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and the cause of action arises wholly outside the jurisdiction. The English decisions are all against such a jurisdiction. General principles are against it. If such cases were admitted our decisions might prove a mere nullity, a *brutum fulmen*. *Ex parte Blain*(1) clearly shows that any departure from the ordinary principles of jurisdiction requires the sanction of express legislation, and that mere general words are not sufficient. Just as in that case the word "debtor" was held only to mean a "debtor subject to English bankruptcy law," so in this case I hold that the words "if the defendant * * shall carry on business" in clause 12 of the Letters Patent must be interpreted to mean "if the defendant being a British subject * * * shall * * carry on business;" and that where the liability of a foreigner is in question, the "carrying on" must include actual residence. I must, therefore, decide this preliminary issue in favour of the defendant, with costs.

Attorneys for plaintiff:—Messrs. *Craigie, Lynch and Owen.*

Attorneys for defendant:—Messrs. *Little, Smith, Frere, and Nicholson.*

(1) L. R., 12 Ch. Div., 522.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Scott.

1888. *August* 3.

MOTIRÁM BHA'GUBHAT, (APPELLANT), *v.* THE GORDON MILLS, LIMITED, IN LIQUIDATION, (RESPONDENTS).

Company—Winding up—Resolution to wind up—Dissentient shareholders—Notice of dissent—Requirements of such notice—Indian Companies Act VI of 1882, *Sec.* 204.

The shareholders of the Gordon Mills having passed a resolution for the voluntary winding up of the company, five dissentient shareholders gave notice of their dissent by a letter to the liquidators in the following terms:—

"With reference to the resolutions to wind up the above company voluntarily, and which were passed and confirmed on 14th instant, we hereby give you notice under section 204 of the Indian Companies Act VI of 1882, and require you to purchase the interest held by us in the said company at such price as may be determined either by private arrangement or by arbitration, as we are dissentients from such resolutions."

Held, that the letter was a sufficient notice of dissent under the provisions of section 204 of the Indian Companies Act VI of 1882

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ON the 23rd November, 1885, the shareholders of the Gordon Mills, Limited, passed a resolution, that the company should be wound up voluntarily, &c. The said resolution was subsequently confirmed on the 14th December, 1885.

On the 19th December, 1885, the appellant and four other dissentient shareholders gave notice to the liquidators of their dissent, under section 204 of the Indian Companies Act VI of 1882, by a letter in the following terms:—

"*Bombay, 19th December 1885.*

"TO THE LIQUIDATORS OF THE GORDON MILLS, LIMITED.

"Sirs,—With reference to the resolutions to wind up the above company voluntarily, and which were passed and confirmed on the 14th instant, we hereby give you notice under section 204 of the Indian Companies Act VI of 1882, and require you to purchase the interest held by us in the said company at such price as may be determined either by private arrangement or by arbitration, as we are dissentients from such resolutions."

No reply to this letter was received, and on the 5th November, 1886, the dissentient shareholders by their solicitors addressed the following letter to the liquidators:—

"*5th November 1886.*

"TO THE LIQUIDATORS OF THE GORDON MILLS, LIMITED.

"Gentlemen,—Messrs. Motirám Bhágubhái, Tuljárám Navalrám, Kapurchand Khengar, and others, the dissentient shareholdiers of the above company, have placed in our hands a copy of their notice, dated 19th December, 1885, served upon you, with instructions to write to you again on the subject. As you have as yet made no proposal to our clients to purchase the interest held by them, and consequently no agreement has been come to between you and our clients for the purchase of their interest, our clients call upon you to give us an early appointment for the purpose of appointing an arbitrator under section 206 of the Indian Companies Act.

"Your early attention to this is requested, as our clients cannot allow any more delay to take place in the settlement of these differences.

Yours faithfully,

JEFFERSON, BHÁISHANKAR, AND DINSHAW."

On the 16th November, 1886, the solicitors for the dissentient shareholders wrote again, as follows:—

"*16th November 1886.*

"TO THE LIQUIDATORS, GORDON MILLS, LIMITED, IN LIQUIDATION.

"Gentlemen,—We beg to draw your attention to our letter to you of the 5th instant, to which as yet we have received no answer. As the parties have

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not concurred in nominating an arbitrator, we are now instructed by our clients, Messrs. Motirám Bhágubhái, Tuljárám Navalrám, Kapurchand Khengar, Mánirám Dáyábhái, and Castur Bhuga, to inform you that they have respectively nominated and appointed Mr. Bháishankar Nánábhái to act as their arbitrator, and to request you to name your arbitrator within the time mentioned in section 206 of the Indian Companies Act.

"We send you herewith the formal request in writing under the hand of each of our clients.

Yours truly,

JEFFERSON, BHÁISHANKAR, AND DINSHAW."

In that letter they enclosed the following letter from the appellant:—

"*Bombay, 25th November 1886.*

"MESSRS. JEFFERSON, BHÁISHANKAR AND DINSHAW,
SOLICITORS FOR MOTIRÁM BHÁGUBHÁI AND OTHERS.

"Dear Sirs,—The liquidators of the Gordon Mills, Limited, have handed to us your letter to their address, dated the 5th instant, with instructions to inform you that the notice to which you refer, dated the 19th December, 1885, served upon them by your clients is insufficient and defective, and that they, the liquidators, do not and cannot in any way recognise the same.

"Consequently they decline to comply with the request contained in your letter of the 5th instant.

"As your clients' notice to the liquidators was insufficient, it is perhaps unnecessary to add, that there has been no discussion whatever between the liquidators and your clients as to any price to be paid them for their shares, and consequently there has been no dispute within the meaning of section 205 of the Companies Act.

"Since the above was written, our clients have handed to us your letter of the 16th instant with its accompaniments, and in reply thereto we are instructed to inform you that, for the reasons already above stated, our clients will not appoint any arbitrator.

Yours truly,

CRAIGIE, LYNCH, AND OWEN."

On the 31st July, 1887, the arbitrator appointed by the appellant sent a formal notice to the liquidators, that he would proceed with the reference on the 3rd June, 1887. In reply to that notice the attorneys for the liquidators sent the following letter to the arbitrator:—

"*Bombay, 2nd June 1887.*

"BHÁISHANKAR NÁNÁBHÁI, ESQUIRE.

THE GORDON MILLS, LIMITED; AND MOTIRÁM BHAGUBHÁI AND ANOTHER.

"Dear Sir,—The liquidators of the Gordon Mills, Limited, have placed in our hands your letter to them, dated the 31st ultimo, giving them notice that you will, as an arbitrator, proceed with reference herein on the 3rd instant.

"In reply thereto we are instructed by our clients to refer you to our letter, dated the 25th March last, addressed on their behalf to your firm, and to state that our clients decline to admit that Mr. Motirám Bhágubhái and Mr. Tuljárám Navalrám are dissentient shareholders within the meaning of the Indian Companies Act, and they consequently dispute their right to appoint you to be an arbitrator, and also your right to act as an arbitrator in any matter concerning the affairs of the company which our clients represent.

"Under these circumstances our clients will not, of course, attend the meeting of which you give them notice.

Yours truly,

(Signed) CRAIGIE, LYNCH AND OWEN."

The appellant subsequently filed a petition to the High Court, praying that the submission to arbitration might be filed in Court.

The petition set forth the facts, and proceeded:—

"12. That Mr. Bháishankar Nánábhái thereafter proceeded with the reference so as aforesaid made to him by your petitioner, and gave notice of the proceedings before him to the said liquidators, but the said liquidators have, through their said attorneys, protested against Mr. Bháishankar's right to proceed with the said reference, and have declined to produce any books, papers, or documents relating to the said company. Copies of the said notices served by the said Mr. Bháishankar Nánábhái upon the parties and the letters of the said attorneys of the said liquidators are also hereto annexed, and collectively marked with the letter (J).

"13. That your petitioner is advised and he is desirous that the submisson to arbitration made by him as aforesaid may be filed in this Honourable Court, and that an order of reference may be made thereon."

On the 6th September, 1887, the matter came on for hearing in chambers before Bayley, J., who rejected the petition, on the

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ground that the notice given by the appellant on the 19th December, 1885, was insufficient under section 204 of the Indian Companies Act VI of 1882.

The petitioner appealed from the order of rejection.

Latham (Advocate-General) for the appellant:—We contend that the letter of the 19th December, 1885, is a sufficient notice under section 204 of the Indian Companies Act VI of 1882. It contains a notice of dissent, and it refers the liquidators to section 204, by a reference to which they could have ascertained their right to choose between the two courses prescribed. They have not been in any way misled or deceived. The fact that the appellant specifies the purchase of his interest as apparently the course preferred by him, could not have misled them. As West, J., says in *The Fleming Spinning and Weaving Company Case*(1), "the purpose of a notice is to convey certain information." The necessary information was conveyed by this notice. The liquidators indeed do not pretend that they have been misled. They rely merely on a most technical objection to our notice. West, J., says: (page 512) "It is not the function of liquidators to lay hold of every technical excuse for fleecing one member, or group of members, for the benefit of the others. They may do what an honourable set of partners would do. Certainly the latter would not say: 'We knew what you meant; but as your notice was defective in form, we will stand on our right to ignore it.'"

The case of *In re Union Bank of Kingston-upon-Hull*(2), relied upon in chambers, has no application whatever. It merely decided that the notice of dissent should contain the notice of requisition also. Our notice does that.

[SARGENT, C. J.:—The section if read grammatically would seem to indicate that there should be two separate notices, *viz.*, a notice of dissent and a notice of requisition.]

Yes, that is so. The point really before the Master of the Rolls appears to have been whether both notices should be contemporaneous, and he held that they should be, but he ex-

(1) I. L. R., 7 Bom., at p. 509. (2) L. R., 13 Ch. Div., 808, at p. 810.

pressed his opinion that "the whole should be one notice in writing."

Hannen, J., in *De Rosaz* v. *Anglo-Italian Bank*[1] seems to have thought that a mere notice of dissent under the section by a shareholder was sufficient, and created a duty on the liquidators to proceed as provided by the section.

Jardine, for the liquidators, *contra*:—The Legislature considered that notice in writing should be given, and prescribed what the notice should contain. We contend that the appellant's notice in question does not contain what the Act requires. It is not for us to say that the liquidators must have known what was meant by the appellants, or might have made inferences. The simple question is, whether the Act was obeyed or not. The Act requires the shareholder to give notice to the liquidators to do one of two things: *i. e.* he must specify both, and require them to do one or other as they may prefer. This notice does not do that, and is, therefore, not sufficient within the section. We do not contend that any specific form of words should be used, but the option should be expressly given to the liquidators. It is not the shareholders but the liquidators who have the right of choice. What the liquidators may have understood from the notice, is of no importance. To hold that would be to make the sufficiency of the notice vary according to the intelligence of the liquidator. The simple question is, does the notice comply with the section? If the liquidators had replied to this notice on the following day and refused to purchase the appellant's interest, and there the matter dropped, could it be held that the notice was sufficient? Counsel relied on *In re Union Bank of Kingston-upon-Hull*[2], and commented on *In re The Fleming Spinning and Weaving Company (Limited) in Liquidation*[3].

SARGENT, C. J.:—The question which we have to determine is whether the letter, dated the 19th December, 1885, by the appellant to the liquidators of the Gordon Mills was a valid and sufficient notice within the provisions of the second clause of section 204 of the Indian Companies Act VI of 1882.

(1) L. R., 4 Q. B. at p. 474. (2) 13 Ch. Div., 808.
(3) I. L. R., 7 Bom., 494.

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It is contended that this letter is insufficient, inasmuch as it only required the liquidators to purchase the interest of the dissentient shareholders in the company, and did not state the alternative course open to them under the section, *viz.*, to abstain from carrying the special resolution into effect. The learned Judge, from whose decision this appeal is brought, was of opinion that the notice was defective and insufficient, and he based his decision upon the cases of *In re Union Bank of Kingston-upon-Hull*(1) and *In re the Fleming Spinning and Weaving Company (Limited) in Liquidation*(2).

In the case of *In re Union Bank of Kingston-upon-Hull*(3), however, it is quite plain that the question upon which Jessel, M. R., expressed his opinion, was not as to the exact form in which the notice should be given, but rather as to "whether the notice of the dissentient shareholder that he dissents, should also contain the notice either to abstain from carrying the resolution into effect, or to purchase the shares," and his decision was "that the whole is to be one notice in writing." That is really the point which he decided. No doubt there are expressions in his judgment which taken by themselves might be supposed to indicate what he thought should be the form of the notice, but it is clear that that was not the question which was present to his mind and which he intended to decide. He did not mean to lay down any rule as to the special form which was necessary for a valid notice, but merely that the two matters, *viz.* the dissent and the requisition, should be comprised in the one notice.

Then the case of *In re The Fleming Spinning and Weaving Company (Limited) in Liquidation*(4) has been relied on. But neither was the decision in that case upon the point now before us. The decision there was that, however informal and irregular the notice given by the shareholder might have been, nevertheless the liquidators by their conduct had waived the informality, and that by reason of their conduct the dissentient shareholder was entitled to proceed as if his notice had been perfectly formal and

(1) L. R., 13 Ch. Div., 808.

(2) I. L. R., 7 Bom., 494.

(3) L. R., 13 Ch. Div., 808, at p. 810.

(4) I. L. R., 7 Bom., 494.

valid. That decision cannot, therefore, be of much assistance to us in the present case.

The point which arises here is whether this letter of the 19th December, written by the appellant to the liquidators, was a sufficient notice under the Act. It is to be observed that it states the writer's dissent from the resolutions, and, further, that it contains an express reference to section 204 of the Companies Act (VI of 1882). In fact, the notice given by the letter is stated to be a notice under that section. It is true the letter proceeds to require the liquidators to purchase the shareholders' interest in the company, which is only one of the two courses either of which the liquidators may adopt. We think, however, that the reference to the section contained in the letter is sufficient to incorporate into the notice the other alternative, and renders it a notice which gives the liquidators the option which they are entitled to exercise under the section.

It is to be observed, that the Act prescribes no particular form of words in which the notice is to be given. It is reasonable, therefore, to hold that any notice in writing, however expressed, would be sufficient if it clearly conveyed to the liquidators the dissent of the shareholder from the resolution, and his demand that they should either abstain from carrying the resolution into effect, or purchase his interest in the manner prescribed by the Act. We think that, substantially, the letter in question gave such notice, and that it is impossible to suppose that the liquidators could have misunderstood it.

To hold otherwise would be to give a very technical construction to the section. We agree with West, J., "that while adhering generally to the principles of construction laid down from time to time by English Courts of law on the various parts of these Acts, we should not forget that such enactments when introduced into this country have to be applied to a people for the most part unfamiliar with our business ways and experience, as well as with our language,— a consideration which makes it desirable that we should be careful not to clog the interpretation and application of these enactments with unnecessary refinements

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and technicalities which are not made imperative by the plain words of the Act"[1].

We, therefore, hold the notice in question to be a good notice, and allow this appeal.

Appeal allowed.

Attorneys for the petitioner:—Messrs. *Jefferson, Bhádishankar, and Dinshaw.*

Attorneys for the liquidators:—Messrs. *Craigie, Lynch, and Owen.*

(1) *Per* West, J., I. L. R., 7 Bom., at p. 508.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1888. *March* 15.

THE COLLECTOR OF RATNA'GIRI, (ORIGINAL DEFENDANT), APPELLANT, *v.* ANTA'JI LAKSHMAN, (ORIGINAL PLAINTIFF), RESPONDENT.*

Khot—Proprietary right of khot to khoti vatani land—Right of such khot to forest land and to timber and wood growing therein—Government, right of, to appropriate to forest preserves assessed or unassessed land—Construction of such khoti grants.

The plaintiff sued the defendant, alleging that the village of mauze Ambedu, in the Ratnágiri District, was his *khoti vatani* village in which his proprietary right extended to raise crop of any kind or to preserve and cut the jungle and forest trees on the lands therein. He complained that since 1855-56 the Collector of the district prohibited him from exercising the above alleged rights, and prayed that the obstruction might be removed and Rs. 600 awarded as damages. The plaintiff based his claim mainly on the settlement of 1788, Dunlop's proclamation of 1824, and several other *khoti* grants in the district. The defendant denied that the plaintiff had any proprietary right in the village, and contended *(inter alia)* that the *khot* derived his rights from the yearly *kabuláyats* passed by him, that his right to cultivate did not extend to cultivating the jungle land, and that his position was no better than that of a *patel.*

The Joint Judge who tried the suit held that under the settlement of 1788 the plaintiff, as *khot*, was entitled to the jungle produce, except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of Rs. 600 as damages. On appeal by the defendant to the High Court,

Held, that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the *khot's sanads*, should be taken most beneficially to the State.

* Appeal, No. 21 of 1868.