

## ORIGINAL CIVIL.

Before Lord-Williams J.

*In re* NORTHERN BENGAL COMPANY,  
LIMITED.

1936  
Nov. 30;  
Dec. 8.

*Company—Winding-up—Crown debts, Priority of—Interpretation of statute—General and particular rule—Indian Companies Act (VII of 1913), s. 229, 230.*

In the winding-up of a company, only those Crown debts which are specifically mentioned in s. 230 of the Indian Companies Act, 1913, have priority.

*Secretary of State v. Punjab Industrial Bank, Ltd.* (in Liquidation) (1) followed.

Where a section of an Act which lays down a general rule is incorporated into another Act which gives a particular rule on the same subject, the particular rule will abrogate the general rule.

APPLICATION by the Secretary of State for India  
In Council.

The claim of the Crown in this case arose out of work done by the Eastern Bengal Railway, of which the ownership is vested in the Secretary of State for India. Payment for work done was demanded in July, 1932, and in August, the Managing Agents of the Northern Bengal Company, Ltd., informed the railway authorities that the company was unable to pay. In November of the same year, the company went into voluntary liquidation. The railway duly proved in voluntary winding-up and has a registered claim for Rs. 6,365-1 and claims preference over other creditors.

*Standing Counsel, S. M. Bose, and S. K. Guha* for the Secretary of State for India in Council. Section 229 of the Indian Companies Act, 1913, incorporates s. 49 of the Presidency-towns Insolvency Act, under which all debts due to the Crown has priority over other debts. The bankruptcy law in

England is different and therefore the case of *Food Controller v. Cork* (1) has no application to this case. The position in India is similar to that in Ireland and differs from the position of the Crown in England. In the case of *Damagoria Coal Co., Ltd.* (2) the effect of s. 229 of the Indian Companies Act was not properly considered. Section 230 merely amplifies the provisions of s. 229 and in no way curtails them. *Motor Emporium Co. v. N. H. Moos* (3).

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*S. Chaudhuri* for the liquidator. Section 230 of the Indian Companies Act cuts down the rights of the Crown to cases specifically mentioned therein; or else the section would be redundant.

If a later Act incorporates any general rule in an earlier Act and then enacts particular rules on the same subject, the general rule of construction is that the rule in the later act will prevail and the particular rule will override the general rule incorporated. *Craie on Statutes*, 3rd Ed., p. 199.

This case is governed by the decision in *Secretary of State v. Punjab Industrial Bank, Ltd.* (in Liquidation) (4). Further as s. 230 of the Indian Companies Act provides explicitly for the case of Crown debts, there is no need to refer to the Insolvency Act. *Hansraj v. Official Liquidators, Dehra Dun Mussoorie Electric Tramway Company, Limited* (5).

*S. M. Bose* in reply.

*Cur. adv. vult.*

LORT-WILLIAMS J. On this petition it is agreed that no question of prerogatives arises, and the short point raised is, whether the priority of payment of all debts due to the Crown, which prevails in insolvency by reason of s. 49 of the Presidency-towns

(1) [1923] A. C. 647.

(2) (1931) I. L. R. 59 Cal. 327.

(3) [1927] A. I. R. (Bom.) 606. (5) (1929) I. L. R. 51 All 695, 725.

(4) (1931) I. L. R. 12 Lah. 678.

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Insolvency Act, obtains equally in the winding-up of a company in liquidation, by reason of the provisions of s. 229 of the Indian Companies Act, or whether only those Crown debts have priority in winding-up proceedings which are specifically mentioned in s. 230 of the Companies Act.

Section 229 provides that—

In the winding up of an insolvent company the same rule shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Section 230 provides *inter alia* that:—

(1) In a winding up there shall be paid in priority to all other debts,—

(a) all revenues, taxes, cesses and rates whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;

(b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding Rs. 1,000 for each clerk or servant; and

(c) all wages of any labourer or workman, not exceeding Rs. 500 for each, whether payable for time or piece work, in respect of services rendered to the company within the two months next before the said date.

(2) The foregoing debts shall—

(a) rank equally among themselves and be payable in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the cost and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effect of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to which the payment is made.

Section 49 of the Presidency-towns Insolvency Act provides *inter alia* that—

(1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(a) all debts due to the Crown or to any local authority ;

(b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer ; and

(c) rent due to a landlord from the insolvent : provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-s. (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-s. (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

\* \* \* \* \*

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

It is argued on behalf of the Crown that s. 229 incorporates the whole of the provisions of s. 49, and therefore all debts due to Crown have priority, in spite of the provision in s. 230 giving priority to specific Crown debts. On the contrary, it is argued that the particular provision contained in s. 230 has the effect of abrogating the general provision in s. 49.

The usual rule of interpretation of statute law is that where a section of an Act which lays down a general rule is incorporated into another Act which gives a particular rule on the same subject the particular rule will abrogate the general rule (Craies on Statute Law, 3rd Ed., p. 199).

Applying this principle, I have no doubt that the intention of the legislature was to limit the priority of Crown debts in winding-up proceedings to those specifically mentioned in s. 230, and that is the

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combined effect of the sections in question. Apart from the exceptions contained in s. 230 the assets of a company must be applied in satisfaction of its liabilities *pari passu* in accordance with the provisions of s. 207. That is the result of the decision in the case of *Secretary of State v. Punjab Industrial Bank, Ltd.* (in Liquidation) (1) with which I agree.

Moreover, if the general provision regarding priority contained in s. 49 was intended to be incorporated by s. 229, the particular provision contained in s. 230, so far as it relates to Crown debts, would be redundant, except to the extent that it provides for equality of rank between revenue, *etc.*, and wages, *etc.*

Lastly, I find no real inconsistency between ss. 229 and 230. Section 229 provides that the current insolvency rules regarding the respective rights of secured and unsecured creditors, and debts provable, and the valuation of annuities, and future and contingent liabilities shall prevail in the winding-up of an insolvent company. Nothing is said therein about rules regarding priority of debts, and in my opinion the provisions of s. 49 are not incorporated by s. 229, and all questions regarding priority of debts in winding-up proceedings are to be governed solely by the provisions contained in s. 230.

It is true that the result of this interpretation of the sections is that the rules regarding priority of debts in insolvency and companies-winding-up in India are different. In England they have been made the same, and doubtless they will be in India eventually.

The priority exercised regarding Crown debts by reason of the Royal prerogative originally applied in practice only to debts arising out of questions of revenue and taxation, because those were the only debts which in former times were likely to arise in favour of the Crown as against the subject. In latter

days the Crown has become engaged to an increasing degree, both in England and in India, in trading and other activities in addition to those arising out of revenue and taxation, and consequently the modern tendency has been to restrict such prerogative rights, by means of legislation, to those matters such as revenue and taxation, to which such prerogative rights originally applied.

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The debt which is the subject-matter of the present petition is such a trade debt, and is entitled to no such priority as is claimed. Therefore, the petition is dismissed with costs.

*Petition dismissed.*

Attorneys for petitioner: *Orr Dignam & Co.*

Attorney for respondent: *Government Solicitor.*

S. M.