

Privy Council Appeal No. 5 of 1917.
Oudh Appeal No. 5 of 1916.

Raghubar Dayal - - - - - *Appellant*

v.

The Bank of Upper India, Limited, Lucknow (in Liquidation) - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 31ST JANUARY, 1919.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALLI.

[*Delivered by* VISCOUNT HALDANE.]

If this was a difficult case their Lordships would have
before formulating their report. But the case appears
to be one of no difficulty.

Section 153 of the Indian Companies Act provides

“ Where a compromise or arrangement is proposed between
a company and its creditors, or any class of them, or between the
members, or any class of them, the Court may on the application
of the company, or any creditor or member, or, in the case of a company being wound up, of the
meeting of the creditors, or class of creditors, or of the
company, or class of members, as the case may be, conduct the same
in such a manner as the Court directs.”

Then by the second part of the section :—

“ If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, or the class of creditors, or on all members, or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.”

In this case the Bank of Upper India closed its doors. The appellant was a customer of the bank who had a fixed deposit with it, which became repayable by the bank on the 4th November, 1914. Before that day, on the 8th August, the bank had suspended payment. The appellant, on the 19th December, began a suit for his money, and on the 19th April, 1915, he got a decree for payment. The amount was over Rs. 25,000. So much for the proceedings of the appellant.

Now we turn to what happened in connection with the bank in order to see how section 153 comes into operation. In October there was a meeting of creditors, and on the 15th December there was an application to the High Court for an order under section 153. On the 23rd December, two days after, an order was made directing the creditors to meet and consider the scheme, and on the 4th March, 1915, they did meet and they passed a resolution sanctioning the scheme by the requisite majority. A little later, on the 2nd June of the same year, the Court gave its sanction. It will be observed therefore that the plaintiff's decree on the 19th April was granted to him before the order confirming the resolution, but after the meeting at which the resolution and the scheme to which it related had been agreed on.

The question is whether under section 153 (which is a section in familiar language, practically identical with the corresponding section of the English Companies Act) the creditor was bound. The Court of the Judicial Commissioner, agreeing with the Judge who heard the case in the first instance, says that it was so, and it is obvious that it is convenient that it should be so. Otherwise, with the uncertainty as to what the ultimate rule of the Court may be, when a decision has finally been obtained, the door would be open for a race between creditors and persons concerned in administering the affairs of the bank. The Court of the Judicial Commissioner put it very well in its judgment when it said this :—

“ If it had been the intention of the Legislature that such an agreement should not be binding until the arrangement had been sanctioned by the Court, instead of the words ‘ if sanctioned by the Court ’ the words ‘ when it has been sanctioned by the Court ’ would ordinarily have been used. The agreement becomes binding from the date when it is arrived at, subject to subsequent sanction by the Court. If that sanction be refused, the agreement is without effect. But it is not the case that the agreement is to take effect from the date of sanction. It takes effect from the date when it is made. Such is our interpretation of the words of the section.”

When you look at the latter part of section 153 it appears that this is so, because the words there are that if the compromise or arrangement, which is the compromise or arrangement sanctioned by a majority of the meeting, is passed, then the compromise or arrangement, if sanctioned by the Court, is to be binding. It is the proceeding of the meeting that is to be binding, provided only that it does not fail to be subsequently sanctioned. Therefore, not only convenience, but the literal language of the section, is in favour of the view to which the Court below adhered, and their Lordships will humbly advise His Majesty that that view should be affirmed, and that the appeal should be dismissed with costs.

In the Privy Council.

RAGHUBAR DAYAL

v.

THE BANK OF UPPER INDIA, LIMITED,
LUCKNOW (IN LIQUIDATION).

DELIVERED BY VISCOUNT HALDANE.

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