ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

KAIKHUSHRU NUSSERWANJI CHANDABHOY (APPELLANTS) *v.* TATA INDUSTRIAL BANK, LIMITED (RESPONDENTS)*.

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Indian Companies Act (VII of 1913), section 207 (ix)—Voluntary liquidation—Liquidators, removal of—Powers of Court—"On cause shown".

Under section 207, clause (ix) of the Indian Companies Act 1913, the Court has the power in the voluntary winding up of a Company on cause shown to remove a liquidator. The jurisdiction of the Court to remove a liquidator is not confined to cases where there is personal unfitness in the liquidator. The cause shown for his removal is to be measured by reference to the real, substantial, honest interest of the liquidation and to the purpose for which the liquidator is appointed.

In re Adam Eyton, Limited. Ex parte Charlesworth[1], relied on.

LIQUIDATION proceedings.

On the 5th July 1923, a "conditional agreement" was entered into between one Hormasjee on behalf of the Tata Industrial Bank and the Central Bank for the transfer of the business, assets and liabilities of the former to the latter Bank. The recitals of the said agreement stated that it was intended to procure the vendor Company (i. e. the Tata Bank) to pass a special resolution for voluntary winding up and directing the liquidators appointed in such winding up to adopt and carry into effect the agreement. By clause 19 of the said agreement it was provided that "until the dissolution of the vendor Company the purchaser Company shall at its own expense produce and show at such times and to such persons and in such places as the liquidators of the vendor Company shall require all the books, documents and papers of the vendor Company hereby agreed to be transferred".

*O. C. J. Appeals Nos. 6 and 7 of 1924.

(1)(1887) 36 Ch. D. 299.

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On July 19, 1923, an Extra-Ordinary General Meeting of the share-holders of the Tata Bank was held at which a resolution was passed that it was expedient to effect an amalgamation with the Central Bank and with a view thereto that the Tata Bank be wound up voluntarily, approving of the "conditional agreement" and authorizing the liquidators pursuant to section 213 of the Indian Companies Act to adopt and carry it into effect with such modifications as they thought expedient. This resolution was confirmed as a special resolution, at an Extra-Ordinary General Meeting held on August 6, 1923, which also passed the resolution appointing Messrs. Gilchrist, Billimoria, Kaikhushru Chandabhoy, and Shapurji Guzdar as liquidators in the winding up to adopt the "conditional agreement" and carry it into effect with such modifications as they thought fit "under the supervision of the Directors of the Central Bank of India, Limited, and the Tata Industrial Bank, Limited the powers of the last mentioned of whom shall continue for the purpose of carrying the said agreement into effect." The "conditional agreement" was adopted by the liquidators on August 7, 1923. The Tata Bank then went into voluntary liquidation for the purposes of amalgamation in terms of the agreement with the Central Bank. The liquidators then handed over all the books, documents and papers of the Tata Bank to the Central Bank on the Managing Director of the Central Bank of India expressly undertaking to allow the liquidators free access to and inspection of them and to furnish them with any information they might require relating to the affairs of the Tata Bank. Shortly thereafter differences arose between the liquidators on the question whether the liquidators had the right to general inspection of the books and papers of the Tata Bank. A meeting of the Joint Board of the Directors was held on September 5, 1923, at

which all the liquidators were present and a resolution was passed at the meeting that, except so far as inspection of the books was necessary to carry into effect the agreement of July 5, 1923, it should not be given. Two of the liquidators Chandabhoy and Guzdar (hereinafter called the petitioning liquidators) did not assent to the resolution and persisted in their demand for a general inspection. On September 17 1923, the Joint Board resolved that the two petitioning liquidators should be informed that the Joint Board could not consent to deal with the demands of some only of the liquidators and that inspection would only be allowed for the purpose of showing the assets and investments of the Tata Bank and such outstandings as the Central Bank declined to accept as good.

On September 24, 1923, the petitioning liquidators wrote to the Joint Board calling for the balance sheet of the Tata Bank as at August 6, 1923 and for a list of properties, investments and outstandings and the profit and loss statement and amount of secret reserves of the Tata Bank.

On October 11, 1923, the Joint Board resolved that inspection of the balance sheet as at July 4, 1923, should be offered, and that a list of immoveable properties and investments should be furnished to the liquidators and they should be informed that there were no valuation reports of the properties and no secret reserves and that the Central Bank had in fact agreed for the purposes of the arbitrations to accept all the outstandings of the Tata Bank at their face value. They also resolved that the conduct of the arbitrations with the dissentient share-holders should be entrusted to the Central Bank,—that being the Bank that would have to pay.

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This position the petitioning liquidators declined to accept, contending that they were entitled, both by virtue of the office of liquidators and under clause 19 of the agreement, to full and complete inspection of the books, documents and papers of the Tata Bank and that they, and not the Central Bank, were entitled to appear before the arbitrators and conduct the arbitrations. Ultimately, on November 12, 1923, they presented an application to the Court, under section 215 of the Indian Companies Act, for determination of the questions that had arisen as to the right of inspection of the books, documents and papers of the Tata Bank and as to the conduct of the arbitration proceedings.

The Directors of the two Banks, on the other hand, having numerous complaints against the said petitioning liquidators, applied to the Court on November 27, 1923, for their removal from office, alleging (*inter alia*) that they had refused to accept the rulings of the Joint Boards, had exceeded the authority conferred on them under the special resolution, dated August 6, 1923, had made serious and unwarranted insinuations against their co-liquidators, and had acted generally against the interests of the Banks, with the result that a dead lock had been created.

Kemp J., before whom the petitions were heard, held that the inspection demanded by the petitioning liquidators was not justified, that they had defied the Joint Boards under whose supervision they were to act, and in so doing had obstructed and hampered the amalgamation. He also found as a fact that Guzdar, one of the petitioning liquidators, had, without consulting his co-liquidators or the Joint Boards, furnished a copy of the balance sheet of the Tata Bank to one Shamdasani, when the latter was engaged in litigation with the said Bank. The two petitioning liquidators

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were, therefore, removed from their office, and their own petition was dismissed with costs.

The petitioning liquidators appealed against both orders.

G. N. Thakor, for the appellants.

B. J. Desai and *Taraporewalla*, for the respondents.

MACLEOD, C. J.:—These are two appeals from the orders passed by Kemp J. on two petitions under the Indian Companies Act VII of 1913. The first petition was filed by the appellants, the second by the respondents in the circumstances mentioned by the learned Judge at pp. 336 to 340 of the Paper Book. There being no dispute as to the facts there is no necessity for me to set them out again in this judgment. The learned Judge on the second petition ordered that Messrs. Chandabhoy and Guzdar should be removed from their office as liquidators in the voluntary winding up of the Tata Industrial Bank. As a consequence of that order the first petition was dismissed with costs, the Judge remarking that in the circumstances of the case he thought the presentation of that petition was improper.

Under section 207, clause (ix), of the Indian Companies Act the Court has power in the voluntary winding up of a company on cause shown to remove a liquidator. What should be the measure of "due cause" was considered in *In re Adam Eyton, Limited. Ex parte Charlesworth*[1] where Bowen L. J. said (p. 306):

"A contention was raised by Mr. *Cozens-Hardy*...to the effect that unfitness in the liquidator ought to be shown before he is removed...In many cases, no doubt, and very likely, for anything I know in most cases, unfitness of the liquidator will be the general form which the cause will take upon which the Court in this class of case acts, but that is not the definition of due cause shown. In order to define 'due cause shown' you must look wider afield, and

[1] (1887) 36 Ch. D. 299.

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see what is the purpose for which the liquidator is appointed. To my mind the Lord Justice has correctly intimated that the due cause is to be measured by reference to the real, substantial, honest interests of the liquidation, and to the purpose for which the liquidator is appointed. Of course, fair play to the liquidator himself is not to be left out of sight, but the measure of due cause is the substantial and real interest of the liquidation. That should be thoroughly understood, I think, as of great importance."

It is unfortunate for the appellants that, as it would seem, they were not aware of that judgment before they embarked upon the course of action which led to the order in the Court below for their removal. It is necessary then to consider the facts leading up to the resolution for the voluntary winding up of the Tata Bank, and the purpose for which the liquidators were appointed. The conditional agreement of July 5, 1923, referred to by the learned Judge, a copy of which by some strange omission does not appear to have been annexed to either petition, provided for the transfer of the whole business of the Tata Bank to the Central Bank, provided the Tata Bank share-holders passed effective resolutions for the voluntary winding up of the Bank and the appointment of liquidators to carry out the transfer mentioned in the agreement. Thereafter the necessary resolution was passed by the shareholders of the Tata Bank for the voluntary winding up and, at the meeting confirming this resolution, the appellants with two other gentlemen were appointed liquidators by a separate resolution for the following purpose, to adopt the conditional agreement and carry it into effect with such modifications as they thought fit under the supervision of the Directors of the Central Bank and the Tata Bank, the power of the last named Directors to continue for the purpose of carrying the agreement into effect. Put shortly, under that agreement the whole of the assets of the Tata Bank were to be transferred to the Central Bank which undertook to satisfy all the liabilities of the Tata Bank and to keep

the Tata Bank, its liquidators, and contributories, indemnified against all such liabilities. The share-holders of the Tata Bank who agreed to take one share of the Central Bank for two shares of the Tata Bank would get the shares in the Central Bank through their liquidators. Those who did not consent to the exchange were offered Rs. 15 for each share, which they would receive from the Central Bank through their liquidators, and if any such share-holder did not agree to the offer of Rs. 15, then he was to be paid such sum as by arbitration between the vendor Company and himself should be determined, the payment being made by the Central Bank to the liquidators.

The liquidation, therefore, was to be carried out under the provisions of section 213 of the Indian Companies Act and was of an entirely different nature to an ordinary liquidation in which the liquidators would have to realise the assets of the Company, inquire into the conduct of its affairs by its Directors, pay the debts of the Company, make calls if necessary on the contributories, and generally so act until the surplus assets, if any, were distributed amongst the share-holders and a final dissolution could be declared.

In the present case it will clearly be seen that it was in the interest of the share-holders of the Tata Bank of whom we are told those holding 97 per cent. of the capital had consented to the liquidation and the transfer of the assets to the Central Bank, that the transfer should be completed with the least possible delay so that the Central Bank should continue its business after the transfer without undue dislocation which might affect its credit. It was also to the interests of the share-holders of the Tata Bank that their liquidators should oppose the claims of the dissentient share-holders who had refused the offer of Rs. 15 per share

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and demanded arbitration. It would also seem hardly necessary to mention that it was in the interest of the share-holders that their liquidators should work together in harmony.

Exhibit B to the affidavit of H. C. Captain of November 22, 1923, filed in the liquidators' petition, contains extracts from the minutes of the meeting of the liquidators. See pp. 83 to 101 of the Paper Book.

The affidavit of Mr. Gilchrist of November 21 summarises very fairly the relations existing between the liquidators as disclosed by these extracts. Practically from the commencement there was friction between the appellants and their co-liquidators. The appellants desired that the liquidators should take complete inspection of all the books, documents, and papers, of the Tata Bank which had been handed over to the Central Bank. They relied on clause 19 of the agreement of July 5, 1923, which, on the face of it, would appear to support their demand. But that clause must be read in relation to the rest of the agreement. It could never have been intended that the liquidators were entitled to a roving inspection which might seriously impede the working of the Central Bank, and I construe that clause as meaning that the liquidators were entitled only to such inspection as was necessary to carry out the purposes for which they were appointed. Now it is clear from the minutes of the liquidators' meetings that the appellants desired to inspect the minutes of the Tata Bank Directors' meetings and also all the books of the Bank because, as Mr. Guzdar said on August 27, he wanted to see whether he could find out specific items on which it would be possible to charge the Directors with fraud or misfeasance, as, if so, he intended to prosecute each and every Director who appeared to be concerned in such acts. He further

said he wanted inspection in order to find out whether the offer of Rs. 15 per share should be accepted or whether if such inspection disclosed acts of fraud or misfeasance a higher value could not be obtained by arbitration. The appellants even instructed counsel before us to support their attitude in these respects. It was not that they had formed a mistaken opinion regarding their duties as liquidators, they were acting in direct opposition to the interests of the share-holders who had appointed them. However much dissatisfied the share-holders may have been with the conduct of their affairs by their Directors, they had decided by an over-whelming majority that it was in their interest to accept the terms of the conditional agreement which excluded any idea of steps being taken against the Directors of the nature contemplated by the appellants. It was also the duty of the liquidators who would represent the Tata Bank in arbitration proceedings between those dissentients who refused to accept the offer of Rs. 15 from the Central Bank to support the offer. Clearly the appellants were seeking for evidence that the offer was not a fair one, and when it was suggested that the Central Bank which would have to provide the liquidators with the funds to meet the awards should present the case for the Tata Bank, the appellants directly opposed the suggestion. They were anxious to side with the share-holders seeking arbitration to obtain for them an award higher than Rs. 15. When they were asked to sign the necessary submission papers they obstructed the proceedings by refusing to do so on the ground that they had not had the inspection they had asked for to enable them to produce evidence before the arbitrators. That they were anxious in one case to agree to Mr. Shamdasani being appointed arbitrator need only be mentioned and comment is unnecessary.

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The appellants' petition was affirmed on November 10, 1923 ; the Companies' petition on November 27. In the appellants' affidavit of December 6 filed in answer to the latter petition they alleged in para. 2 that the Banks realising that they had no answer to the petitions presented by the liquidators had as a counter-blast filed their petition for the removal of the petitioning liquidators from their office in the hope that they would thereby avoid the decision of the questions in the prayer of the first petition. The answer to that allegation lies in the fact that long before November 10 the Banks had a complete case for the removal of the appellants from their offices. Assuming that they had honest doubts as to their rights and powers as liquidators which could not be removed by the opinion of their solicitors, the directions of the Court on the question in dispute could easily have been obtained before the end of August but the appellants had been invited to join in an application to the Court for such directions and they had refused. See Messrs. Little & Co.'s letter of November 15. In their letter of September 8 to the Secretary of the Joint Boards they write :—

"Mr. Pochkhanavalla and two of our colleagues who are auditors of the Tata Bank, as also some of the Directors of both the Banks are desirous of *dragging* us into a Court of law to ascertain what they call our legal position. They do not seem to realise what effect such proceedings would have on the public mind and what a rude shock such proceedings would give to the credit of the Central Bank."

While the appellants had been considering how they could obtain materials for attacking the Directors on the ground of their fraud and misfeasance, they thought that a simple application to the Court for construction of some clauses in the agreement between the Banks would seriously affect the credit of the Central Bank. The Secretary to the Joint Boards in his letter to the appellants of September 20 correctly

stated the functions of the liquidators, but the appellants would not agree with him as appears from their letter of September 24. It is possible that in spite of all that had occurred before the appellants' petition had been filed, the Banks would have been unwilling to take proceedings for their removal as liquidators had not the fact been discovered that a copy of a balance sheet which had been given in confidence to the liquidators had been furnished, and it is not denied that it was furnished by Mr. Guzdar, to Mr. Shamdasani whose suit against the liquidators and the Banks was then pending before Pratt J. It was this discovery which in all probability made the Bank realise the necessity for filing their petition. Lastly, I may refer to the fact that the appellants declined to recognize the provision in the resolution appointing them that they should act under the supervision of the Directors of the two Banks.

It is extremely unfortunate that the appellants who were appointed liquidators at the meeting of share-holders of the Tata Bank on August 6, in conjunction with Mr. Gilchrist and Mr. Billimoria, should have entirely misconceived from the commencement their duties as liquidators according to the terms of the resolution. What Mr. Guzdar described their duties should be is clear from his speech on that occasion when he said :

"A liquidator's business is not only to liquidate but to bring to book those who have wittingly or unwittingly by their negligence ruined thousands of share-holders and the Tata Bank."

And again :

"We have lost heavily, but that is no reason why the delinquents should escape scot-free, they must be brought to book in the interest of the commercial morality of Bombay."

But the resolution passed at the meeting strictly defined the duties in a manner contrary to Mr. Guzdar's

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wishes. If the share-holders had wished to impeach the conduct of their Directors they could easily have resolved to do so, but clearly the resolutions to adopt the proposed amalgamation scheme excluded the idea of any such action being taken. The appellants received perfectly correct advice from the solicitors for the liquidators but they chose to disregard it and have persisted in maintaining before the lower Court and this Court that Messrs. Little & Co.'s advice was wrong. In my opinion the conclusions of Kemp J. are right and the appeal against the order removing the appellants from their office as liquidators must be dismissed with costs. But the order as to cost in the lower Court will be amended by directing the parties to pay their own costs.

I should not, however, be inclined to say that the first petition as framed was improper. If the appellants had filed it as soon as they came into disagreement with their co-liquidators, nothing could have been said against it. But by November the situation had become exceedingly strained with the result that in their affidavit in reply to the petition Messrs. Gilchrist and Billimoria disclosed the motives which prompted the petitioners in adopting the view they took of their rights as liquidators, so that the affidavits, with the exhibits on the petition, cover nearly 200 pages of the Paper Book. It would have been sufficient if the Court had been asked to answer the questions in the petition on a construction of the documents in the case. The greater part of these 200 pages contains matter which would only be relevant to the second petition. I think, therefore, that the proper order to make on the petition was that the parties should bear their own costs except the costs of filing the petition which should be paid by the respondents out of the assets. On the appeal there will be no order as to costs.

SHAH, J.:—I agree that the order appealed from as to the removal of the liquidators, who are the appellants before us, is right. I shall state briefly the reasons for my conclusion, without recapitulating the facts.

Under section 207 (ix) of the Indian Companies Act the Court has the power to remove a liquidator "on cause shown". The expression "on cause shown", as used in the corresponding section of the English Statute, has been judicially construed ; and it has been held in *In re Adam Eyton, Limited. Ex parte Charlesworth* [1] that the jurisdiction of the Court to remove a liquidator is not confined to cases where there is personal unfitness in the liquidator. I accept the observations in the judgment in that case as laying down the scope of the expression used, and I particularly rely upon the observations of Bowen L. J. at p. 306 of the report as being applicable to the circumstances of the present case. According to the language used in that case, we have to consider that cause is to be measured by reference to the real, substantial, honest interests of the liquidation, and to the purpose for which the liquidators are appointed. Of course fair play to the liquidators themselves is not to be left out of sight but the measure of due cause is the substantial and real interest of the liquidation.

In the present case, according to the terms of the resolution passed by the share-holders, the four liquidators were appointed for adopting the agreement of July 5, 1923, and carrying the same into effect with such, if any, modifications as the liquidators might think expedient under the supervision of the Directors of the Central Bank of India, Limited, and the Tata Industrial Bank, Limited, the powers of the last mentioned of whom were to continue for the purpose of carrying the said agreement into effect. Apart from the personal

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allegations against the two appellants, it is clear that they have failed to comply with these two conditions. First, instead of strictly confining their attention to the carrying out of the amalgamation of the two Banks and of the agreement of July 5, 1923, they have been influenced by other considerations, which, even though they may be proper in themselves, cannot be treated as advancing the liquidation, and as giving effect to the agreement of July 5. Secondly, the supervision of the Joint Board of Directors has not been accepted by them in effect. Lastly, owing to the divergence of views between the appellants and the other two liquidators a situation has arisen under which it is difficult to hold that the substantial and real interest of the liquidation can be served by retaining the appellants as liquidators. While I am prepared to give due weight to the consideration that the liquidators appointed by the general body of share-holders should not be removed without adequate reasons, in the present case I am satisfied that sufficient cause for their removal is shown.

The principal thing, so far as the present proceedings are concerned, that remains to be determined in liquidation is the carrying out of the provisions as to arbitration in the agreement as regards the amount to be paid to the dissenting share-holders. On this point the conflicting interest will be represented by such share-holders on the one hand and the Central Bank on the other, which has to pay the amount to be determined by the arbitrators. The two remaining liquidators will be in a position to represent the same interest as that of the Central Bank. The position of the appellants does not appear to be consistent with the interests of the liquidation of the vendor Company or of the Central Bank, and having regard to the divergence in the views of the two sets of liquidators, it is difficult to understand what useful position they can take up in the arbitration

proceedings, if they are not to side with the dissenting share-holders. Without implying any reflection on the liquidators personally and without expressing any opinion as to the merits of the conflicting interests in the liquidation it is clear that the appellants have misconceived their position and that in the interests of liquidation their removal is desirable.

In this view of the matter it is not necessary to consider the points in the appeal arising out of the first petition filed by the appellants for directions of the Court on certain points.

I, therefore, agree that both the appeals be dismissed. I concur in the order as to costs.

Solicitors for appellants : Messrs. *Mehta, Lalji & Co.*

Solicitors for respondents : Messrs. *Little & Co.*

Appeals dismissed.

V. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

CHANBASAPPA NAGAPPA HAVERI (ORIGINAL OPPONENT), APPELLANT *v.* HOLIBASAPPA BASAPPA MOTIBENNUR AND ANOTHER (ORIGINAL APPLICANTS), RESPONDENTS*.

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February 1.

Indian Limitation Act (IX of 1908), section 15—Civil Procedure Code (Act V of 1908), Order XXI, Rule 53 (1) (b)—Transfer of decree for execution—Attachment of decree in another execution proceeding—Effect—Limitation.

One B obtained a decree against C in Haveri Court in April 1914. On B's application, it was directed that the decree be transferred by the Haveri Court to the Hubli Court for execution. In September 1914, B took out a Darkhast in Haveri Court, but before the execution proceeded any further,

*Second Appeal No. 208 of 1923.