

ORIGINAL CIVIL.

Before Lord-Williams J.

EASTERN TAVOY MINERALS CORPORATION,
LIMITED (*in liquidation*)

1937
Jan. 25.

v.

CLARKE, RAWLINS, KER & COMPANY.*

Liquidator—Company, in liquidation—Suit in the ordinary original jurisdiction of High Court—Right of audience—Letters Patent, 1865, cl. 10.

The liquidator, as representative of a company in liquidation, has no right of audience, in any proceeding in a suit brought by such company, in the ordinary original jurisdiction of the High Court.

Charles P. Kinnell & Co., Limited v. Harding, Wace & Co. (1) relied upon.

APPLICATION, in chambers, for leave to examine witnesses upon interrogatories.

The relevant facts of the case and arguments on behalf of the parties appear from the judgment.

A liquidator of the plaintiff company, in person, moved the application.

F. R. S. Surita for the defendants, opposed.

LORT-WILLIAMS J. This suit was instituted originally by the Eastern Tavoy Minerals Corporation, Limited, a public limited company, incorporated under the Indian Companies Act, 1913, against Messrs. Clarke, Rawlins, Ker & Company and others. Subsequently, the company went into liquidation and leave was obtained by the liquidators under s. 179 of the Indian Companies Act to proceed with the suit, and the cause-title was amended. Consequently, the suit at present is by the Eastern Tavoy Minerals Corporation, Limited, in liquidation, through its official liquidators, F. L. Harcourt and M. L. Mullick.

*Application in Original Suit No. 641 of 1931.

(1) [1918] 1 K. B. 405.

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Company.*
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The company through Mr. Harcourt, who has appeared before the Court, has presented a petition asking for permission to examine witnesses upon interrogatories. Objection has been taken by counsel on behalf of Messrs. Clarke, Rawlins, Ker & Company on the ground that Mr. Harcourt has no right of audience. Mr. Harcourt, on the contrary, has contended that as liquidator of the company he has a right of audience.

In the first place, it is to be observed that this is not a proceeding in the winding up. It is a suit brought in the ordinary way in the original civil jurisdiction of the Court, but the Court which deals with winding-up proceedings has given leave to the liquidator to proceed with the suit. Order III, r. 1 of the Code of Civil Procedure provides that—

Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting on his behalf.

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Rule 2 defines the persons called “recognised agents” within the meaning of the Code.

This Order therefore has no application to the present case because it expressly provides that the rule shall not apply “where otherwise expressly provided by any law for the time being in force,” and as this proceeding is one which comes within the ordinary original civil jurisdiction of the Court, the rules of the Court on the Original Side apply, and the matter is governed also by cl. 10 of the Letters Patent of 1865. That clause provides *inter alia* that—

No person whatsoever but such advocates, vakeels, or attorneys shall be allowed to act or to plead for or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf or on behalf of a co-suitor.

It is clear, therefore, that no person has a right of audience in the original civil jurisdiction of the Court except advocates and attorneys and suitors in person. The suitor in the present case is the Eastern Tavoy Minerals Corporation, Limited, a public limited company; such "a company cannot appear "in person, not having as a legal entity any visible "person, it must appear by counsel or solicitor," as was stated by Swinfen Eady L. J. in the case of *Charles P. Kinnell & Co., Limited v. Harding, Wace & Co.* (1).

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 ———
 L^{nt} Williams J.

For the reasons I have given above, it is not necessary for me to deal with the cases to which I have been referred, because, in my opinion, they have no application to the present case. They deal with questions regarding "recognised agents" under the Code of Civil Procedure which does not apply to questions of right of audience on the Original Side of this Court.

The result is that I hold that Mr. Harcourt, as liquidator, has no right of audience, and the application therefore cannot at present be entertained. I will adjourn it till Friday to give the liquidator an opportunity of instructing attorney and counsel, if he so chooses.

Application adjourned.

Attorneys for respondents: *Clarke, Rawlins, Ker & Co.*

P. K. D.

(1) [1918] 1 K. B. 405, 413.