

VENKATEA- Judge was wrong in dismissing the plaintiffs' suit without taking
 MIAH evidence and recording findings, and we accordingly set aside his
 v. decree and remand the case to him for disposal according to law
 RAJAH The costs in this Court will abide and follow the result.
 VENKATA
 RANGIAH
 APPA ROW.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

1907.
 September.

VAIDISWARA AYYAR AND OTHERS (CONTRIBUTORIES),
 APPELLANTS,

v.

SIVA SUBRAMANIA MUDALIAR AND ANOTHER
 (PETITIONERS AND OFFICIAL LIQUIDATOR), RESPONDENTS.*

Indian Companies Act, Act VI of 1892 s. 61—Contributory liable in respect of unpaid portions of calls even when the company's right to recover them is barred by limitation.

Section 61 of the Indian Companies Act creates a new liability in the shareholders in respect of unpaid calls; and such calls can be recovered though barred by limitation before the order for winding up was made.

THE Tinnevelly Sarangapani Sugar Mills Company was ordered to be compulsorily wound up and an official liquidator was appointed. A list of contributories was submitted to the Court and the appellants who were placed on the list applied to the Court to be removed from the list on the ground, *inter alia*, that they had committed default in respect of calls prior to 1897, and proceedings in winding up having commenced only after the lapse of more than six years after such default, the right of the Company to recover such calls was barred at the commencement of the winding up and the official liquidator was not in a better position than the Company. This application was rejected by the District Judge.

The contributories appealed to the High Court.

K. Ramchandra Ayyar for P. B. Sundara Ayyar for appellant.

Mr. K. Ramchandra Shenai for respondents.

* Civil Miscellaneous Appeal Nos. 159 to 162 of 1906, presented against the order of C. G. Spencer, Esq., District Judge of Tinnevelly, dated 16th October 1906, declining to exclude the names of the appellants in these appeals from the list of contributories passed in the course of the proceedings in Civil Miscellaneous Petition No. 265 of 1903.

*JUDGMENT.—We agree with the District Judge that on a VAIDISWARA
 construction of the Articles of Association a resolution of the
 Directors was necessary to effect a forfeiture of the appellants' Ayyar
 v.
 Siva
 Subramania
 Mudaliar.
 shares, and there is no proof or indication that there was any such
 resolution. The appellants, therefore, continued to be members
 of the Company until the date of the winding up. That being
 so, section 61 of the Indian Companies Act renders them liable to
 the extent of the unpaid portions of their shares. This section
 corresponds with section 38 of the English Companies Act of 1862,
 the effect of which was fully considered by Sir George Jessel,
 M.R. in *re Whitehouse & Co.* (1). It was there pointed out
 that the liability under section 38 was a new liability and it
 was added "it is true that a call made before the winding up
 is a debt due to the Company, but that does not affect the
 new liability to contribute." Sir Charles Sargent in a case,
 precisely on all fours with the present case, after referring to the
 decision of the Master of the Rolls in that case added "Nor
 can it in this view of the section affect the liability created by
 the section that the debt was barred" (*Sorabji Jamssetji v.*
Ishwardas Juggiwandas(2)). We think that this view of the law is
 correct, and that even though the recovery of the unpaid portions
 of the calls might have been barred under article 112 of the
 Limitation Act, if the Company had sued for them, yet this does
 not affect the new liability created by section 61 when the
 Company has gone into liquidation.

We therefore dismiss the appeals with costs.

(1) L.R., 9 Ch.D., 595.

(2) I.L.R., 20 Bom., 654 at p. 658.