

1880 section to cases in which the document is actually produced in
 KHETTER CHUNDER MOOKERJEE v. KHETTER PAUL SREESTERUTNO. Court. I think that, as the document has been shown to have been lost in proper custody, and to have been lost, and is more than thirty years old, secondary evidence may be admitted without proof of the execution of the original.

Attorney for the plaintiff: Baboo *Denonath Bose*.

Attorney for the defendant: Mr. *Zorab*.

Before Mr. Justice Wilson.

1880
 June 3 & 24.

IN THE MATTER OF THE INDIAN COMPANIES' ACT, 1866, AND OF THE
 CALCUTTA JUTE MILLS CO., LIMITED.

*Jurisdiction of High Court—Winding up of Company formed in England—
 Principal Place of Business—Indian Companies' Act (X of 1866), s. 213.*

A limited company formed in England under the English Companies' Act, 1862, and having its registered office in England, but which has its principal place of business in Calcutta, and is managed exclusively by directors in Calcutta, and the business of which is carried on exclusively in India, can be wound up by the High Court.

In re Agra and Masterman's Bank (1) distinguished.

THIS was a petition by the directors and mortgagees of the Calcutta Jute Mills Company, praying for an order that the Company might be wound up by the Court under the provisions of s. 213 of the Indian Companies' Act, 1866.

The Company was formed in London; and duly incorporated there, under the English Companies' Act of 1862, on the 16th April 1872. The Memorandum of Association provided that the registered office of the Company should be situated in England, and the Articles of Association provided that the general meetings of shareholders should be held in England. On the 18th of August 1876, new Articles of Association were adopted in lieu of those under which the Company had been previously working. By these articles it was provided that the meetings of shareholders should be in Calcutta. Although the

registered place of business of the Company was in London, yet the whole of the property of the Company was in Bengal, and the chief object for which, according to the Memorandum of Association, the Company was established, was the purchasing of the jute mills, land, business, works, machinery, plant, and stock-in-trade of the Ishera Jute Mills, Bengal, and the carrying on the trade or business of buying, selling, and manufacturing jute.

1880
 IN THE
 MATTER OF
 THE INDIAN
 COMPANIES'
 ACT, 1866, AND
 OF THE
 CALCUTTA
 JUTE MILLS
 CO., LIMITED.

Only one director of the Company was permanently resident in England. His duties were confined to acting as the agent of the Company, and virtually the whole of the business of the Company was transacted in Bengal by the petitioners. The half-yearly reports were prepared, issued, and passed, and the half-yearly meetings held at the head office in Calcutta, such office being the principal place of business of the Company, either in England or India.

On the 3rd May 1880, the mill was stopped, it being found impossible to work it except at a heavy loss, and the present petition was presented

Mr. *Phillips* for the directors.

Mr. *Stokoe* for the mortgagees.

WILSON, J.—This case raises a question of jurisdiction of some importance. I think it well, therefore, to state the grounds on which I make the order asked for.

The Company in question was formed in England in April 1872, under the Companies' Act, 1862; and by the Memorandum of Association its registered office is in England. By its original Articles of Association the general meetings of shareholders were to be held in England, and they contemplated, I think, that the board of directors should act in England. The manufacturing business has always been carried on in India. In August 1876, new Articles of Association were substituted for the former ones. Under these the meetings of shareholders must be held in Calcutta. The directors are chosen in Calcutta, and it appears from the affidavits that the board act here; there being generally only one director in England, whose business

1880
 IN THE
 MATTER OF
 THE INDIAN
 COMPANIES'
 ACT, 1866, AND
 OF THE
 CALCUTTA
 JUTE MILLS
 CO., LIMITED.

is that of agency. The property of the Company is all in Calcutta: the whole of the manufacturing business is still carried on here; and a large majority of the shares held are on the Indian register,—that is to say, 5,232 against 768 on the English list.

I have to consider whether this Court has power to wind up the Company.

The English Act, under which the Company is registered, clearly gives no power to this Court, but only to the English Courts mentioned in s. 81. Nor does Part IV of the Indian Companies' Act give such a power. That is limited to companies registered under the Act.

The question depends upon s. 213. That is the first section of Part VIII, the title of which is "Application of Act to unregistered companies." The section is, so far as it is material, as follows:—

"Subject as hereinafter mentioned, any partnership, association or company, except railway companies incorporated by Act of Parliament or Act of the Governor-General of India in Council, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to such company with the following exceptions and additions:—

"(1.) An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of British India where its principal place of business is situate; or if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding up of such company, be deemed to be the registered office of the company,

"(2.) No unregistered company shall be wound up under this Act voluntarily, or subject to the supervision of the Court.

“(3.) The circumstances under which an unregistered company may be wound up are as follows (that is to say)—

“(a.) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

“(b.) Whenever the company is unable to pay its debts;

“(c.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.”

To give jurisdiction under this section the following conditions must be fulfilled: *First*, the company must be a company within the meaning of the section. In an Indian Act, of course, a company means an Indian company, unless a contrary intention appears; and it was so held under this section on an appeal in this Court—*In re Agra and Masterman's Bank* (1). *Secondly*, the company must have its principal place of business, or a principal place of business, within the jurisdiction.

There is little authority in this country to assist in determining what is an Indian company within the meaning of this section. But putting aside for the present the fact that this Company is registered in England, and viewing it as if it were registered nowhere, I can see no room for doubt that this is an Indian company. The ultimate control and direction are exercised here; the actual business operations are carried on here; the assets are here; the bulk of the shareholders are here. If such a company be not an Indian company, I do not see how any unregistered company can be.

I think it clear, too, that the principal place of business of the Company is in Calcutta. I should be disposed to construe those words strictly, and to hold that, in the case of a company constituted as this is, no place is a principal place of business except the place where the supreme control of its affairs is exercised, whatever may be the case with companies otherwise constituted: see *per* Phear, J., in *Re Agra and Masterman's Bank* (1). An agency or branch establishment is certainly not a principal place of business—*Re Agra and Masterman's Bank* (1). This Company, under its original Articles of Association, was held by the Court of Exchequer to be a “person residing in

(1) 1 Ind. Jur., N. S., 335.

1880
 IN THE
 MATTER OF
 THE INDIAN
 COMPANIES'
 ACT, 1866, AND
 OF THE
 CALCUTTA
 JUTE MILLS
 CO., LIMITED.

the United Kingdom," for the purposes of income tax—*Calcutta Jute Mills Company v. Nicholson* (1); and had those articles been still in force, I do not think it could have been said to have a principal place of business in India. This view is also in accordance with the numerous English decisions upon the question of where a company carries on business within the meaning of the County Courts Acts. See *Brown v. London and N. W. Ry. Co.* (2), *Abérystwith Pier Co. v. Cooper* (3), *Corbett v. General Steam Navigation Co.* (4).

Judging the case by the strictest test that can be applied, I think the only principal place of business of this Company is in Calcutta.

It remains to be considered whether the fact that the Company is registered in England excludes the jurisdiction of this Court. In my opinion it does not. The provisions of the Indian Companies' Act are substantially taken from the English Act; see *per* Peacock, C. J., in *Re Agra and Masterman's Bank* (5). And under the English Acts English Courts have exercised jurisdiction to wind up companies formed in foreign countries or in India. *Wigram, V. C.*, acting under 11 and 12 Vict., c. 45, s. 5 (the language of which is not, I think, materially different upon this point from that of the later Acts) exercised this jurisdiction in the case of a company incorporated by Charter of the King of the Belgians: *In re Dendre Valley Ry. Coy.*; *Ex parte Moss* (6). Lord Romilly, M. R., under the present Act, wound up a banking company formed and registered in India—*Re Commercial Bank of India* (7). And Mr. Justice Lindley, in his work on Partnership, Vol. II, pp. 1233, 4th Edn., says:—"It seems clear that companies formed here or abroad, for the transaction of business abroad, but the management of which is subject to the control of persons in this country, can be wound up under the Act."

The only authority with which I am acquainted that might seem to point the other way, is the case already referred of the *Agra Bank* (5). Some of the *dicta* of Peacock, C. J., taken apart

(1) L. R., 1 Exch. Div., 428.

(4) 28 L. J., Exch., 214.

(2) 4 B. and S., 326.

(5) 1 Ind. Jur., N. S., 335.

(3) 35 L. J., Q. B., 44.

(6) 19 L. J., Ch., 474.

(7) L. R., 6 Eq., 517.

from their context, might seem to lay down that an Indian Court could not wind up a company formed by Royal Charter or under an Imperial Statute. But those *dicta* must be read with their context, and so reading them, I think the learned Chief Justice was speaking throughout of an English company so formed, such as the one then before the Court; and did not intend to deal with the very different case of a company Indian in everything except registration; and s. 194 seems to show that companies formed under Act of Parliament or Letters Patent may register in India, and may do so for the purpose of being wound up.

I am, therefore, of opinion that this Court has jurisdiction to wind up this Company.

I have had further to consider whether, in the exercise of the discretion given to the Court by s. 167, I ought to refuse to exercise the jurisdiction. The present petition is the petition not only of the directors, but also of the principal creditor, and is not opposed. Now the granting an order may not in such a case be strictly *ex debito justitiæ*. But where a creditor petitions, and the assets and the bulk of the shareholders are within the jurisdiction, it would, in my judgment, require very strong reasons to justify a Court in withholding the order.

The only reason against making the order that I see, is the fact that the Chancery Division of the High Court in England has, undoubtedly, power to wind up this Company—*Princess of Reuss v. Jean Bos* (1), and concurrent proceedings here and in England might lead to inconvenience. But the English Court has the same discretion as this Court, and if application be made in England, the Court will give whatever weight ought to be given to the fact of the winding-up order having been made here. Even if there should be a winding up in each country, I do not think there would be any insuperable difficulty in securing that no creditor proving here should gain any undue advantage, and that no contributory (if any there be) made liable here, should bear any undue burden by reason of the concurrent proceedings.

Application granted.

Attorneys for the directors : Messrs. *Watkins and Watkins*.

Attorneys for the mortgagees : Messrs. *Roberts and Morgan*.

(1) L. R., 5 H. L., 176.

1880

IN THE
MATTER OF
THE INDIAN
COMPANIES'
ACT, 1866, AND
OF THE
CALCUTTA
JUTE MILLS
CO., LIMITED.