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it was not proved that the complainant had knowledge of the breach of the provisions of the section before the complaint was filed. Here, however, the complainant has admitted that he became first aware of the use of his mark in October 1932.

The result is that limitation runs from October 1, 1932, and not from July 24, 1933. I therefore agree that the rule should be discharged.

Rule discharged.

J. G. R.

ORIGINAL CIVIL.

Before Mr. Justice Kania.

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 April 9

IN RE BRITISH INDIA BANKING AND INDUSTRIAL CORPORATION LTD.
 VITHALDAS DHANJI & CO., APPELLANTS v. SHIVA
 CHEDUMBARIAH, OPPONENT.*

Indian Companies Act (VII of 1913), section 160—Company—Voluntary liquidation—Contributory—Shareholder dying before list of contributories settled—Deceased shareholder's name included in list of contributories—Order of Court for payment of balance—Liability of legal representative of deceased shareholder for such payment—Procedure—Administration of estate of such deceased shareholder.

Where a shareholder of a company, which has gone into voluntary liquidation dies before the list of contributories is settled, and his name is included in the list of contributories in the liquidation proceedings, and an order is made by the Court for payment of the balance of the money due on the shares, such balance can only be recovered from his legal representatives under section 160 of the Indian Companies Act by adopting proceedings for the administration of the estate of the said deceased. In such cases it is not proper to seek an order for payment personally against the legal representatives of the deceased.

PROCEEDINGS for recovering moneys from a contributory of a company in voluntary liquidation.

*Miscellaneous application I. C. No. 21 of 1922.

The British India Banking and Industrial Corporation, Ltd., was a company registered under the Indian Companies Act (VII of 1913). On November 8, 1922, the said company was taken into voluntary liquidation by a resolution of its shareholders.

On December 20, 1923, the High Court passed an order on the contributories of the said company, ordering them to pay to the liquidator of the said company the amounts due by them.

On September 30, 1933, the liquidator sold by public auction the unpaid claims against the contributories to one Vithaldas Dhanji & Co. (applicants). The liquidator executed a deed of assignment in respect of the said claims in favour of the purchaser on October 5, 1933.

One Macherla Ramanna Chedumbariah, who was a contributory, had died before the list of contributories was made, but as the company was not aware of that fact his name was included in the list.

Vithaldas Dhanji & Co. applied for direction to execute the order for payment made by the Court on December 20, 1923, against Shiva Chedumbariah (opponent) as the heir and legal representative of the said deceased shareholder.

M. C. Setalvad, for the applicants.

N. P. Engineer and *V. F. Taraporewala*, for the opponent.

KANIA J. The facts briefly are that contributory No. 136, Macherla Ramanna Shiva Chedumbariah, was a shareholder of the company and as such had become liable to contribute to the assets of the company in its liquidation. The company not being aware of his death put his name on the list of contributories in the liquidation proceedings, and in due course the Court made the balance order for payment. After

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the liquidator realised such amounts as he could in liquidation, he sold the rest of the claims, and the present assignees purchased the claim payable by contributory No. 136. The assignees now seek for an order against the respondent, Shiva Chedumbariah, as the heir and legal representative of the deceased contributory No. 136, for payment of the amount appearing against the name of the deceased contributory in the balance order. On behalf of the assignees it is contended that until the company was informed of the death of the contributory the deceased continued to be liable as a member and the company was not bound to take notice of the death otherwise. Therefore, the proceedings adopted by the company, in the name of the deceased, are good and are not a nullity as would otherwise be the case under the ordinary law. In this connection reliance is placed on *New Zealand Gold Extraction Company (Newbery Vautin Process) v. Peacock*,⁽¹⁾ and in particular on the observations of Lord Davey at p. 633.

The principle of that decision, I believe, cannot be disputed.

The difficulty in the way of the applicants, however, is that the application is not correct in form. Part V of the Indian Companies Act, 1913, deals with the winding up of the companies and sections 156 to 161 define the various kinds of contributories. The term "contributory" is defined in section 158 as follows:—

"The term 'contributory' means every person liable to contribute to the assets of a company in the event of its being wound up"

Then comes section 160 which runs as under:—

"160. (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

⁽¹⁾ [1894] 1 Q. B. 622.

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the money due."

Sections 162 and onwards deal with winding up of the company by the Court, and under the heading "Ordinary Powers of Court" section 184 lays down the manner in which the list of contributories is to be settled. Sub-clause (2) of that section provides that in settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or are liable for the debts of others. Under section 186, the Court has the power, at any time after the winding up order, to make an order on any contributory for the time being settled on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Indian Companies Act. That section necessarily contemplates an order made against a person named in the order and whose name appears in the list of the contributories settled under section 184. The material words in connection with the present issue are contained in section 160. On looking to the terms thereof, it appears to me that it contemplates the case of a person dying even before the list of contributories is settled. The section provides that in all cases where the contributory (i.e., one who is ordinarily liable to contribute to the assets of the company as defined in section 158) dies either before or after he is placed on the list of contributories, his legal representatives and heirs will be liable. The section then provides the way in which that liability is to be brought home, and mentions that they shall be liable in a due course of administration to contribute to the assets. Lastly, the first sub-clause of section 160 recites that by reason of their liability

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(of the heirs and legal representatives) as such "they shall be contributories accordingly". In my opinion, the last words do not exclude the case which has arisen before me, viz., of a person having died before the list of contributories came to be settled and in whose name the order for payment is made by the Court. The last mentioned words in the first sub-section of section 160 only make clear the position of the legal representatives who are to pay in due course of administration of the estate, and specify that by reason of the liability of such heirs and legal representatives in due course of administration they become contributories. If the company or the liquidator obtain an order for the payment against such heirs or legal representatives, by reason of their name being put on the list of contributories under section 184 (2), the method of recovering the amount is again provided in section 160 (2). It is there expressly provided that when an order for payment is made against a contributory, who is an heir or legal representative only, proceedings should be taken for administering the property of the deceased person. This sub-section in terms makes it clear that, even when an order for payment is made against such contributory, the proper procedure for the company or the liquidator to enforce payment is to adopt proceedings for the administration of the estate of the deceased and not seek an order for payment personally against the contributories as is attempted to be done in the present application. Section 160 (1) which is, in my opinion, applicable here lays down that when no such order for payment is made, the liability of the heir and legal representative is only in the course of administration, and either in execution of the original balance order made by the Court against the deceased contributory, or otherwise, an order for payment against him personally is not justified by the words of the section.

The assignees strongly rely on the decision of B. J. Wadia J. in *In the matter of the Dharamsi Morarji Woollen Mills*,

Ltd.,⁽¹⁾ where it was urged that an order made against a deceased contributory was void and a nullity. In considering that argument the learned Judge had occasion to refer to section 160. Perusing that judgment, however, it appears that the learned Judge's attention was not drawn to the question of the form of the order as contemplated and provided for in section 160. Under the circumstances, I am unable to consider that judgment as laying down any principle as to the form in which the order should be made in execution.

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⁽¹⁾ (1932) I. C. No. 25 of 1928 decided by B. J. Wadia J. on July 11, 1932.

The Judgment runs as follows :—

B. J. WADIA J. This is a notice under Order XXI, rule 16, of the Civil Procedure Code, calling upon the respondents to show cause why the orders made in the matter on November 6, 1928, and February 14, 1930, respectively in favour of the Liquidator and by him transferred to the assignee should not be executed by the said transferee against the second respondent as the heir and executor of the last will of Varjivandas Tribhuvandas. Varjivandas was contributory Nos. 380 and 848 on the list of contributories of the Dharamsi Morarji Woollen Mills Ltd. He died in December 1925, and it was therefore argued that these two orders were made against a dead man, and that under the general rule of law laid down in various cases e.g., *Vishwanath v. Lallu Kabla*⁽²⁾ they were a nullity and could not be executed.

On the other hand my attention was drawn to section 160 of the Indian Companies Act, and it seems to me that an exception to the general rule that a decree or an order cannot be made against a dead person has been enacted by the Legislature by and under that section. The first part of it runs as follows :—

“ If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.”

Mr. Bahadurji appearing for the legal representative of the original contributory Varjivandas Tribhuvandas contended that in order to make the heirs or representatives liable they have to be brought on the record first. I do not agree with that contention, for the section clearly states that the heirs and legal representatives of a contributory who is on the list shall be contributories themselves, so that there is no particular order necessary to bring them on the record. It has been laid down in *New Zealand Gold Extraction Company (Newbery Vandin Process) v. Peacock*⁽³⁾ that a “ deceased member or his estate remains a member for the purpose of the articles so long as his name remains on the register without notice to the company of his death.” Admittedly no notice was given to the company of the death of the contributory before the two orders were made, and the contributory's name therefore remained on the list, and his estate in the hands of his legal representatives is liable. I may mention that this case has been followed also in *James v. Buena Ventura Nitrate Grounds Syndicate, Limited*,⁽⁴⁾ and in *Allen v. Gold Reefs of West Africa, Limited. Same v. Same*.⁽⁵⁾ Under the circumstances in my opinion the assignee is entitled to ask for leave to execute the decree against the legal representatives of the deceased contributory, and the Notice must therefore be made absolute with costs. Counsel certified.

⁽¹⁾ (1909) 11 Bom. L. R. 1070.

⁽²⁾ [1894] 1 Q. B. 622 at p. 633.

⁽³⁾ [1896] 1 Ch. 456.

⁽⁴⁾ [1899] 2 Ch. 40.

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In my opinion the application must fail. The proper remedy of the assignees is to proceed as provided under section 160, viz., to take proceedings to recover the amount in a due course of administration of the estate of the deceased. The application is, therefore, dismissed. As, however, the present application fails on a point of law, which is not covered by any authority, I think the applicant should not be made liable to pay the costs. Under the circumstances, I make no order as to costs. Counsel certified.

Attorneys for applicants: Messrs. *Mulla & Mulla.*

Attorneys for respondent: Messrs. *Desai & Co.*

Application dismissed.

B. K. D.

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Before Mr. Justice Kania.

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August 23

THE INDIAN CASABLANCAS HIGH DRAFT COMPANY *v.* THE
MILLOWNERS' ASSOCIATION OF AHMEDABAD.*

*Practice and Procedure—Indian Patents and Designs Act (II of 1911), section 15—
Patentee's petition to extend term of patent—Reference of petition to High Court—
Procedure—Additional grounds of objection—Whether can be allowed to be
put in.*

If a petition for extension of term of a patent which has been presented to the Governor-General in Council, has been referred to the High Court for its decision under the provisions of section 15(3) of the Indian Patents and Designs Act (II of 1911), the Court should deal with the original petition, and it is not necessary to file a fresh petition.

On such a reference, the petition becomes a judicial proceeding and the Court has jurisdiction to allow the objectors to file further grounds of objection to the petition, provided that the same can be done according to the law relating to the amendment of pleadings.

When an extension of a patent is asked for, it is legitimate for the Court to inquire what profits the inventor had made since the registration of the patent and the inquiry

*Miscellaneous Petition No. 12 of 1934.