MISCELLANEOUS CIVIL.

Before Mr. Justice Ashworth.

IN THE MATTER OF ALLAHABAD TRADING AND BANKING CORPORATION, LIMITED.* 1927 October, 28.

Act No. VII of 1913 (*Indian Companies Act*), *section* 171—*Company—Liquidation—Decree illegally obtained against company in liquidation—Refusal of liquidator to pay.*

A company (bank) went into voluntary liquidation, and two liquidators were appointed, but one of them refused to accept the office. On July 17, 1924, an order was passed by the High Court directing that the liquidation be continued as a liquidation under the supervision of the court. On May 21, 1926, this order was superseded by a further order directing that the liquidation should be by the court. On July 10, 1924, certain creditors brought a suit against two of the directors, the manager, and the bank—described as in voluntary liquidation—through one of the liquidators, and obtained a decree (October 31, 1924) against all the four defendants. The decree was satisfied in part by the two directors in their personal capacity. Later the balance of the decree was claimed against the official liquidator, who refused to pay.

Held, that the liquidator was right in refusing, inasmuch as the decree was not binding on the company in liquidation, first, because it was in contravention of section 171 of the Indian Companies Act, 1913, and, secondly, because the liquidator against whom it was framed had no authority to act as a liquidator after his co-liquidator had refused to act.

The bar imposed by section 171 of the Indian Companies Act, 1913, cannot be waived by a liquidator. *Narasimham* v. *Subramaniam* (1), referred to.

THIS was an application under section 183(5) of the Indian Companies Act, impugning the action of the liquidator in rejecting the applicant's claim for payment of the amount due under a decree. The facts of the case are fully stated in the judgement of the Court.

*Miscellaneous Case No. 340 of 1924.
(1) (1927) A.I.R., (Mad)., 201.

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Mr. *A. Sanyal*, for the applicant.

Babu *Harendra Krishna Mukerji* (Official Liquidator), for the opposite party.

ASHWORTH, J. :—This is an application under section 183(5) of the Indian Companies Act, 1913, on the part of an alleged creditor of the Allahabad Union Bank, Limited, now under liquidation by the court, asking that a decision of the Official Liquidators (no date is mentioned) rejecting the petitioners' claim to realize against the company in liquidation the balance of a decretal sum due under a decree of the Subordinate Judge of Allahabad passed on the 31st of October, 1924, should be reversed.

The facts of the case are as follows. The Allahabad Union Bank, Limited (hereafter called the company in liquidation) by a resolution of the shareholders entered into voluntary liquidation on the 29th of June, 1924. The Liquidators appointed were Messrs. S. K. Day and Company of Calcutta and Mr. Kashi Narain Malaviya, a Vakil of the Allahabad High Court, who were appointed as joint Liquidators on a remuneration of Rs. 2,000. Mr. Malaviya never accepted the appointment. On the 17th of July, 1924, an order was passed by the Company Judge of this Court, directing the voluntary liquidation to be continued under the supervision of this Court. It may be remarked, although this fact is immaterial to the present question, that two years later, viz., on the 21st of May, 1926, this order was superseded by an order that liquidation should be by the court. Before the order of the 17th of July, 1924, the present petitioners brought a suit on the 10th of July, 1924, against two of the Directors and the Manager, Kedar Nath Mitter and the Allahabad Union Bank, Limited, which was described as being under voluntary liquidation through S. K. Day, Liquidator, at least such is stated in the present application. On the 31st of October, 1924, a decree for

Rs. 3,099 with costs and future interest was passed against all four defendants by the Subordinate Judge. The sum of Rs. 2,401-11-0 has been realized from the two Directors in their personal capacity. The Official Liquidators appointed by this Court refused to entertain the claim for the balance of Rs. 1,399-15-0. Their reasons appear to be as follows. Under section 171 of the Indian Companies Act (Act VII of 1913) the suit in pursuance of which the decree was obtained could not be proceeded with after the 17th of July, 1924, because on that date liquidation was under the supervision of the court, and it is not contested that section 171 applies to such liquidation as well as to liquidation by the court. The Official Liquidators, therefore, hold that the decree obtained is a nullity as against the company in liquidation. As regards the suggestion that the decree may be treated as a nullity, but the claim as a claim on the promissory note still exists, their contention is that the decree still operates as against the two Directors personally and consequently it cannot be said that the decree is altogether a nullity. So long as a decree, operative in part, subsists on the basis of the promissory note, it is impossible to treat the promissory note as in existence.

The petitioners impugn these arguments as follows. They first maintained that the suit against the bank was at any rate in order from the 10th up to the 17th of July, 1924. Even this contention seems open to question, and, if it were necessary, would be decided by me against the applicants. The suit was brought against the bank through S. K. Day, Liquidator. Mr. S. K. Day could in no way at that date be considered a Liquidator. In the first place it was not S. K. Day personally who was appointed Liquidator by resolution but S. K. Day and Co. In the second place, S. K. Day and Co. were not appointed Liquidators alone, but jointly with Mr. Malaviya. Where two persons are appointed Liquidators jointly, it

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is my view that the refusal of one of them to act renders abortive the resolution appointing them. One of them cannot take up the work alone, it clearly being the intention of the shareholders that they should act jointly and not separately. Then it is said that if the decree against the company in liquidation be abortive, the promissory note will, so to speak, revive. For the reasons urged by the Liquidators this argument is impossible. The decree is not altogether abortive. It subsists against the two Directors personally. Lastly it is urged that section 171 of the Companies Act will not operate as a bar to the validity of the decree against the bank because the Liquidators must be deemed to have waived this invalidity. It is said that the present Official Liquidators are but the legal successors of S. K. Day and he never raised any objection to the progress of the suit against the bank. This argument is met partly by the fact that, as held above, Mr. S. K. Day had no *locus standi* as a Liquidator. Apart from this I find no authority for holding that the Liquidators could waive the bar created by section 171 in such a way as to require them to admit a claim under decree rendered inoperative by that bar. I have been referred to a decision by a single Judge of the Madras High Court reported in *Narasimham* v. *Subramaniam* (1), where it was held that a decree obtained against a certain insolvent or certain insolvents would not be inoperative by reason of the requisite leave to sue not having been obtained, if such insolvent did not raise the plea at the time of the suit. This decision is not relevant. It was distinctly held in that case that the Official Receiver was not made a party to the suit and was, therefore, not bound by the decree. It was merely held that the decree might operate as against the insolvent. The finding that the Official Receiver was not bound by the decree is one that is destructive of the present application. In like manner the Official Liquidators in this

(1) (1927) A.I.R., (Mad.), 201.

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case are entitled to disown the decree. So the decision relied on, instead of being in favour of the petitioners, is against them. The counsel for the petitioners with great pertinacity maintains that his clients should be allowed to produce their account books to prove the claim. For the reasons set forth above by me there does not now exist any claim except the decree. In refusing to satisfy the decree the Liquidators have been held to be justified and there is nothing else in existence creating any liability against the insolvent company.

For the above reasons I hold that this application must fail. As an Official Liquidator has argued the case himself I make no order as to costs.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Ashworth.

MUHAMMAD SHOAIB KHAN (PLAINTIFF) v. ZAIB JAHAN BEGAM AND OTHERS (DEFENDANTS).*

1927
November, 4.

Muhammadan law—Dower—Nature of widow's possession in lieu of dower.

The right of a Muhammadan widow is founded on her power as creditor for her dower, to hold the property of her husband, of which she has lawfully and without force or fraud obtained possession, until her debt is satisfied. But it does not follow from this that unless and until the widow actually enters into possession of the estate on the express assertion that she is taking possession in lieu of her dower debt, she cannot subsequently be allowed to raise such plea. *Mussumat Bebee Bechun* v. *Sheikh Hamid Hossein* (1), *Ali Bakhsh* v. *Allahdad Khan* (2) and *Ramzan Ali Khan* v. *Asghari Begam* (3), followed.

*First Appeal No. 69 of 1926, connected with First Appeal No. 388 of 1924, from a decree of Kashi Prasad, Additional Subordinate Judge of Aligarh, dated the 14th of May, 1924.

(1) (1871) 14 Moo. I. A., 377. (2) (1910) I.L.R., 32 All., 551.
(3) (1910) I.L.R., 32 All., 563.