1886
December 1.

MISCELLANEOUS CIVIL.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Oldfield and Mr. Justice Brodhurst.

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

Company—Winding up—Transfer of winding up from District Court to High Court—Act VI of 1882 (Indian Companies Act) s. 219—Civil Procedure Code, ss. 25, 647—Stat. 24 and 25 Vic. (High Courts Act) c. 104 s. 15—Letters Patent, s. 9—Creditor's vakil acting as liquidator—Practice—Barrister or Pleader appearing as litigant in person.

There is nothing in the Indian Companies Act (VI of 1882) or the High Courts Act (24 and 25 Vic. c. 104) or the Letters Patent, which prevents the High Court from calling for the record of the proceedings in the winding up of a company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 25 of the Civil Procedure Code.

Where, in the proceedings in the winding up of a company under Act VI of 1882, an order was passed admitting the proof of a particular creditor of the company before any Liquidator had been appointed,—*held*, that this was an irregularity which by itself would justify the High Court in sending for the record.

Where the District Judge conducting the proceedings in the winding up of a company under Act VI of 1882 had, after receiving notice of the admission by the High Court of a petition for transfer of those proceedings to its own file, drafted and placed upon the record an order which it might have been difficult for him to reconsider if the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with windings up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side or the other,—*held* that, under these circumstances, the case was a proper one for the exercise of the High Court's jurisdiction by calling up the winding up proceedings to its own file.

A person who has been appointed liquidator of a company, ought not, after such appointment, to continue to act as vakil of a creditor whose right to prove against the company is in dispute in the liquidation.

In cases where a Barrister or Pleader appears before the Court as a litigant in person, he must not address the Court from the advocates' table or in robes, but from the same place and in the same way as any ordinary member of the public.

THIS was a petition by C. J. Vansittart, H. D. Vansittart, R. Vansittart, K. T. Vansittart, and E. L. Walsh, in which it was set forth that on the 11th March, 1886, the Delhi and London

1886

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

Bank, a creditor of the West Hopetown Tea Company, Limited, applied to have the said Company wound up under the Indian Companies Act (VI of 1882); that on the 6th July, 1886, the Official Liquidator of the Company applied to have the petitioners, together with certain other persons named, declared contributories to the Company's assets; and that the application was pending in the Court of the District Judge of Saháranpur. The prayer of the petitioner was that the High Court would remove the proceedings from the District Court to its own file, the chief grounds stated being that the case involved intricate questions of law, in dealing with which the District Court would not have the assistance of any rules framed by the High Court under Act VI of 1882, and would probably not have access to the principal authorities on the subject, and that at Saháranpur the petitioners would be unable to obtain the services of counsel, as the only counsel practising there would be required as a witness.

The Hon. T. *Conlan*, Mr. *C. H. Hill*, and Mr. *H. Vansittart*, for the petitioners.

Mr. *W. Quarry*, the Official Liquidator, appeared in person to oppose the petition. He appeared in robes as a pleader of the High Court, and addressed the Court from the Bar.

During the course of the argument, Edge, C. J., addressing Mr. *Quarry*, said that, in future, in cases where a barrister or pleader appeared before the Court as a litigant in person, he must not address the Court from the advocates' table or in robes, but from the same place and in the same way as any ordinary member of the public. This was the universal practice in England and Ireland, and it should be followed here. Upon this occasion, however, Mr. *Quarry* might continue as he had begun.

The facts of the case are sufficiently stated in the judgment of Edge, C. J.

EDGE, C. J.—This is a petition on behalf of the persons on the list of contributories of the West Hopetown Tea Company now in liquidation in the Court of the District Judge of Saháranpur, asking us to call up the record in the winding up of the company from Mr. Benson's Court, and to proceed with the case here. A preliminary objection has been taken by Mr. *Quarry*, the Liquida-

1886

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

—tor, that this Court has no power to call up the record and transfer the winding up proceedings to its own file. His main contention is that the Indian Companies Act (VI of 1882) is itself a Procedure Code, which must be followed in the winding up of companies, and impliedly excludes any other procedure, and prevents this Court from exercising the power of interference it possesses in other cases, otherwise than by way of appeal. He argues that this must be the inference from s. 219 of the Act, because that section expressly gives power to the High Court to transfer the windings up from one District Court to another; and he contends that this is by implication a negation of the power to transfer such cases from the District Courts to this Court. I must say that I am unable to follow this contention. The section was probably intended to be enabling, but unless there is something in the Act which expressly limits the control which this Court was obviously intended to exercise in the interests of justice over the Subordinate Courts, we ought not to infer from a section enabling transfers from one Subordinate Court to another, that this Court has no power to transfer cases from those Courts to itself. I asked Mr. *Quarry* if he could point out any provision in the Act which distinctly prohibits us from exercising this jurisdiction, but he failed to do so. The question is, there being nothing in the Companies Act to prevent us, have we power under the Letters Patent, or the High Courts Act, or the Civil Procedure Code, to accede to the prayer of the petition? I do not think it necessary to consider whether we have such a power under s. 15 of the High Courts Act, or s. 9 of the Letters Patent, though, if a case should arise in which it was necessary to do so, I should require very strong argument to convince me that the word "suit" in the latter provision should not be construed in the broadest possible sense, so as to provide against any possible miscarriage of justice. It is not necessary, however, to consider either of those provisions, because s. 647 of the Civil Procedure Code makes applicable to all miscellaneous proceedings not specifically provided for the general procedure prescribed by the Code for suits and appeals. Now, in this view of the matter, which has before now been held by this Court, I am of opinion that s. 25 of the Code is applicable to cases of winding up companies, and that we have under that section

1886

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

ample power to call up such proceedings and transfer them to the file of this Court. The only question therefore is whether we ought to exercise this power in the present case. In the observations which I am about to make, I wish it to be distinctly understood that the last thing I should be disposed to do would be to cast any reflection upon Mr. Benson. It is not because we have any doubt as to his capability and integrity, or that he would bring his best judgment to bear upon the matters before him, that we propose to remove the proceedings to this Court. I say this to prevent any possible misapprehension on the part of Mr. Benson or any other person. Let us consider how the case stands. It arises out of the winding up of the West Hopetown Tea Company. The application for winding up was made early in March, 1886, and it was signed by Mr. *Quarry* as vakil for the Delhi and London Bank. After this application, and I suppose after some preliminary order had been made, an application was made on behalf of the Bank for the appointment of Mr. *Quarry* as liquidator of the Company. It appears that at a meeting at which some of the contributories were present, and I suppose some of the creditors were represented, and at which Mr. *Quarry* was in the chair, his appointment as liquidator was proposed, and he was in fact appointed by the meeting. I presume that this appointment was sanctioned by Mr. Benson. So far I see no objection to anything that was done. Mr. *Quarry* might, if he chose to do so, have ceased to represent the Bank as its advocate, and it was perfectly open to him to act as liquidator of the Company. But after his appointment as liquidator, he still continued to act as the Bank's vakil. I make no suggestion against his integrity or his intention to do justice to his client and to those whom he represented in his capacity as liquidator. I desire to treat this matter as a dry legal question between *A* and *B*, and to make no imputation upon Mr. *Quarry*. But we find as a fact that after his appointment as liquidator he still acted as vakil of the principal creditor whose debt was in dispute in the liquidation. As I understand, the amount of the debt may not be in dispute, but whether this particular creditor is entitled to prove against the Company or not, is a question as to which there is a contention in law. For my own part, I cannot understand how any liquidator, no matter how honestly disposed

1886

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

he may be—and I assume Mr. *Quarry's* complete *bonâ fides*—can possibly do his duty to a client who is claiming to rank on the estate as a creditor, and at the same time to do his duty to the estate and the contributories—the other creditors—when his client's claim to rank as a creditor is in dispute. I do not understand how he can put forward his client's proof, and then administer even-handed justice by admitting in his capacity of liquidator the proof which he put forward in his capacity of vakil. The position is an anomalous one, which ought to be avoided. It appears from the statement made by Mr. *Quarry* that, before any liquidator was appointed, the proof of the Bank was admitted. I do not understand under what law the order by which this was done could have been made, and it was, I think, an irregularity which by itself would justify this Court in calling for the record; but further, after notice of this petition went to the District Court, the Judge, who is an officer for whom I entertain the greatest respect, drafted an order, for which he gave several reasons, and placed it upon the file of the proceedings. I cannot ascertain or even surmise the Judge's object in taking this step. It may have been that he wanted to keep a record of the matter for himself in the event of the case coming back to him while it was still fresh in his recollection, but I think that he committed an error in judgment in passing an order after he had notice that proceedings had been taken, and had been to some extent sanctioned, by this Court for the removal of the winding up from his Court. This circumstance would not affect my mind in any way, because I have perfect confidence in Mr. Benson; but it may have weight in this manner—that Mr. Benson has made an order which it might be difficult for him to reconsider if the matter again came before him. Again, it is obvious from the statement which has been made by the learned counsel for the petitioners, that this case is one in which serious questions of law are likely to arise, which it would probably be difficult to discuss adequately at Saháranpur in the absence of the authorities upon the subject to which they relate. Mr. Benson might perhaps not have an opportunity of consulting these authorities, and the case appears to me to be one which, even if he proceeded to deal with it, would in all probability ultimately come before this Court in a variety of appeals from orders brought by one side or

1886

IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY, LIMITED.

the other. Moreover, this Court has not framed any rules, such as those framed by other High Courts, for dealing with windings up under the Companies Act, no doubt because such proceedings are not very frequent in this part of the country. This again might leave the Judge in a position of some difficulty in dealing with many of the applications that might come before him. The case is of a kind which is perhaps unfamiliar to most of the District Judges, and involves in its earliest stages the question whether the principal creditor is entitled to prove against the estate, and other serious questions of law. Under these circumstances I am of opinion that this is a proper case for the exercise of our jurisdiction by calling up the winding up proceedings to the file of this Court, and we order accordingly. Costs will be paid out of the estate.

OLDFIELD, J.—I am of the same opinion.

BRODHURST, J.—I also concur.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

1886
December 22.

RADHA PRASAD SINGH (PLAINTIFF) *v.* JUGAL DAS (DEFENDANT).*

Land-holder and tenant—Determination of rent by Settlement Officer—Suit for arrears of rent for period prior to order—Jurisdiction in such suit to determine rent for such period—Civil and Revenue Courts—Act XIX of 1873 *(N.-W. P. Land Revenue Act)* ss. 72, 77—*Act XII of* 1881 *(N.-W. P. Rent Act)*, s. 95 *(l)*.

The jurisdiction to determine or fix rent payable by a tenant is given exclusively to the Revenue Court, either by order of the settlement officer, or by application under s. 95(*l*) of the N.-W. P. Rent Act (XII of 1881); and such rent cannot be determined in a suit by a landholder for arrears of rent in the Revenue Court, in which the appeal lies to the District Judge or High Court.

In March, 1884, the rent payable by an occupancy-tenant was fixed by the settlement officer under s. 72 of Act XIX of 1873 (N.-W. P. Land Revenue Act). In 1885, the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the settlement officer's order, as well as for the period subsequent thereto. The lower appellate Court dismissed the claim for rent prior to the 1st July, 1884, and decreed such as was due subsequently to that date, but without interest.

* Second Appeal No. 171 of 1886 from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 29th September, 1885, modifying a decree of Munshi Ganpat Rai, Assistant Collector of Ballia, dated the 24th April, 1885.