

1878  
 GOLUCK  
 CHUNDR  
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 v.  
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to have occurred to the learned Judges in that case, and we believe that the rule upon which we are now acting is one which has been generally adopted by this Court of late years. There are certainly several recent authorities in favor of it, and it seems to us quite in accordance with good sense and justice.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice White.*

1879  
 Jan. 13  
 &  
 Feb. 24.

IN THE MATTER OF THE SARAWAK AND HINDUSTAN BANKING  
 AND TRADING COMPANY, LIMITED.

LALLAH BARROOMUL v. THE OFFICIAL LIQUIDATOR.

*Practice—Winding-up—Notice of Appeal—Extension of Time for Appeal—  
 Indian Companies' Act (X of 1866), s. 141.*

Notice of an appeal against any order or decision made or given in the matter of the winding-up of a company by the Court, must, under s. 141 of Act X of 1866, be given to the respondent within three weeks after the order or decision complained of has been made. The Court has power to extend the time for giving the notice after the three weeks have expired, upon special circumstances being shown.

THIS was an appeal from an order made by Mr. Justice Broughton. No notice of the appeal was given to the respondent within three weeks of the order appealed against. It appeared that the appeal was lodged with the proper officer of the Court within three days from the date of the order, and that it was the officer's duty to serve the respondent with notice that the appeal had been lodged. Upon the appeal being called on, the respondent took a preliminary objection to the hearing, on the ground that, under s. 141 of Act X of 1866 (The Indian Companies' Act), no appeal can be heard unless notice of the same is given within three weeks after any order complained of has been made in the manner in which notices of appeal are ordinarily given, under the Code of Civil Procedure; and

*Ex parte Green* (1) and *In re Risca Coal and Iron Co.* (2) were referred to. For the appellants it was contended that the Court, under the circumstances, had power to extend the time for hearing the appeal, and reference was made to *Cox on Joint Stock Companies*, p. 214.

The Court considered that the appeal was barred, and allowed the objection. On a subsequent day, a rule was obtained by the appellant to show cause why this order should not be set aside, and the appeal heard.

1879

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AND  
HINDUSTAN  
BANKING AND  
TRADING  
COMPANY,  
LIMITED.

LALLAH  
BARROOMUL  
v.  
THE OFFICIAL  
LIQUIDATOR.

*Mr. Jackson* and *Mr. Stokoe* showed cause.

*Mr. J. D. Bell* and *Mr. Phillips* in support of the rule.—The appellant is not to blame. He lodged the appeal with the proper officer of the Court, and it was the duty of that officer to serve the respondent with notice that an appeal had been lodged. The appellant ought not to be made to suffer by the negligence of the officer of the Court. In England the parties themselves are personally responsible for the service of the notice, and, therefore, if they or their attorneys neglect to serve the notice, it may well be that the Court will not excuse the delay. But even there the rule is not inflexible—*Banner v. Johnston* (3).

The judgment was delivered by

GARTH, C. J. (WHITE, J., concurring).—I think that this rule should be discharged. We are asked to review our former judgment, and virtually to set it aside, upon the ground that, although no notice of the appeal was in fact given to the respondent within three weeks from the date of the order appealed against, that was not the fault of the appellant, but of the officer of this Court, and that the appellant has done all that he was bound to do by merely lodging his appeal within three days from the date of the order.

Now it is perfectly true that the 141st section of Act X of 1866 does present some difficulty in this respect, because the

(1) 24 L. J., Ch., 331.

(2) 31 L. J., Ch., 429.

(3) L. R., 5 Eng. and Ir. App., 157.

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appellant's right of appeal under that section is made to depend upon a notice being given, not by himself, but by an officer over whom he has no control.

It is probable that the legislature, when they passed the Act, did not foresee this difficulty. Section 141 corresponds with the 124th section of the English Joint Stock Companies' Act of 1862 (25 and 26 Vict., c. 89), which contains the same provision as to the three weeks' notice.

By the English Act, the notice is to be given in the manner in which notices of appeal are ordinarily given according to the practice of the Court appealed from. By the Indian Act of 1866, the notices are to be given in the manner in which notices of appeal are ordinarily given under the Code of Civil Procedure.

Now in England the practice is, that such notices are served by the appellant or his attorney, so that, if the notice is not given within the proper time, the appellant has only himself to blame. But in India, under the Civil Procedure Code, the service is effected by the Court, so that the appellant's right of appeal depends not on himself, but upon whether the officer of the Court performs his duty.

Of course this might operate very unjustly ; but we are no less bound by the provisions of the section ; and unless we find that the notice has been given within the three weeks, or the time for giving it has been extended, we have no right to hear the appeal.

I cannot accede to Mr. Phillip's argument, that because it was not his client's duty to serve the notice, it became immaterial to his right of appeal whether the notice was served or not.

The notice is of course intended for the benefit of the other parties who are interested in the winding-up proceedings, and to prevent those proceedings being unduly delayed. The appellant's proper course clearly was to ascertain whether the notice had been served within the three weeks ; and if he found that it had not, he should have applied to this Court at the earliest opportunity to extend the time for giving it.

I was certainly under the impression, when we dismissed the appeal, that the Court could not have extended the time for

service of the notice after the expiration of the three weeks. The language of Lord Justice Knight Bruce, in the case of *Ex parte Green* (1), seemed to support that view. But after hearing the point argued again, and considering the case of *Banner v. Johnston* (2), I think it clear that the time for giving the notice may be extended by the Court after the three weeks have expired. In this case the appellant could not possibly have applied within the three weeks, because the Court of appeal was not sitting.

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But the difficulty which I feel in assisting the appellant in the present state of things is this. At the time when the appeal came on to be heard, no notice had been given within the three weeks, nor had the time for giving it been extended, nor had any application been made by the appellant for that purpose. Mr. Phillips acknowledges very frankly and properly that the point took him and his clients completely by surprise. They do not appear to have been aware of the necessity of any notice, and even at the last moment no application was made to extend the time for giving it. That being so, we had no alternative but to dismiss the appeal; and we are now asked to say that our judgment was erroneous, upon the ground that the notice should have been given by the officer of the Court, and that the appellant consequently was not in fault.

Now, with every wish to assist the appellant, if I could properly do so, I cannot say that our judgment was erroneous, or that if we had to decide the case again, we could do so otherwise than by dismissing the appeal.

The appellant ought to have been aware of the provisions of s. 141. He should have ascertained, whether the notice of appeal had been duly given, and if he found that it had not, he should have applied to extend the time.

Not having done this, I think that it is not in our power to assist him, and that, consequently, his rule must be discharged with costs.

Attorney for the appellant: Mr. *Carruthers*.

Attorneys for the respondent: Messrs. *Dignam and Robinson*.

*Rule discharged.*

(1) 24 L. J., Ch., 331.

(2) L. R., 5 Eng. and Ir. App., 157.