

## ORIGINAL CIVIL

Before Lord-Williams J.

1939  
Aug. 4.

KAMAL BROTHERS (1937), LIMITED  
(In Liquidation)

v.

SUNIL KUMAR CHATTERJI.\*

**Company**—*Winding up—Private examination—Proceeding against examinee—Inspection of deposition—Indian Companies Act (VII of 1913), s. 195—High Court (Original Side) Rules, Ch. XXXI, r. 174.*

In the winding up of a company, certain persons were examined under s. 195 of the Indian Companies Act at the instance of the Official Liquidator and their depositions were duly taken. The liquidator then filed a suit to set aside the sale of the stock-in-trade and assets of the company to one of the deponents. In the suit, the liquidator in applying for the appointment of a receiver, referred in his petition to the depositions taken at the private examination and stated that the facts clearly indicated a well-designed conspiracy to defraud the creditors of the company. Thereupon, the defendants took out a summons for leave to inspect and take copies of their depositions, and the Official Liquidator objected under Ch. XXXI, r. 174, of the High Court (Original Side) Rules.

*Held* that each defendant was entitled to have a copy of his own deposition on his undertaking to prevent its communication to the other defendants.

In re *Merchants' Fire Office* (1) followed.

*Obiter.* The depositions made under s. 195 of the Indian Companies Act and obtained by the liquidator were to be regarded as private documents and he was not entitled to refer to them in the petition.

*North Australian Territory Company v. Goldsborough, Mort and Company* (2) followed

APPLICATION by the defendants.

Kamal Brothers was a private limited company carrying on business in leather goods. On December 21, 1938, the defendant, Sunil Kumar Chatterji, filed a suit against the company for recovery of a sum

\*Application in Suit No. 1450 of 1939.

(1) [1899] 1 Ch. 432.

(2) [1893] 2 Ch. 381.

of money due on a *hatchitá* and obtained a consent decree on January 11, 1939. The assets were sold by the receiver on January 14, 1939, at a gross under-value to the defendant, Sunil, who in turn sold them, two days later, to the defendant Amita Prasad Chatterji. On March 13, 1939, at the instance of Ah Chin, a creditor of the company, an order was made for the winding up of the company and the appointment of the Official Liquidator as liquidator. Pursuant to an order, dated April 24, 1939, the defendants Santosh Kumar Banerji, Sunil Kumar Chatterji, Amita Prasad Chatterji and the receiver were examined at the instance of the Official Liquidator, under s. 195 of the Indian Companies Act and the depositions were recorded. The present suit was filed by the liquidator on behalf of the company for setting aside the purchase by Amita of the stock-in-trade and assets of the company. On July 31, 1939, the plaintiff made an application for the appointment of a receiver of the assets of the company and in the petition in support of his application, while referring to the examination under s. 195 of the Act, stated that the facts elicited by such examination clearly indicated a well-designed conspiracy to defraud the creditors of the company and also to keep the business away from their reach.

1939  
*Kamal Brothers*  
 (1937), *Limited*  
 (In Liquidation)  
 v.  
*Sunil Kumar*  
*Chatterji.*

The Official Liquidator also craved leave to take copies of the depositions and use them in the proceedings. Thereupon, the defendants applied for obtaining copies of their depositions at the private examination and the liquidator objected.

*S. R. Das* for the applicant Amita Prasad Chatterji. Barring r. 174 of Ch. XXXI of the Rules of the High Court, my client is entitled to a copy of his deposition and, even under this rule, it is in the discretion of the Judge to grant my client leave to get the copy. The examination under s. 195 of the Act, is private and the Official Liquidator is not

1939

*Kamal Brothers*  
(1937), *Limited*  
(In Liquidation)

v.  
*Sunil Kumar*  
*Chatterji.*

entitled to refer to the deposition in any other proceedings. Once having been referred to, my client is entitled to obtain a copy of his deposition. I undertake not to communicate the deposition of my client to the other defendants or their legal advisers. In re *Merchants' Fire Office* (1); In re *Standard Gold Mining Company* (2).

*S. P. Chowdhury* for the defendant *Sunil Kumar Chatterji*. The plaintiff is himself relying on the alleged admission of the defendants in their deposition as grounds of his application. He cannot be heard to say that the defendants are debarred from pointing out that the allegations are not borne out from the depositions as recorded. There can be no object in preventing witnesses themselves from having copies of their own deposition—the bar is against outsiders. In re *Regent Park Syndicate, Ltd.* (3).

*S. K. Basu* for the other defendant.

*N. Sanyal* for the Official Liquidator. Examination under s. 195 of the Indian Companies Act is of a private nature. The answers are not taken as evidence in an action but for the purpose of obtaining information to enable the company or its liquidator to decide as to the propriety of bringing an action. *North Australian Territory Company v. Goldsborough, Mort and Company* (4).

In the case *In re Merchants' Fire Office* (1), the Court gave leave to inspect and take copies of such deposition on the ground that the applicant had already put in a full defence. The case in *In re Regent Park Syndicate, Ltd.* (3) is distinguishable. That was not an application by the deponent himself

(1) [1899] 1 Ch. 432, 436.  
(2) [1895] 2 Ch. 545.

(3) (1929) I. L. R. 57 Cal. 424, 427,  
(4) [1893] 2 Ch. 381.

but by an outsider. There the police wanted to elicit certain information for the purpose of the administration of criminal justice.

*Vide* Palmer's Company Law, p. 425 and Buckley's Company Law (1930 Ed.), p. 462.

LORT-WILLIAMS J. In this case the Official Liquidator has filed a petition asking that a receiver be appointed of the stock-in-trade, books of account and other books and papers of Kamal Shoe House, carrying on business at College Street Market in Calcutta. An interim receiver has already been appointed.

In his petition, para. 28, the Official Liquidator states that the defendants in this suit, Santosh Kumar Banerji, Sunil Kumar Chatterji and Amita Prasad Chatterji, as well as the receiver, Mr. S. N. Banerjee, were examined under s. 195 of the Indian Companies Act. Their examination has now been concluded. He further states "That the facts elicited by such examinations clearly indicate a well-designed conspiracy to defraud the creditors of the company and also to keep the business away from their reach" and that he "will crave leave to take copies of such examinations and use the same in these proceedings."

The depositions were made under the provisions of s. 195 of the Indian Companies Act, and obtained by the liquidator under r. 174 of Ch. XXXI of the Original Side Rules made under the Indian Companies Act. Such depositions so obtained are to be regarded as private documents: see *North Australian Territory Company v. Goldsborough, Mort and Company* (1).

1939  
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 (1937), *Limited*  
 (In Liquidation)  
 v.  
*Sunil Kumar*  
*Chatterji.*

1939

*Kamal Brothers*  
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(In Liquidation)

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*Lort-Williams J.*

The liquidator, therefore, was not entitled to state in his petition that the facts elicited by such examinations clearly indicated a well-designed conspiracy to defraud the creditors of the company and also to keep the business away from their reach.

Santosh Kumar Banerji, Sunil Kumar Chatterji and Amita Prasad Chatterji, the defendants in the suit, have applied for copies of the depositions made by them.

In the circumstances which I have stated, I think that each of them is entitled to have a copy of his own deposition upon his counsel undertaking on his behalf to prevent communication of his deposition to his co-defendants or their solicitors or counsel. Such an order was made in the case *In re Merchants' Fire Office* (1), and, in my opinion, the facts of the present case justify a similar order, which is, accordingly, made. Costs to be paid by the company. Certified for counsel. The Registrar to act on counsel's endorsement.

Attorneys for applicant: *Mitter & Ghose.*

Attorneys for defendants: *P. C. Chatterjee;*  
*S. N. Mitra; S. C. Bose & Co.*

(1) [1899] 1 Ch. 432.