theory as to the widow's estate at the present day, which allows of her not only enjoying the usufruct, but alienating her interest by anticipation, and leaves the question whether unexpended income at the time of the widow's death is to be regarded as an accretion to the husband's estate to depend upon whether it can be treated as an accumulation.

In the present case the cash balance in question does not amount to much more than half the yearly payment by Khárvá Bhána, and had not been separated from the general account so as to form a distinct fund which could be regarded as "savings." There is an entire absence of any outward sign of an intention to accumulate; whilst on the contrary the existence of debts rebuts any such intention, and points to the conclusion that the balance was held in suspense by the widow at the time of her death, —to use the language of the Privy Council in *Isri Dut Koer* v. *Mussumut Hansbutti Koerain*(1).

We think, therefore, that the question referred to us must be answered in the affirmative.

Attorneys for the plaintiff:—Messrs. *Crawford and Buckland.*

(1) 10 I. A. at p. 158.

ORIGINAL CIVIL.

Before Mr. Justice Jardine.

THE PARELL SPINNING AND WEAVING COMPANY, LIMITED, IN LIQUIDATION, (PLAINTIFF), v. MA'NEK HA'JI, (DEFENDANT).*

1886. *July* 20.

Company—Winding up—Liquidator—Suit by liquidator for calls—Limitation—Period of limitation applicable to suit by liquidator for calls different from that applicable to suit by company itself—Limitation Act XV of 1877, *Sch. II, Art.* 120.

The directors of the P. Company made a call of Rs. 100 per share upon its shareholders on the 1st October, 1882. On the 8th March, 1886, the company was ordered to be wound up by the Court, and an official liquidator was appointed. On the 17th March, 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October, 1882. As to this part of the claim, the defendant pleaded limitation.

*Suit No. 167 of 1886.

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Held, that the suit being brought, not by the company, but by the liquidator, article 120 of the Limitation Act XV of 1877 applied, and that the claim was, therefore, not barred.

SUIT by the official liquidator of the plaintiffs' company to recover Rs. 8,407-14-11 with interest alleged to be due from defendant in respect of calls on twenty-one shares in the plaintiffs' company.

The Parell Spinning and Weaving Company, Limited, was a joint stock company duly registered under the Indian Companies Act, 1866. The defendant became a holder of twenty-one shares, and paid the first call of Rs. 100 made thereon.

Subsequent calls of Rs. 100 per share were declared by the Board of Directors payable on the 1st October, 1882, the 15th September, 1883, and the 15th October, 1883, respectively, of which due notice was given to the defendant.

On the 8th March, 1886, the company was ordered to be wound up by the Court, and Henry Stead was appointed official liquidator.

On 15th April the official liquidator demanded payment of the sum now sued for, and on the 17th April, 1886, the suit was filed.

The defendant appeared in person and admitted the claim, except so much thereof as was barred by limitation.

Russell for the plaintiff:—The question of limitation can only arise with reference to the calls payable on the 1st October, 1882, the suit being filed on the 17th April, 1886. I contend, however, that this part of the claim is not barred; and that article 120 of the second schedule of the Limitation Act XV of 1877 applies, which gives a period of six years. This is a claim by a liquidator and not by a company, and, therefore, article 112 does not apply. Nor can article 115 apply, for the contract was made, not with the liquidator, but with the company. This case comes within the principle that the liquidator of a company can enforce rights which the company itself could not enforce. The liability of contributories is a new liability. See *In re Whitehouse & Co.*[1]; *In re National Funds Assurance Company*[2]; *Burgess's Case*[3];

[1] 9 Ch. Div., 595.
[2] 10 Ch. Div., 118.
[3] 15 Ch. Div., 507.

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Webb v. *Whiffin*[1]; Buckley on the Companies Act, (4th ed.,) pp. 108 and 255; section 38 of the English Companies' Act, 1862, and section 61 of the Indian Companies Act VI of 1882. Counsel also drew the attention of the Court to *Waterhouse* v. *Jamieson*[2].

JARDINE, J.:—This suit is brought by the official liquidator, appointed under section 141 of the Indian Companies Act VI of 1882, in the name of the Parell Spinning and Weaving Company, Limited, to recover calls from the defendant, a shareholder, due before the winding-up order was passed.

The only question on which the parties are at issue relates to a call made on the 1st October, 1882, and is a question about limitation. The plaint was filed on the 19th April, 1886, and it is admitted that this date is more than three years from the time when the call was payable, and that if this part of the claim falls under article 112 of the second Schedule of Act XV of 1877 (for a call by a company registered under any Statute or Act), it is barred. Mr. Russell has, however, argued that the article applicable is article 120, which provides a period of six years for a suit for which no period of limitation is provided elsewhere. He has relied on the decisions, to which I will refer presently, and on section 38 of the English Companies Act of 1862, which corresponds to section 61 of the Indian Act VI of 1882 defining the liability of members in the event of a company being wound up.

It may be conceded that, at first sight, there appears a strong resemblance between a suit brought by a company for a call and a suit brought for a call by an official liquidator in its name and on its behalf. There are some expressions in the judgment of Lord Westbury in *Waterhouse* v. *Jamieson*[2] which appear to support this view: "I take it to be quite settled that the rights of creditors against the shareholders of a company, when enforced by a liquidator, must be enforced by him in right of the company. What is to be paid by the shareholders is to be recovered by him in that right. What is due to the company is that only which is in fact recoverable by the company."

(1) L. R., 5 H. L., 711.

(2) 2 H. L. Sc. 29 at p. 37.

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But, as remarked by Jessel, M. R., in *In re National Funds Assurance Company*[1], these observations refer simply to the cases before Lord Westbury at the time, and, in my opinion, were not intended to apply at all to the question of limitation. Sir G. Jessel also expressed his concurrence in the view taken by Hatherley, L. C., in *Waterhouse* v. *Jamieson*[2] as regards the powers of the liquidator being more extensive than those of the company, and enabling him to make a member of the company pay what the company itself could never have made him pay. In *In re Whitehouse and Co.*[3] and in *Burgess's Case*[4] the same learned Judge lays down that it has been decided by the House of Lords in *Webb* v. *Whiffin*[5] that the winding-up section of the Act of 1862, sec. 38, (corresponding to section 61 of the Indian Act VI of 1882), creates new liabilities as regards the shareholders which do not exist until there is a winding up. The result of the decisions and *dicta* seems to be, that although the liquidator is substituted for, and enforces the rights of, the creditors in right of the company, yet that the winding-up order calls into existence new rights and new liabilities which did not exist before; and that equities which might have been set up against the company cannot prevail against the liquidator as representing the creditors.

In his judgment in *In re Whitehouse and Co.*[6] Sir G. Jessel explains the liability of a shareholder to contribute under section 38 after a winding-up order has been passed :—

"That is a new liability; he is to contribute; it is a new contribution. It is a liability to contribute to the assets of the company; and when we look further into the act, it will be seen that it is a liability to contribution to be enforced by the liquidator. It is quite true that a call made before the winding up is a debt due to the company, but that does not affect this new liability to contribution."

These decisions thus discriminate claims like the present from suits for calls brought by a company itself where there is no

(1) 10 Ch. Div. 118 at p. 129.
(2) 2 H. L. Sc. 29 at p. 37.
(3) 9 Ch. Div. 595 at p. 599.
(4) 15 Ch. Div. 507 at p. 511.
(5) 5 H. L., 711.
(6) 9 Ch. Div., 595, at p. 599.

winding up. It is, therefore, not necessary to assume that article 112 applies to suits not brought by the company itself. As observed in *Balvantráv* v. *Purshotam*[1] "Limitation Acts are in abridgment of the common law right to sue, which is unlimited as to time, and those acts being thus restrictive should receive a strict construction."

I, therefore, exclude the present suit, which being brought only in the name and behalf of the company does not fall within the words of article 112 strictly construed. I hold the article 120 applicable; and award the claim for the amount claimed with interest at 12 per cent. from 31st March, 1886, till to-day and for costs and 6 per cent. on judgment.

Judgment for plaintiffs.

Attorneys for the plaintiffs :—Messrs. *Tobin and Roughton.*

(1) 9 Bom. H. C. Rep., 99, at p. 111.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1886. *January* 18 *and June* 30.

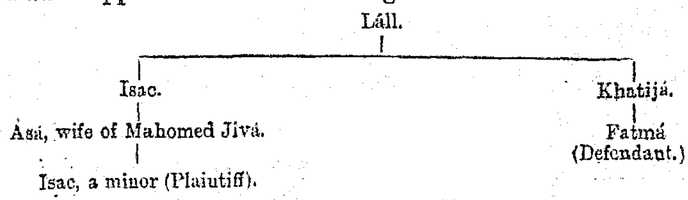
ISAC MAHOMED, A MINOR, BY HIS GUARDIAN, MAHOMED JIVÁ, AND ANOTHER, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'I FATMA', WIFE OF ABDUL RAHIMAN MAHOMED, (ORIGINAL DEFENDANT), RESPONDENT.*

Material alteration of a document after execution by consent of all the parties.

A material alteration made after execution does not vitiate a deed, if it be made with the consent of all the parties.

THIS was a second appeal from the decision of S. B. Thakur, Acting Assistant Judge at Broach, confirming the decree of Ráv Sáheb Chandulál Mathurádás, Second Class Subordinate Judge of Broach.

The relationship of the minor plaintiff Isac and the defendant Fatmá appears from the following table :—



* Appeal No. 114 of 1884.