

ORIGINAL CIVIL.

Before Buckland J.

In re DAMAGORIA COAL CO., LTD.*

1931

May 18.

Company—Winding Up—Crown debts—Priority—Prerogative of Crown—Indian Mining Settlement Act (II of 1912)—Indian Companies Act (VII of 1913), s. 171.

The Crown is bound by the Indian Companies Act and section 171 of the Indian Companies Act restricts any rights to recover debts, in priority, which the Crown might possess by virtue of its prerogative.

In re H. J. Webb & Co. (Smithfield, London), Ltd. (1) and *Food Controller v. Cork* (2) relied on.

In the matter of *West Laikdih Coal Co., Ltd.* (3), *In re Henley & Co.* (4) and *In re Oriental Bank Corporation. Ex parte The Crown* (5) dissented from.

APPLICATION by the Crown.

The facts and arguments appear sufficiently from the judgment.

Susil C. Sen for the applicant.

BUCKLAND J. This is an *ex parte* application, made at the instance of the Mines Board of Health, Asansol, for leave under section 171 of the Indian Companies Act to levy execution upon a certificate issued by the Certificate Officer, Asansol, for the recovery of a sum of Rs. 1,955, said to be recoverable as a public demand, on account of the applicant's dues under the Indian Mining Settlement Act II of 1912.

It is stated that this is a debt due to the Crown, which I will assume to be correct, and a question arises as to the prerogative right of the Crown to payment in priority to other creditors. The certificate is dated 30th July, 1930, the winding up order was made on the 18th August, 1930, and an Official Liquidator has been appointed. No notice has been given to the Official Liquidator and in

*Ordinary Original Civil Jurisdiction.

(1) [1922] 2 Ch. 369.

(3) (1925) I.L.R. 53 Calc. 328.

(2) [1923] A. C. 647.

(4) (1878) 9 Ch. D. 469.

(5) (1884) 28 Ch. D. 643.

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consequence the matter has not been fully argued. But Mr. Susil Sen who appears on behalf of the applicant has drawn my attention to a judgment of Page J. in *In the matter of West Laikdih Coal Co., Ltd.* (1), who, after hearing learned counsel on both sides, followed *In re Henley & Co.* (2), and *In re Oriental Bank Corporation*, ex parte *The Crown* (3), in each of which it was decided that the Crown was not bound by the Companies Act, and, accordingly, held that section 171 of the Indian Companies Act did not restrict any of the rights to recover debts due to it which the Crown might possess in virtue of its prerogative. Mr. Sen has, however, very properly invited my attention to a later authority which does not appear to have been cited before my learned brother, and that is—*In re H. J. Webb & Co. (Smithfield, London), Ltd.* (4), in which *In re Henley & Co.* (2), and the *Oriental Bank Case* (3), were held to be no longer applicable to the case of a winding up of a company by reason of the later Companies Act which, as was explained at length, contained provisions overriding the prerogative by which the Crown was bound. On appeal: [*Food Controller v. Cork* (5)] the judgment of the court of appeal was upheld and, in the words of Lord Wrenbury, the Crown is bound “to a statutory scheme of administration wherein the prerogative right of the Crown to priority no longer exists.”

No reasons have been advanced why the petitioner board should proceed in execution and any question of priority under section 230 should be decided in the winding up. The application must be refused.

Application dismissed.

Attorneys for applicant: *Dutt & Sen.*

S. M.

(1) (1925) I.L.R. 53 Calc. 328.

(2) (1878) 9 Ch. D. 469.

(3) (1884) 28 Ch. D. 643.

(4) [1922] 2 Ch. 369.

(5) [1923] A. C. 647, 672.