(1912) 02 CAL CK 0026

Calcutta High Court

Case No: None

Charnock Collieris Co. Ltd.	APPELLANT
Vs	
Bholanath Dhar	RESPONDENT

Date of Decision: Feb. 29, 1912

Citation: 17 Ind. Cas. 976

Hon'ble Judges: Fletcher, J

Bench: Single Bench

Judgement

Fletcher, J.
This is a special case for the opinion of the Court under Order XXXVI of Schedule I of the Civil Procedure Code. The plaintiffs are the Charnock Collieries Co., Ltd., in liquidation and Edward William Viney and John Woodhouse Thurston, the liquidators of the Company; the defendant is Bholanath Dhar.

2. The matters in which the opinion of the Court is sought are under two headings. First, the defendant claims as a secured creditor in respect of a sum of Rs. 7,417-8, which is said to be due to him under a certain instrument of hypothecation, dated the 3rd January 1910, expressed to have been made between the Company of the one part and the defendant of the other part.

3. The second part of the claim is with reference to the right of the defendant to be a secured creditor in respect of certain royalties and rents due by the plaintiff Company to the defendant under the authority of a kabulat under which the plaintiff held the colliery.

4. This Colliery was, by an agreement made between the Company, the defendant, and the liquidators, sold, and the proceeds of the sale are now in the hands of the attorney to the liquidators.

5. The first point is a short one. It appears that Bholanath Dhar on the 3rd January 1910 lent to the plaintiff Company the sum of Rs. 3,995-8. On that date, there was

also due to that gentleman on a promissory-note executed by the Company Rs. 2,004 8. Therefore the amount taken to be lent on the 3rd January 1910 was Rs. 6,000. That amount, it is not denied by the liquidators, went into the coffers of the Company and was credited by the Company or its managing agents in the loan account.

6. The liquidators do not dispute the right of the defendant to prove as an unsecured creditor; but they say that the terms of the articles of the Company were not complied with and that, therefore, the mortgage did not create a charge on the properties of the Company,

7. The only articles which are material to this matter are Nos, 49, 50/84 and 112.

8. Article 49 authorises the managing: agents with the approval of the Directors to barrow from the members or other persons, and may themselves lend any sum or sums of money for the purposes of the Company. Then follows a proviso which is not material to this case.

9. Article 50 says--"The Managing agents may with such approval as aforesaid raise or secure re-payment of such money in such manner and upon such terms and conditions in all respects as they think fit, and in particular by the issue of debentures or bonds of the Company or by the creation of debenture stock, or by making, drawing, accepting or endorsing on behalf of the Company, any promissory-notes or bills of exchange, or giving or issuing any other security of the Company, or by mortgage or charge of all or any part of the property of the Company including its uncalled capital."

10. Article 84 is material because by it a power, which in England is confined to the Board of Directors, is conferred on the managing agents. "Subject to the control and supervision of the Directors, the Managing agents are by this article authorised to sign all such contracts, and to draw, accept, endorse and negotiate on behalf of the Company all such bills of exchange, promissory-notes, hundies, cheques, drafts and other instruments as shall be necessary for the, carrying on of the business of the Company, and to exercise all the powers, authorities and discretions of the Company except only such of them as by the Company''s Acts or these presents are expressly directed to be exercised by the Board of Directors or by the shareholders in general meeting. All monies belonging to the Company shall be paid to such bankers as the managing agents, subject to the approval of the Directors, shall deem expedient, and all receipts for monies paid to the Company shall be signed by the Managing agents whose receipts shall be an effectual discharge for the monies therein stated to have been received."

11. Article; 112 relates to the custody of the seal. It says--"The Managing agents shall provide for the safe custody of the seal. Every instrument to which the seal is affixed shall be signed at least by one Director and countersigned by the Managing agents, provided that the signature of a Director shall not be required to documents to

which the seal is affixed and which are required for use only in connection with any civil and criminal proceedings in which the Company is concerned or to documents which the managing agents are hereby expressly authorised to sign, but it shall be sufficient if such documents are signed by the Managing agents only."

12. Now, the facts in this case are that the document given to the defendants on the 3rd January 1910. was sealed by the Company. The seal of the Company was affixed, but it was only attested by the signature of the Managing agents.

13. The point really is whether, this document not having complied with the terms of the Articles of Association of the Company, has the defendant a valid charge on the property of the Company? In my opinion, he has This case is covered by authority starting, I think, with the case of The Royal British Bank v. Turquand (1856) 6 El. & Bl. 327 : 24 L.J.Q.B. 317 : 1 Jur. (N. s.) 663 : 106 R.R. 623. That has been followed by a long string of cases going down to the cases cited by Mr. Pugh: County of Gloucester Bank v. Rudry Merthyr Colliery Co. (1895) 1 Ch. 629 : 12 Rule 183 : 72 L.T. 375 : 43 W.R. 486 : 2 Manson 223 : 61 L.J. Ch. 451 and In re Bank of Syria (1901) 1 Ch. 115; 70 L.J. Ch. 82; 49 W.B. 100; 83 L.T. 547; 17 T.L.R. 81; 8 Manson 105. The point is this, whether a person dealing with the Company is bound to look into what Lord Halsbury calls the ''indoor management'' of the Company, that is whether a person dealing with the Company is, bound to see whether the act of the Company is not ultra vires, or whether he may assume that all the acts done by the Company or on its behalf are regular and proper. In my opinion in this case, the lender was entitled to assume that the managing agents had the authority or approval of the Board of Directors. It seems to me that the observation of Sir G.M. Giffard in In re County Life Assurance Co. (1870) 5 Ch. Ap. 288 at p. 293; 33 L.J. Ch. 471; 22 L.T. 537; 18 W.R. 390 exactly fits this case. He says: "In the first place a stranger must be taken to have read the General Act under which the Company is incorporated and also to have read the Articles of Association; but he is not to be taken to have read anything more, and if he knows nothing to the contrary, he has a right to assume as against the Company that all matters of internal management have been duly complied with." That seems exactly to fit the case. The lender, when he advanced money to the Company, was entitled to assume that the Managing agent had obtained the Approval of the Board of Directors to the borrowing of those sums. Then it, is said that cannot be so in this case because on the document of hypothecation which was given to the defendant the seal of the Company was only attested by the signature of the Managing agents. With that argument I do not agree. Under Article 50, Managing agents are authorised to secure money advanced to the Company by giving or issuing any security or by a mortgage or charge on all or any part of the Company including its uncalled capital. It may be that the security is not complete, but the Managing agents obviously have the power under Article 50 to give a security on behalf of the Company, and that security can be either by way of mortgage or a charge on any part of the property of the Company.

14. It seems to me that under Article 50 the Managing agents have ample power to give a security. That being so, the affixing of the seal on the document was not necessary. The signature of the Managing agents, in my opinion, was ample. If that was not so, I should have decided upon the well known class of cases where a person who advanced money to a Company upon the terms that security should be given to him, even if the security be not complete, he is nevertheless entitled under the rules of equity to have a charge on the property of the Company. That class of case rests on the elementary maxim of equity, that equity looks upon that as done which is agreed to be done. If the money were borrowed on account of the Company, it is not open to the Company to say that the person who lent the money is not entitled to a charge. It is only necessary to refer to the case of In re Queensland Land and Goal Co. (1834) 3 Ch 181: 8 R. 476; 71 L T. 115; 42 W.R. 600; 1 Mensom 335; 63 L.J. Ch. 810, in which North, J., held that a person is entitled to a charge on the property of the Company where the debenture was void. Mr. Pugh also cited Pegge v. Neath Tramways Co. Ld. (1898) 1 Ch. 183 : 67 L.J. Ch. 17 : 17 L.T. 550 : 14 T.L.R. 62 : 46 W.R. 213 which decided where a person who never had a debenture was entitled to call for the security because he lent money on the footing that he was to get the security.

15. It seems to me on all these grounds that the defendant is entitled to a charge upon the monies in the hands of the, attorney of the liquidators for the sum of Rs. 7,417-8.

16. The other portion of the claim set up by the defendant is, I think, not well founded. That relates to certain monies that became due to the defendant in respect of rents and royalties under the lease under which the plaintiff Company held the collieries.

17. The general rule is that the defendant would be entitled only to prove for the rent that became due prior to the liquidation and to claim to have the full rent paid subsequent to the liquidation if the liquidators remain in possession for the benefit of the Company; but if the liquidators remain in possession after the liquidation with the acquiescence of the landlord, then that right of the landholder to have the rent accruing due after the liquidation paid to him as a secured creditor would not stand, and he would be relegated to the position of having a right of proof as an unsecured creditor. In this case, no difficulty arises because after the liquidation the defendant was in possession and it appears quite clear from a letter set out in Exhibit E to the special case that possession was made over by the defendant to the liquidators subsequent to the liquidation.

18. The rule, therefore, that the landlord is entitled to be paid in full for rent accruing due subsequent to the liquidation should the liquidators remain in possession cannot be applied to this case, as the landlord acquiesced in the liquidator''s possession; and, therefore, in so far as the special case asks for the opinion of the Court as to whether the defendant is entitled to claim as a secured

creditor in respect of the rents which are due under the terms of the kabuliat either before or after the liquidation, I answer by saying he is a secured creditor in respect of no portion of that rent. Mr. Buckland has asked me not to say anything as to what; the actual position of the defendant is, and I shall refrain from doing so.

19. The liquidators will pay the defendant''s costs and retain their own costs. The liquidators'' costs will be as between attorney and client.