APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

BAGDIGI KUJAMA COLLIERIES LIMITED

v.

JAGMOHAN DAS NAGAR.*

1930

Feb. 14.

Company—Winding-up—Fully paid-up share-holder—Right to be heard—"Contributory"—Indian Companies Act (VII of 1913), s. 174.

Whether or not the Indian Companies Act uses the word "contributory" in all cases with exactness, a fully paid-up share-holder has an interest in the question whether the company should be wound up and has the right to appear and to be heard upon an application for the winding-up of the company.

In re Anglesea Colliery Company (1) and *In re Rica Gold Washing Company* (2) relied on.

For the purposes of section 174 of the Indian Companies Act a fully paid-up share-holder will, in many cases, be in an entirely different position from a creditor or a contributory who is still liable for calls.

It is improper to allow the company to fight the battle or the grievances of an individual share-holder.

APPEAL by Bagdigi Kujama Collieries Limited, objectors, from a judgment of Buckland J. dated 26th August, 1929.

The facts sufficiently appear from the judgment of the appeal court.

W. Gregory and *U. C. Laha* for the appellants.

A. K. Roy for the respondent, Jagmohan.

Westmacott for four other unsecured creditors, respondents.

RANKIN C. J. This is an appeal from a compulsory winding-up order made by my learned brother, Mr. Justice Buckland, on the 26th day of August, 1929, against a company called the Bagdigi Kujama Collieries Limited. The winding-up order was made upon a creditor's petition. The appeal before us is on the part of the company and the ground upon

*Appeal from Original Order, No. 96 of 1929, in *In re* Bagdigi Kujama Collieries Ltd.

(1) (1866) L. R. 1 Ch. 555.

(2) (1879) 11 Ch. D. 36.

which the appeal is brought is that a certain gentleman—a share-holder named M. K. Khanna—was desirous of being heard at the time the winding-up order was made, and the learned Judge refused to hear him on the ground that, although he was a share-holder and a large share-holder, he was a fully paid-up share-holder and, therefore, not a contributory.

There can be no doubt really, whether or not the wording of the Companies Act uses the word "contributory" in all cases with exactness, that a fully paid-up share-holder has the right to appear and to be heard upon the application to wind up the company. That has been the settled practice for a great many years and we have been referred to the cases of *In re Anglesea Colliery Company* (1) and *In re Rica Gold Washing Company* (2), which say that a fully paid-up share-holder has the right to present a winding-up petition. The Companies Act does not, it appears to me, deal directly with the question of who shall be heard at the time when a winding-up petition is being tried. If one goes on the ordinary principle, it seems to be manifest that a share-holder has an interest in the questions whether the company should be wound up, a receiver appointed over all its assets, its goodwill brought to nothing and its capital, as it very often happens, sold at a ruinous loss.

In my experience, it has been the commonest form in England for a fully paid-up share-holder to be heard at the hearing of the application. Our Rules do not contain the specific rule, which is No. 33 of the English Companies Rules, to say that a person desirous of being heard shall send notice of his claim to be heard to the attorney of the petitioning creditor by 6 o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. We have a general rule—No. 95 in Chapter XXXI. of the Rules of the Original Side—which says "In "cases not provided for by this Chapter or by rules of "procedure laid down in the Act, the practice and

(1) (1866) L. R. 1 Ch. 555. (2) (1879) 11 Ch. D. 36.

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"procedure of the High Court of Justice in England "in matters relating to companies shall be followed "so far as they are applicable and not inconsistent "with this Chapter and the Act." Whether that is sufficient to bind a party by the words of the English rule is a matter upon which I entertain great doubt.

The position, therefore, is that, when Mr. Khanna appeared and asked to be heard, the learned Judge was wrong in thinking that he was not a person who was entitled to be heard and he may or may not have been entitled to refuse him a hearing on the ground that he had not given notice. If, upon that, Mr. Khanna had preferred an appeal, it seems to me that the appeal would have had very considerable substance. But Mr. Khanna has not preferred any appeal. We have been informed—it may or may not be so—that he has since been adjudicated insolvent. The Official Assignee has not preferred an appeal. The company has preferred an appeal. The company is in this position that, though it got notice, it did not appear before the learned Judge. So, there is all the difference in the world between a company opposing an application for winding-up and a person coming in with a real right to be heard merely as a shareholder. In my opinion, it is entirely improper to allow this company to come in and fight the battle or the grievances of an individual share-holder, and this appeal is incompetent on that ground.

I have heard with some astonishment that there is supposed to exist somewhere a judgment of my own to the effect that a share-holder, if fully paid-up, is not entitled to be heard on a winding-up petition. I think there is some misunderstanding as regards that matter. In all cases in the winding-up jurisdiction, the statute has the general provision in section 174 that "the court may, as to all matters "relating to a winding-up, have regard to the wishes "of the creditors or contributories as proved to it by "any sufficient evidence." It is quite obvious that, for the purposes of that section, a fully paid-up share-holder will be in an entirely different position from

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a creditor or a contributory who is still liable for calls in many cases. If, for example, there is a creditor's petition—the creditor being *prima facie* entitled to an order and it turns out that the majority of the creditors do not desire a winding-up, then a question arises for the discretion of the Court. The same question would not arise, if it merely turns out that the majority of the contributories or the majority of the share-holders did not desire the winding-up. For the purpose of giving value to a mere desire of a contributory or share-holder, the position of a fully paid-up share-holder may be one of comparative unimportance; but that a person, who may have a large holding in a company, is not entitled to be heard before the Court makes an order bringing the company to an end is a proposition which, so far as I know, has never been given effect to.

In my judgment, this appeal must be dismissed with costs. Mr. Westmacott's clients are not entitled to any costs in this appeal.

GHOSE J. I agree.

Appeal dismissed.

Attorneys for appellant: *Mukherji & Biswas.*

Attorneys for respondents: *Dutt & Sen*; *S. C. Mitra.*

C. S.