

were going on, and then failed to appear and prosecute his case.

I therefore would answer both the points referred to the Full Bench in the negative.

BEASLEY, J.—I agree.

MADHAVAN NAIR, J.—I agree.

WALLACE, J.—This opinion will be sent back to the Division Bench of which I shall be a member. The matter of costs will be decided then.

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DARAM
PILLAI
v.
PICHUVIER.
WALLACE, J.

K.R.

APPELLATE CIVIL.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,
and Mr. Justice Jackson.*

IN THE MATTER OF THE MADRAS NATIVE PERMANENT FUND, LIMITED, IN LIQUIDATION, BY MESSRS. FRASER AND ROSS, LIQUIDATORS,
APPELLANTS,

1928,
February 7.

v.

T. S. NATESA SASTRI AND 8 OTHERS, RESPONDENTS.*

Indian Companies Act (VII of 1913)—Nidhi—Memorandum of Association—Object, to advance money to help shareholders to acquire property—Articles of Association—Shares of Rs. 100 each—Shareholders enabled to sever connexion with company and end liability on payment of Rs. 84 per share—If intra vires of the Act—If such shareholders liable as contributories on liquidation.

Where the effect of the Articles of Association of a Nidhi, started, as set out in the Memorandum of Association, with the object of helping shareholders to acquire property, was to

* Original Side Appeal No. 30 of 1928.

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enable persons, who had subscribed for shares of Rs. 100 each, to sever their connexion with the company and end all their liability with regard to it, when they had paid up Rs. 84 per share, *held*, that such a course would be *ultra vires* the Memorandum of Association, and would constitute a reduction of capital without the assent of Court, and thus directly contravene the provisions of the Indian Companies Act, and that those persons will, on liquidation, be liable as contributories.

ON APPEAL from the judgment of Mr. Justice WALLER, dated 20th January 1928, and passed in the exercise of the Ordinary Original Civil Jurisdiction in O.P. No. 75 of 1927, holding that the 357 persons mentioned in the liquidators' list are not contributories within the meaning of the Indian Companies Act.

The Nidhi was registered as a limited liability company under the Indian Companies Act, 1864. According to the Memorandum of Association the object with which the company was started was to make advances to shareholders to enable them to purchase property, etc. By the Articles of Association of the company a shareholder was to pay Re. 1 per share per month for 84 months, at the end of which period he would be entitled to a payment of Rs. 100 per share. The Articles of Association also provided that a shareholder might at any time withdraw from the company on the ground of loss of employment, etc., in which case the amount paid by him on the shares had to be refunded to him. After an order directing the liquidation of the Nidhi was passed, the liquidators applied to the Court for an order that those shareholders of the company who had withdrawn from the company and had been paid off under the provisions of the Articles of Association should be included in the list of contributories. Mr. Justice WALLER, who heard the application, held that those shareholders were not contributories. Against that order, the liquidators filed the present appeal.

O. T. Govindan Nambiar for appellants.—The provisions for the withdrawal of a shareholder from the company and the termination of his liability in relation thereto are *ultra vires* of the Memorandum of Association and the Indian Companies Act, inasmuch as they amount to a reduction of capital without sanction of Court. Those persons who had thereby ceased to be members are still shareholders in law, and are liable to be included in the list of contributories. See *Bellerby v. Rowland and Marwood's Steamship Company, Limited*(1).

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S. Duraiswami Ayyar for respondents.—The company consists of two branches, the loan branch and the deposit branch. All the debts of the company are of the deposit branch, and the debts of that branch are not binding on the company. The company had no power to open the deposit branch. The proposed contributories could not be made liable for those debts.

O. T. Govindan Nambiar in reply.—The question as to whether the debts in the deposit branch are binding on the company or not has no bearing on the issue before the Court. Even if the company had no debts, the costs of winding up have to be paid and for that purpose at least the rights and liabilities of contributories have to be settled. The list of the company's debts has already been settled by the Court, and a person who is not in the list of contributories cannot question their binding character. Once a debt has been admitted it can only be expunged on an application by the Official Liquidator or by a contributory. The respondents cannot now question the debts unless they are placed in the list, see *Halsbury's Laws of England*, Vol. 5, p. 523.

JUDGMENT.

This matter arises out of the liquidation of the Madras Permanent Fund, Limited, which is what is commonly called a *nidhi*. The greatest difficulties arise when these funds are turned into limited companies because their articles are usually drawn without regard either to the provisions of the memorandum or to the general law embodied in the

(1) (1902) 2 Ch., 14.

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Companies Act. The effect of the articles relied upon in this case was shortly to enable persons who had subscribed for shares of Rs. 100 to sever their connection with the company and end all their liability when they had paid up Rs. 84. That appears to us not only to be *ultra vires* of the memorandum but to be a reduction of capital without the assent of the Court which is directly forbidden by the Indian Companies Act. That being so, it is clear that these 357 persons mentioned in the liquidators' list should be declared to be contributories. Mr. S. Doraiswami Ayyar argued a wider ground before us, namely, that the debts which it was sought to make these persons liable to contribute to liquidate were debts themselves incurred *ultra vires* of the powers of the fund. That may be right or wrong; but it is obvious that it is premature to discuss it at this stage. When these persons are called upon to contribute to the liquidation of definite debts, it will be open to them to argue that the debts which they are called upon to contribute to pay are *ultra vires* of the powers of the company, that is to say, are not in law debts at all. That must be dealt with on its merits as each case arises. It is not a matter with which we can deal now.

Costs as between attorney and client out of the estate.

King & Partridge, Attorneys for appellants.

B.C.S.