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conviction under section 62(*b*), although it can undoubtedly be taken into account in passing sentence. In the circumstances of this case we think that as the stamp duty on two of the documents which form the subjects of the charges amounted to only two annas, only light fines will be necessary.

We hold therefore that the documents Exhibits C and D are receipts and that the conviction of the accused under section 62(*b*) of the Stamp Act read with section 109 of the Indian Penal Code in respect of these two documents must be upheld. We consider that a sentence of Rs.5 fine in respect of each of these two documents will be sufficient.

MISCELLANEOUS CIVIL

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Young

1933 *November*, 24

COMMISSIONER OF INCOME-TAX (APPLICANT) *v.* OFFICIAL LIQUIDATORS, AGRA SPINNING AND WEAVING MILLS CO. (OPPOSITE PARTY).*

Income-tax Act (XI of 1922), sections 2(6), 2(12), 3, 22(1) and 41—Company in liquidation—Business carried on by official liquidators for beneficial winding up—Liquidators liable to furnish income-tax return in respect of such business—"Manager"—Right of the Crown to recover dues—Companies Act (VII of 1913), sections 2(9), 171—Interpretation of statutes.

Where, in course of liquidation of a company, the business of the company is carried on by the official liquidators for the beneficial winding up, they can be called upon to furnish a return of income, for purposes of income-tax, in accordance with section 22(1) of the Income-tax Act.

A company, once formed and registered, continues to be a company until it is dissolved under section 194 of the Companies Act. *Prima facie*, therefore, a company in liquidation is included in the definition of a company in section 2(6) of the Income-tax Act, and is therefore liable to income-tax under section 3 of that Act. Under section 22(1) of that Act the "principal officer" of the company is liable to furnish a return of the income; the definition of "principal officer" in section 2(12) of the Act includes a manager, and the official liquidators,

*Application in Miscellaneous Case No. 404 of 1931.

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who were actually managing the business of the company, would therefore be regarded as the "principal officers". This is in consonance with the definition of "manager" in section 2(9) of the Companies Act. They were, therefore, liable to furnish the return of income in respect of the business of the company which was being carried on.

Even if the word "company" in section 3 of the Income-tax Act were held not to include a company in liquidation, the liquidators, as managers, would be liable to income-tax under section 41 of the Act.

The right of the Crown to realize the amount of the tax which might be assessed could not be taken away by section 171 of the Companies Act. The Crown's right and remedy could not, by mere implication, be taken away by a statute which did not expressly enact to that effect.

Mr. *Kamala Kant Verma*, for the applicant.

Dr. *K. N. Katju*, Messrs. *Bhagwati Shankar* and S. N. *Gupta*, for the opposite party.

MUKERJI and YOUNG, JJ.:—This Bench was constituted in order to decide four points, which are enumerated in the order of one of us dated the 8th of September, 1933. Point No. 4 alone has been argued, because it has been found that the other three points do not arise at the present moment . . . We, therefore, proceed to decide point No. 4, on which alone we have been addressed by learned counsel for the official liquidators and the legal adviser to the Income-tax authorities.

The point for decision is: "Whether under the Indian Companies Act a liquidator is exempt from making an income-tax return on business managed by him for the beneficial winding up of the company."

Just a few facts would be necessary to be stated in order to lead up to the questions before us. It appears that there was a limited company doing business in Agra, called the Agra Spinning and Weaving Mills Co., Ltd. At the instance of one of the creditors a compulsory winding up was ordered on the 24th of June, 1931. Two gentlemen, being advocates of this Court, were appointed official liquidators. Later on it was reported by the

official liquidators to the Company Judge that "in the interests of the company it is necessary that the business of the company should be carried on; so permission may be granted to that effect with powers to the official liquidators to dismiss, employ and maintain such staff for the mills as they may consider proper." This report was approved by the learned Company Judge. It appears that since this order was passed on the 27th of June, 1931, the business of the company, as it was carried on before the liquidation, is being carried on under the direction and supervision of the official liquidators.

The Income-tax Officer at Agra called on the official liquidators to make a return under section 22(1) of the Income-tax Act. There was a large amount of correspondence, and ultimately the official liquidators thought that they were not liable to make any return at all because the company had gone into liquidation. The Income-tax Officer wanted a ruling of the Court on this point, and that is how the point is now before us.

We have heard learned arguments on both sides, and we proceed to record our opinion. Under section 3 of the Indian Income-tax Act of 1922 every individual, Hindu undivided family, "company", firm and other association of individuals is liable to income-tax. The argument on behalf of the official liquidators is that a company which has gone into liquidation is no longer a "company" within the meaning of section 3 of the Indian Income-tax Act, and therefore no income-tax can be assessed on the liquidators as representing the company. The word "company" is defined in section 2(6) of the Indian Income-tax Act as follows: "Company means a company as defined in the Indian Companies Act, 1913 . . ." The Agra Spinning and Weaving Mills Co., Ltd., was therefore a company within the meaning of the Indian Income-tax Act. A company once formed and registered would continue to be a company until it is dissolved under section 194 of the Indian Companies Act. *Prima facie,* therefore, a company as defined in

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section 2(6) of the Indian Income-tax Act would include a company in liquidation.

The arguments against this conclusion are these. First of all, it is said that there can be no "principal officer" of a company in liquidation, and unless the "principal officer" of a company in liquidation can be determined, no tax can be assessed. Reliance is placed on section 22(1) of the Income-tax Act, which runs as follows: "The principal officer of every company shall prepare, and on or before the 15th day of June in each year furnish to the Income-tax Officer, a return, in the prescribed form . . . " The argument is that if there can be no principal officer of a company in liquidation, there can be no assessment, because the method of assessment laid down in the Income-tax Act cannot be followed. The expression "principal officer" is defined in section 2(12) of the Income-tax Act as follows: "Principal officer, used with reference to . . . a company . . . means the secretary, treasurer, manager or agent of . . . the company, or any person connected with the . . company . . . upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof." It is true that when the winding up order was made the previous officers of the company ceased to hold office, and thus the former secretary, treasurer, manager or agent disappeared from the scene. But we find that the liquidators are actually managing the business of the company, and we may safely take it that the liquidators come under the word "manager" as used in clause (*a*) of sub-section (12) of section 2. The word "manager" is defined in the Indian Companies Act, section 2(9) as follows: "Manager includes any person occupying the position of a manager, by whatever name called and whether under a contract of service or not." It will, therefore, be noticed that the word "manager" used in section 2(12) of the Income-tax Act has been used in a wide sense and is quite in keeping with the meaning assigned to it in the Indian Companies Act.

Further there is no difficulty in treating the official liquidators as the "principal officers" of a company if the Income-tax Officer serves a notice on them of his intention of treating them as the principal officers of the company, as he has already done in this case.

The other arguments advanced against the inclusion of a company in liquidation in the word "company" as used in section 3 of the Income-tax Act are as follows. It is argued that in section 10 of the Income-tax Act certain items are pointed out as being liable to be set off against gross profits or gains of business for the purpose of discovering the net amount on which the tax has to be assessed. It is argued that under clause (iii) of sub-section (2) of section 10, if there be any borrowed capital, the interest paid on such capital is allowed to be deducted from the total income, but in the case of a company in liquidation, which has debts to pay, the interest cannot be paid till the principal amounts have been paid off, and thus, although interest may be accumulating, the liquidators would not get advantage of clause (iii). This argument is easily met by reference to sub-section (3) of section 10. It is further met in this way. If no interest has been actually paid, the official liquidators may not be entitled under the law to set it off against the income already earned; but this circumstance is no answer to the question as to whether the liquidators are liable or not to make a return for the purpose of assessment of income-tax. Again when the interest is paid, say two or three years hence, they would be entitled to set off the interest actually paid against the income then earned.

The next argument is that under clause (ix) of sub-section (2) of section 10, a man doing business is entitled to set off against his income any expenditure incurred solely for the purpose of earning such profits or gains; but in the case of the official liquidators it cannot be said that the whole of the expenditure in liquidation has been spent for the purpose of earning such profits or

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gains. This may be true. What the liquidators have to do is only to apportion a fair amount of the expenditure incurred in liquidation in order to have it set off against the income earned by the working of the mills. The next argument is that section 19A of the Income-tax Act makes it a duty of the principal officer of every company to send a statement of the names and addresses of shareholders who have received a dividend. It is argued that this is not possible in the case of official liquidators who have been managing the company which is insolvent. This may be true, but this leads to no conclusion; for there may be companies which are actually working and which are not paying any dividend. These would not be called upon to furnish any statement required by section 19A of the Income-tax Act. Lastly it was argued that under sections 40 and 41 of the Income-tax Act all persons who were in the position of guardians, trustees or agents of persons residing outside British India, administrators-general, official trustees and receivers or managers appointed by courts are mentioned as persons liable to pay income-tax on behalf of the parties or properties in their charge, but there is no mention of an official liquidator. This argument is really destructive of the position taken up by the official liquidators. Two remarks may be made on this point. Sections 40 and 41 indicate that it was the intention of the legislature to cast its net, for the purpose of securing income-tax, as wide as possible, and it is impossible to believe that the legislature was forgetful of the fact that there might be companies in liquidation which were earning profits in the course of liquidation. There could not have been an intention on the part of the legislature to exempt such companies from taxation. If we are not allowed to read the word "company" in section 3 as including a company in liquidation, surely the official liquidators would come under the word "manager" used in section 41 of the Income-tax Act. The word "manager", it is stated in section 41 itself,

includes any person, whatever his designation, who in fact manages property on behalf of another. Within this definition the liquidators must come. Our view is that a company in liquidation is included in the word "company" in section 3, and it is not necessary to have recourse to section 41 for the purpose of holding the liquidators liable.

It was argued that a company in liquidation would usually be an insolvent company and that this may be one of the reasons why the legislature intentionally exempted a company in liquidation from the liability to pay income-tax. But it is not correct to say that only insolvent companies go into liquidation. A perfectly solvent company, not burdened with any debt, may go into liquidation by special resolution, vide section 162(1) of the Indian Companies Act. It is possible to imagine cases where a company, otherwise in a prosperous condition, may decide to wind up its business. Let us take this case. The sugar factories in Java may be doing very good business, and their main source of income is from exportation of sugar to India. The Indian Government gives protection to sugar by imposing a heavy tax against imported sugar. A prosperous company in Java may find that it would be difficult for it to sell its sugar in India and it may, therefore, decide to wind up its business, although so far the business had been prosperous. Examples like this may be multiplied. Therefore, there is no basis for the argument that every company in liquidation must be working at a loss and cannot earn any profits which may be liable to taxation.

One of the arguments advanced on behalf of the liquidators was that if the Income-tax authorities assess a tax and it is not paid, they may seek to enforce payment in one of the ways laid down in law against the property of the company in liquidation, but section 171 would stand in their way of taking any proceedings against the company's property. Two answers can be given to this argument. The first is that where a tax is justly and

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legally leviable, there would be no difficulty in obtaining the leave of the court to enforce payment of the tax. This would satisfy the requirements of section 171 of the Indian Companies Act. The second answer is that the right of the Crown to enforce payment of its dues cannot be taken away by a statute which does not expressly enact to that effect. By mere implication the Crown's right and remedy cannot be barred. This was held in the case of the *West Laikdih Coal Co., Ltd.* (1). The view taken there is supported by English decisions. We agree with that view. The result is that we see no difficulty in the way of the Income-tax authorities in calling upon the official liquidators to furnish a return in accordance with section 22(1) of the Income-tax Act. This is our answer to the question. We allow counsel for the Income-tax authorities one day's fee, which we assess at Rs.200.

Before Mr. Justice Young

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November, 24

IN THE MATTER OF INDIAN STATES BANK, LTD.*

Companies Act (VII of 1913), section 230—Winding up—Preferential payments—Salary and wages—Voluntary winding up followed by compulsory winding up—Commencement of period for preference for unpaid wages.

Where during the voluntary winding up of a company an order for compulsory winding up is passed, the date of the commencement of the winding up, for the purposes of section 230 of the Companies Act, is the date when the voluntary winding up commenced, i.e. when the resolution for voluntary winding up was passed, and it is in respect of the salaries and wages for the two months next before that date that the servants of the company are to be given the preferential right of payment.

Mr. *Bhagwati Shankar*, Official Liquidator, for the Indian States Bank.

YOUNG, J.:—This is a report by the official liquidator of the Indian States Bank, Ltd., for directions under the

*Miscellaneous Case No. 784 of 1931.

(1) (1925) I.L.R., 53 Cal., 328.

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following circumstances. The company in liquidation passed a resolution for voluntary winding up on the 21st of September, 1931. A compulsory order for winding up was made on the 18th of December, 1931. There were a number of servants of the company who had not been paid their wages for some time before the voluntary winding up. Under section 230(*b*) of the Indian Companies Act "all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant, shall be paid in priority to all other debts." Under the same section, sub-section (5), it is enacted that "The date hereinbefore in this section referred to is: (*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and (*b*) in any other case, the date of the commencement of the winding up." The report seeks for directions on the point as to whether the two months should run from before the date of the voluntary winding up or from before the date of the compulsory order. If the two months run from before the date of the compulsory order, the servants who have lost their employment at the date of the resolution for voluntary winding up would not have any claim in priority. If, however, the date from which the period of two months is to be reckoned is the date of the voluntary winding up, then they all would have a claim in priority to the extent of two months' salary. The construction of this section, in my opinion, is clear. The date of the commencement of the winding up in the case of a compulsory winding up which had been preceded by a voluntary winding up must be the date of the commencement of the voluntary winding up. The winding up undoubtedly commenced when the resolution was passed on the 21st of September, 1931. In my opinion, section 230 makes the winding up one continuous process. The winding up may be

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commenced as voluntary and continued as compulsory. There would have been no difficulty about the construction of section 230, if it had not been for a decision of the Chancery Division in England, in *In re Russell Hunting Record Co.* (1), on the construction of section 164 of the English Act of 1862 equivalent to section 210 of the Act of 1908 and to section 231 of the Indian Companies Act. In that case it was decided that when a voluntary winding up is followed by a compulsory winding up, then, for the purposes of the fraudulent preference section, that is, section 164 of the Act of 1862 and section 210 of the Act of 1908, the act of bankruptcy is the presentation of the petition, that is, the presentation of the petition for a compulsory winding up. This case, however, was considered in the case of *In re Havana Exploration Co.; Nathan's claim* (2). There the learned Master of the Rolls came to the conclusion that the wordings of the two sections were completely different, and that a decision on the fraudulent preference section could not be taken to be an authority on the preferential claims section.

I therefore direct the official liquidator to treat the claim for preference by the servants of the company in liquidation as if liquidation commenced from the date of the resolution for the voluntary winding up.

APPELLATE CIVIL

Before Mr. Justice Young and Mr. Justice Rachhpal Singh

MURARI LAL AND ANOTHER (DEFENDANTS) *v.* RAGHUBIR SARAN AND OTHERS (PLAINTIFFS)*

1933
November, 27

Civil Procedure Code, order XXI, rules 2 and 16—Execution by assignee of decree—Uncertified payment—Whether judgment-debtors can raise the plea of payment which has not been certified or recorded within limitation.

First Appeal No. 386 of 1932, from a decree of Pran Nath Agha, Additional Subordinate Judge of Moradabad, dated the 11th of July, 1932.

(1) [1910] 2 Ch., 78. (2) [1916] 1 Ch., 8.