Lord Wilberforce, after reviewing the authorities, said ([1973] A.C. at 378–380):

> "My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.
>
> It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii)

restriction on the transfer of the members' interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many cases do, to 'quasi-partnerships' or 'in substance partnerships' may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. And in many, but not necessarily all, cases these has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

95 In the present case, it is clear from the evidence and it is not disputed that Mr. Barlow and Mr. Gillespie had been partners together for many years. In so far as Trent Ltd. is concerned, it is clear that Mr. Barlow and Mr. Gillespie, as well as being in partnership in various ventures, were in association in business with Mr. Finch. On August 10th, 1977, all three men were appointed directors of Trent Ltd. in place of the two original directors. It does not appear from the evidence of Mr. Barlow that Mr. Finch was brought into Trent Ltd. solely on a commercial basis. The three men had been involved together in other property ventures and, it appears to me, their association in Trent Ltd. was also based on a personal relationship involving mutual confidence in one another.

96 As I have said earlier, I am satisfied that at some stage between January 23rd and March 16th, 1981, Mr. Finch resigned from the board of directors of Trent Ltd. I am also satisfied that the payment of £300, made by him, was to sever his connection with Trent Ltd. It appears to me that Mr. Finch's resignation may have occurred as early as the time of the allotment to De Vegas and Framar of 1,000 shares each in Trent Ltd., the resolution relating to which appears in the minutes of the directors' meeting of November 29th, 1979. Mr. Finch's name continues to appear as a director in the company records up to February 27th, 1981, but we know that Mr. Barlow only notified Messrs. Isola & Isola of Mr. Finch's resignation (with effect from March 1st, 1981) by letter of March 10th,

1981. Whatever the date Mr. Finch orally resigned from the board of directors, it is clear that the sole directors of Trent Ltd. were for a period Mr. Barlow and Mr. Gillespie alone, and that the 2,002 issued shares in the company were held during that period, as to the 2 shares held by Mrs. Harnamji and Mrs. Edwards, in trust for the beneficial owners of the company, and as to the 1,000 shares by Mr. Barlow's family company, De Vegas, and the remaining 1,000 shares by Mr. Gillespie's family company, Framar.

97 Notwithstanding that the majority of the shares in Trent Ltd. were held in equal shares by these two subsidiary companies rather than by individuals, I consider that Trent Ltd. was during this period, in substance, a partnership between Mr. Barlow and Mr. Gillespie based on their long-established personal relationship and mutual confidence in one another. In my view, the original relationship of partner and partner between Mr. Barlow and Mr. Gillespie, and the obligations that entailed, continued to underlie the company structure of Trent Ltd. But, as Lord Wilberforce said (*ibid.*, at 380): "A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations may come in."

98 Lord Wilberforce continued as follows ([1973] A.C. at 380):

> "My Lords, this is an expulsion case, and I must briefly justify the application in such cases of the just and equitable clause. The question is, as always, whether it is equitable to allow one (or two) to make use of his legal rights to the prejudice of his associate(s). The law of companies recognizes the right, in many ways, to remove a director from the board. Section 184 of the Companies Act 1948 confers this right upon the company in general meeting whatever the articles may say. Some articles may prescribe other methods: for example, a governing director may have the power to remove (compare *In re Wondoflex Textiles Pty. Ltd.* . . .). And quite apart from removal powers, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote. In all these ways a particular director-member may find himself no longer a director, through removal, or non-re-election: this situation he must normally accept, unless he undertakes the burden of proving fraud or *mala-fides*. The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation of his fellow member(s) in good faith, or confidence, that so long as the business continues he shall be entitled to management participation, an obligation so basic that, if broken, the conclusion must be that the association must be dissolved. And the principles on which he may do so are those worked out by the courts in partnership

cases where there has been exclusion from management (see *Const* v. *Harris* . . .) even where under the partnership agreement there is a power of expulsion . . ."

99 I have found that Mr. Gillespie's sudden departure to Saudi Arabia in November 1981 did not amount to an act of misconduct on his part so as to debar him through Framar, the petitioning company, seeking the winding-up of Trent Ltd. under the just and equitable clause. It was open to Mr. Barlow at that stage, to suggest to Mr. Gillespie in the circumstances that Trent Ltd. be wound up. It was not open to Mr. Barlow, as I see it, no sooner had Mr. Gillespie, his co-director, left the country to appoint another director in Mr. Gillespie's place without the latter's consent. I find the appointment of Mr. Finch as a director of Trent Ltd. on November 22nd, 1981, the subsequent appointment on December 26th, 1981 of Mrs. Barlow as a director and the company's allotment of 2,002 shares to Mrs. Barlow, whereby Framar's shareholding in the company was substantially diluted, to be invalid. In my view, these were acts incompatible with the original partnership obligations between Mr. Barlow and Mr. Gillespie which underlay the establishment of Trent Ltd.

100 Mr. Stagnetto has referred me to *In re Fildes Bros. Ltd.* (3), in which Megarry, J. held that the question of whether it was just and equitable to wind up a company under the "just and equitable clause" could only be answered on the facts existing at the time of the hearing. Mr. Stagnetto submitted that as Mr. Barlow had stated in evidence that he would be prepared in principle, on consultation with Mr. Finch, to admit Mr. Gillespie as a third participant in the company, on his paying for such a share, this indicated a change in the circumstances obtaining at the date the petition was filed. He submitted that while at that date it might have been just and equitable that the company should have been wound up, this, as a result of the change in Mr. Barlow's attitude, was no longer the case. As I understand him, Mr. Stagnetto is suggesting that Mr. Barlow's attitude is now one of letting bygones be bygones and that he, Mr. Finch and Mr. Gillespie should all start again as equal shareholders in Trent Ltd. upon each of them paying the full amount for his one-third share.

101 As Mr. Budhrani has pointed out, however, Mr. Gillespie's claim is for a half-share in Trent Ltd., and in any case, the mutual trust between Mr. Barlow and Mr. Gillespie that underlay their relationship in Trent Ltd. has clearly been completely destroyed by the events that have occurred since November 20th, 1981. Stemming from Mr. Barlow's appointment of Mr. Finch as a director on November 22nd, 1981, there is no doubt in my mind that the subsequent resolutions of the directors, the appointment of Mrs. Barlow as a director and the allotment to her of 2,500 shares in Trent Ltd., can be attributed to Mr. Barlow as chairman and, in the absence of Mr. Gillespie in Saudi Arabia, the moving spirit of the company. Lord Cross in *Ebrahimi* v. *Westbourne Galleries Ltd.* (2), in commenting on the

decision in *In re Yenidje Tobacco Co. Ltd.* (7) said ([1973] A.C. at 383–384):

> "The reason why the petitioner succeeded was that the court thought it right to make the order which it would have made had Mr. Rothman and Mr. Weinberg been carrying on business under articles of partnership which contained no provision for dissolution at the instance of either of them. People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the relationship should be ended—unless, indeed, the party who wishes to end it had been solely responsible for the situation which has arisen. The relationship between Mr. Rothman and Mr. Weinberg was not, of course, in form that of partners. They were equal shareholders in a limited company; but the court considered that it would be unduly fettered by matters of form if it did not deal with the situation as it would have dealt with it had the parties been partners in form as well as in substance."

102 In my view, the circumstances of this case are such as to satisfy me that I should exercise my jurisdiction under s.156(f) of the Companies Ordinance to wind up this company. I find that the complaints set out in the petition have substantially been established and I am satisfied that it is just and equitable that Trent Ltd. be wound up.

103 Accordingly, I order that Trent Ltd. be wound up. In addition, as a request by counsel for the petitioner, I direct that all the acts of the company since November 20th, 1981, whether by the directors or at general meeting of the shareholders, be deemed to be unlawful and null and void.

Order accordingly.
