1913.

CHHOGMAL BALKISSON-DAS v. JAINARAYAN KANAIYALAL.

the plaintiffs do pay the defendant's costs. The plaintiffs must also pay the defendant's costs of the appeal.

Attorneys for the appellants: *Messrs. Madhowji, Kamdar and Chhotubhai.*

Attorneys for the respondents: *Messrs. Malvi, Hiralal, Mody and Ranchhoddas.*

Decree varied.

H. S. C.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1914. *February* 28.

IN THE MATTER OF THE COMPANIES ACT VI OF 1882

AND

IN THE MATTER OF THE PIONEER BANK LIMITED.

CHANIRAM VALLIRAM, PETITIONER.

Indian Companies Act (VI of 1882), sections 128 and 131—Winding up—Petition for compulsory winding up of company by the Court—Grounds to be alleged in petition—Internal mismanagement of the company not such grounds—Admission of petition, discretion of Court as to—Shareholder, petition by.

Any ground alleged under section 128 (*e*) of the Indian Companies Act in a petition for the winding-up of a company presented under section 131 of that Act must be of a like nature to the specific grounds given under clauses (*a*), (*b*), (*c*) and (*d*) of section 128. If any other grounds are alleged they do not fulfil the requirements of the Act. Allegations as to the internal management or mismanagement of a company are matters for the shareholders to deal with and do not call for the interference of the Court.

A petition by a shareholder stands in a different footing to a petition by a creditor and should be more closely scrutinized on presentation.

There is no obligation on the Court to admit a petition merely because it is presented. Not only must a petition allege facts which, if proved, would justify an order for winding up a company but even if it alleges such facts the Judge has a discretion to consider whether it is really *bonâ fide*.

The Court may, if it thinks fit, refuse to admit a petition, or, as an alternative course, give the company concerned notice that a petition has been presented, so that it may take proceedings to restrain the petitioner from proceeding with his petition.

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THE petitioner filed a petition in which (*inter alia*) he stated that the Pioneer Bank was a limited company, established for the purpose of doing banking business, and that the petitioner was a shareholder of the company, holding 10 shares of Rs. 25 each, on each of which Rs. 10 had been paid up. The petitioner alleged various acts of misconduct in the management of the company and submitted that the whole company was a bogus company and that the *substratum* of the company had already been lost through the transactions complained of and prayed that the company might be wound up by the Court under the provisions of the Indian Companies Act, that a provisional liquidator might be appointed to take charge of the affairs of the company, that auditors might be appointed to look into the affairs of the company and to report and for other relief.

The petition was opposed by the company but was admitted by Mr. Justice Davar and subsequently a provisional official liquidator was appointed and also auditors to audit the company's books and report and a report was made by such auditors accordingly. The matter ultimately came before Mr. Justice Macleod who on the 17th of January 1914 adjourned it in order to enable the shareholders of the company to meet and ascertain whether they would continue the business or pass a resolution for the voluntary winding-up of the company. The shareholders at their meeting having decided to continue the business, the matter came again before Mr. Justice Macleod.

Strangman (Advocate General) for the petitioner.

Desai for the company.

MACLEOD, J. :—This petition was presented on the 29th of November 1913, under the Indian Companies Act, VI of 1882, praying that the Pioneer Bank should be wound up. It came on for hearing before me on the 17th of

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January and I adjourned it in order to enable the shareholders of the Bank to meet and ascertain whether they should continue the business or pass a resolution for the voluntary winding-up of the Bank. The shareholders have now decided to continue the business and therefore the petition stands dismissed for this reason that it does not comply with the provisions of section 131 of the Indian Companies Act, which states that the petition must allege facts which, if proved, will justify an order for winding-up the company. Section 128 enacts the circumstances under which a company may be wound up by the Court :—

(*a*) Whenever the company has passed a special resolution requiring the company to be wound up by the Court ;

(*b*) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year ;

(*c*) Whenever the members are reduced in number to less than seven ;

(*d*) Whenever the company is unable to pay its debts ;

(*e*) Whenever, for any other reason of a like nature, the Court is of opinion that it is just and equitable that the company should be wound up.

The first four grounds for winding up a company are specific, and any other ground alleged under (*e*) must be of a like nature to those given under headings (*a*) to (*d*). The allegations in the petition all relate to the internal management or rather mismanagement of the company's affairs and that is a matter for the shareholders themselves to deal with. It is not a matter that would call for interference by the Court : so this petition is not in accordance with the provisions of the Act, and if it had been presented to me, I should have declined to accept it. There is no obligation whatever on the Court to admit a petition merely because it is presented. In the first place it must, as I have already stated, allege facts which, if proved, would justify an order for winding up a company and therefore perusal is necessary. But even if a petition does allege such facts, then the

Judge has a discretion, since the admission of the petition must inevitably damage the credit of the company concerned, to consider whether it really is a *bonâ fide* one. Otherwise, the door would be laid open to unlimited opportunities for blackmail, especially in times of financial panic. For a discontented shareholder might cause serious, if not irreparable, damage to a company by presenting a petition which, if the Judge were bound to accept it, would, under Rule 636, have to be advertised in the newspapers fourteen days before the hearing, with the result that the company would have to close its business for the time, as no director would dare to authorise payments being made which he might be liable to refund in the case of a winding-up order being passed.

In this case, the petitioner is a shareholder for ten shares, on which Rs. 100 have been paid up and on which there is a liability of Rs. 150. It is difficult to conceive that the petitioner was actuated by proper motives in presenting his petition, which, if successful, would most probably result, so far as he was concerned, in his being called upon to pay another Rs. 150. A petition by a shareholder stands on a different footing to a petition by a creditor. It should be more closely scrutinized on presentation. The usual ground for a creditor's petition would be that the respondent company is unable to pay its debts, and in such a case the company must pay the debt or submit to a winding-up order. A shareholder's petition must, as a general rule, allege one of the grounds under headings (*a*), (*b*), (*c*) and (*d*) or any grounds which the Court is satisfied is of a like nature to those in section 128, and if any of those grounds are alleged, there is little doubt that the Court will, under ordinary circumstances, admit the petition. If any other grounds are alleged, the petition does not satisfy the requirements of the Act. The procedure provided

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by the Act and the Rules on the presentation of petitions for winding up do not seem to my mind to be as clear as they ought to be, and I, therefore, take the opportunity of pointing out that, in my opinion, there is nothing in the Act or Rules which deprives the Court of the discretion which it has in every other case, so that the Court may, if it thinks fit, refuse to admit a petition, or, as an alternative course, give the company concerned notice that a petition has been presented, so that it may take proceedings to restrain the petitioner from proceeding with his petition.

In this case the company has not pressed for costs against the petitioner, as I am told such an order would be valueless to them, the petitioner not being a man of any means, and therefore it has consented to the petition being dismissed without costs ; otherwise, I should have made the petitioner pay its costs.

Attorneys for the Bank : *Messrs. Matubhai Jamietram & Madan.*

Attorneys for the petitioner : *Messrs. Patel & Ezekiel.*

H. S. C.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1914. *July* 7.

JOSHI LAXMIRAM LALLUBHAI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MEHTA BALASHANKAR VENIRAM (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), Schedule II, Article 179—Limitation Act (IX of 1908), Schedule I, Article 182—Civil Procedure Code (Act XIV of 1882), sections 351 and 357—Decree on mortgage—Application for execution—Mortgagor's petition for declaration of insolvency—Opposition by mortgagee judgment-creditor—Step-in-aid of execution—Limitation.

An application by mortgagee judgment-creditor in execution of his decree, opposing the insolvency proceeding of the mortgagor judgment-debtor, is a

* Second Appeal No. 929 of 1913.