

ORIGINAL CIVIL.

Before Mr. Justice Scott.

IN RE THE PARELL MILL COMPANY, LIMITED.

1886.
January 16.

Company—Winding up—Unpaid wages of servants—Priority—Indian Companies Act VI of 1882.

Under the Indian Companies Act VI of 1882, the claim of servants of a company, in respect of unpaid wages, has no priority to other debts due by the company.

On the 20th February, 1886, an order was made, on petition, for the winding up of the Parell Mill Company, Limited, and a liquidator was appointed. On the 22nd February a petition was presented to the Judge in chambers by the workmen who had been employed at the mill, stating that arrears of wages for periods varying from one month to four months were due to them, and that they and their families were almost reduced to starvation. The petition prayed that the official liquidator might be ordered to pay the wages due to the petitioners.

Roughton appeared for the official liquidator, and on his behalf stated that he had no objection to an order being made in accordance with the prayer of the petition, but felt bound to point out that it had been frequently held that the Court had no power to give priority to workmen in respect of their wages, except in cases that had arisen since the passing of the Judicature Act in England, a section of which had been held by Malins, V. C., to apply the principles of insolvency to companies winding up. He referred to *In re Association of Land Financiers*⁽¹⁾; *In re The General Rolling Stock Company*⁽²⁾; *Chapman's Case*⁽³⁾; and *In re Calcutta Steam Tug Association*⁽⁴⁾.

SCOTT, J.—Some six hundred workmen of this company have not been paid for their labour for a period of two or three months, and they now ask, in case a winding-up order is made, to be admitted preferentially to other creditors, and to be paid in full.

Were this the insolvency of a single employer of labour, these workmen would be entitled to the priority they claim. The

(1) L. R., 16 Ch. Div., 375.

(3) L. R., 2 Eq., 567.

(2) L. R., 1 Eq., 346.

(4) 2 Ind. Jur., N. S., p. 17.

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Indian Insolvency Act says that a labourer whose wages are unpaid shall have priority over the general body of creditors to the extent of six months' arrears. But as their employer was a company, these men come, not under the Insolvency Act, but under the Indian Companies Act VI of 1882, and it is according to the provisions of that Act that their claims must be decided.

Now, the Companies Act VI of 1882 does not contain any such benevolent provision similar to the one I have cited from the Insolvency Act. Section 147 deals with the distribution of assets, and merely says that they are to be applied to the discharge of the company's liabilities. The question I have to consider is, whether, in the silence of the Companies Act, I may follow the analogy which exists between an insolvency and a winding-up, and give priority to these unpaid wages.

To answer that question I must look at the course that has been followed in England. Companies and company law are of English creation, and English jurisprudence and legislation form a good guide in case of doubt. The English Companies Acts of 1862 and 1867, like the Indian Companies Act, contain no special provision as to unpaid wages. But the Judicature Act of 1875 (section 10) incorporated certain rules of insolvency as to the rights of the creditors of the insolvent with the winding-up provisions of the Companies Act. There has, however, been no such extension of any rules of insolvency to the Indian Companies Act. My decision must be on the meaning of the Companies Act standing alone.

Now, even in England, notwithstanding the provisions of section 10 of the Judicature Act, the Judges have differed on the point as to whether unpaid wages were paid preferentially out of the assets of the company. Only one Judge, Malins, V. C., has distinctly decided in favour of priority—*In re Association of Land Financiers*⁽¹⁾; whilst the late Master of the Rolls seemed in doubt—*In re Albion Steel and Wire Company*⁽²⁾; see also *In re Norton Iron Works Company, Limited*⁽³⁾; *In re Coal Consumers' Association*⁽⁴⁾; *In re Printing and Numerical Registering Company*⁽⁵⁾; *In re Bridgewater Engineering Company*⁽⁶⁾; *In re Richards*

(1) L. R., 16 Ch. Div., 373.

(4) L. R., 4 Ch. Div., 625.

(2) L. R., 7 Ch. Div., 547.

(5) L. R., 8 Ch. Div., 535.

(3) 26 Cal. W. R. Civ. Rul., 53.

(6) L. R., 12 Ch. Div., 181.

and Co.⁽¹⁾. It is also most important to observe that in each case the Judicature Act was solely relied upon as assimilating the rules in winding-up companies to the rules in bankruptcy, and it was not even argued that the Companies Act alone justified any priority. Whilst, as regards the true meaning of section 10 of the Judicature Act, there was a great difference of judicial opinion. In order to remove all doubt, and to remedy what was thought a case of hardship, the Legislature interfered with an amending Act (Stat. 46, 47, Vic., cap. 28). It is there enacted (section 4): "In the distribution of the assets of any company being wound up under the Companies Acts of 1862 and 1867, there shall be paid, in priority to other debts, (a) all wages or salary of any clerk or servant in respect of service rendered to the company during four months before the commencement of the winding-up, not exceeding fifty pounds; and (b) all wages of any labourer or workman in respect of service rendered to the company during two months before the commencement of the winding-up."

This *resumé* of English law on the subject shows that the treatment of claims for unpaid wages in the winding up of companies was a *casus omissus* in the English Companies Acts, to be remedied by the Legislature, not by the Courts; and the same remark applies to the Indian Companies Act (VI of 1882). My duty as a judge is plain. I cannot import into the Act a provision which the Act does not contain. I must decide against any priority. I trust the Indian Legislature will soon remedy the hardship, though it will not be in time for the present applicants. Meanwhile in this case it is within the power of the creditors to waive their rights, in part or in whole, as against these labourers; and under section 140 of the Companies Act VI of 1882 I have the power to call a meeting of the creditors for the purpose of ascertaining their wishes as to any matter relating to the winding up. I find there is a precedent for such a meeting to consider the payment of labourers' wages, and I think I am justified in adopting this course in the present instance.

Attorneys for the official liquidator.—Messrs. *Tobin and Roughton*.

(1) L. R. 11 Ch. Div., 676.

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