M. K. Ranganathan And Another vs Government Of Madras And Others on 20 April, 1955

Equivalent citations: 1955 AIR 604, 1955 SCR (2) 374, AIR 1955 SUPREME COURT 604

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati, Bhuvneshwar P. Sinha

PETITIONER:
M. K. RANGANATHAN AND ANOTHER

Vs.

RESPONDENT:
GOVERNMENT OF MADRAS AND OTHERS.

DATE OF JUDGMENT:
20/04/1955

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
DAS, SUDHI RANJAN
SINHA, BHUVNESHWAR P.

CITATION:
1955 AIR 604 1955 SCR (2) 374

ACT:
Indian Companies Act, (Act VII of 1913), s. 232(1) as amended by Act XXII of 1936-The words "or any sale held without leave of the Court of any of the properties of the Company" added in the section-Whether legislature intended to make alteration in the low as respects sales effected by secured creditor-Secured creditor-Whether outside the winding up-Construction-Presumption against implied alteration of law.

HEADNOTE:
The secured creditor is outside the winding up and can realism his security without the leave of the winding up Court, though if he files a suit or takes other legal proceedings for the realisation of his security he is bound

under s. 171 of the Indian Companies Act to obtain the leave of the winding up Court before he can do so although such leave would almost automatically be granted.

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It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It is also a well-recognized rule of construction that the legislature does not intend to make a substantial alteration in the law beyond what it explicitly declares either in express words or by clear implication and that the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched.

Held therefore that having regard to the context in which the words "any sale held without leave of the Court of any of the properties" added in s. 232(1) by the amending Act XXII of 1936 have been used in juxtaposition with "any attachment, distress or execution put into force without leave of the Court against the estate or effects" it would be a legitimate construction to be put upon them that they refer only to sales held through the intervention of the Court and not to sales effected by the secured creditor outside the winding up and without the intervention of the Court, and that the amendment was not intended to bring within the sweep of the general words sales effected by the secured creditor outside the winding up.

Held accordingly that in the present case the sale effected by respondent No. 2 as the receiver of the trustees of the debenture holders in July 1954 was valid and binding on all parties concerned and could not be challenged as it was sought to be done by the Official Receiver.

Food Controller v. Cork(1923 A.C. 647), Kayastha Trading and Banking Corporation Ltd. v. Sat Narain Singh ([1921] I.L.R. 43 All. 433), Baldeo Narain Singh v. The United India Bank Ltd. ([1915] 38 I.C. 91), State of West Bengal v. Subodh Gopal Bose and others (1954 S.C.R. 587), Angus Robertson and others v. George Day (L.R. [1879] 5 A. C. 63), Murugian, P. v. Jainudeen, C. L. ([1954] 3 W.L.R. 682), National Assistance Board v. Wilkinson ([1952] 2 Q.B. 648), Vasudeva Mudaliar and others v. Srinivasa Pillai and another ([1907] I.L.R. 30 Mad. 426) and The Governor-General in Council v. Shiromoni Sugar Mills Ltd. (In Liquidation) (1946 F.C.R. 40), referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 20 of 1955. Appeal from the Judgment and Order dated the' 29th day of September 1954 of the High Court of Judicature at Madras in Original

Side Appeal No. 113 of 1954 arising out of the order dated the 9th day of August 1954 of the said High Court in its Ordinary Original Civil Jurisdiction in Application No. 3542 of 1954.

C. K. Daphtary, Solicitor-General for India (H. J. Umrigar, Mohan Kumaramangalam and Rajinder Narain, with him) for the appellants.

B. H. Dhebar and P. G. Gokhale for respondent No. 1. Samarendra Nath Mukherjee and B. N. Ghose for respondent No.

2. N. P. Engineer, (B. Moropant and V.J. Taraporewala, with him) for respondent No. 3.

1955. April 20. The Judgment of the Court was delivered by BHAGWATI J.-This appeal with a certificate under article 133 (1) (c) of the Constitution is directed against the judgment of the High Court of Judicature at Madras dismissing the appeal of the Appellants and refusing to set aside a sale effected by Respondent 2 of certain properties belonging to the Madras Electric Tramways (1904) Ltd. hereinafter called the Company, above the ground at Vepery, Madras and Mylapore, including the machinery cars, etc. and buildings as scrap to Respondent 3 in his capacity as the Receiver of the trustees of the debenture holders of the Company. The Appellants are the Secretary and President respectively of the Madras Tramways Workers Association (Registered No. 1253) a Trade Union registered under the Trade Unions Act. The workmen employed by the Company are entitled under the award of the Special Industrial Tribunal, Madras in I. D. No. 9 of 1953 published in the Fort St. George Gazette, dated the 8th July, 1953 being G. 0. Ms. No. 3024/53 to a payment of nearly Rs. 7,00,000 out of which the workers belonging to the Madras Tramways Workers Association alone would be entitled nearly to a sum of Rs. 4,35,000 and are thus the major creditors of the Company. The Company was incorporated in England with its principal office situated at No. 1, Rundalls Road, Vepery, Madras-7 and was running the Tramway Service in Madras with licence issued to it by the Government under the Tramways Act. It had issued 1300 First Debentures of CIOO each and the debenture-holders had appointed the Beawer Trust Ltd., England as trustees. By an Indenture made in England on the 13th October 1924 the Company charged by way of first charge in favour of the trustees all its undertaking properties and assets for the time being both present and future including its uncalled capital with the payment of all moneys for the time being owing on the security of the debentures and such charge was to rank as a floating charge. By two subsequent deeds made at Madras dated the 26th March, 1925 and 6th July, 1950 certain immovable properties belonging to the company were mortgaged in favour of the said trustees. The said Trustees appointed Respondent 2, the Managing Director of the Company and day to day management of the Tramway Service and of the business of the Compay, as their Receiver. He took possession as such Receiver,, from the midnight of 11th April, 1953 of all the assets of the Company including moneys in the bank to the credit of the Company and after that date the Tramways Service was suspended and still remains suspended.

One J. B. Beardsell, one of the Directors of the Company filed O. P. No. 419 of 1953 as the duly constituted Attorney of the Company for winding up the Company on the ground that it was unable to pay its debts and that it bad ceased to carry on its business. An order for the winding up of the Company was made by the Court on the 20th January, 1954 and the Official Receiver, High Court,

Madras, was appointed the Official Liquidator. Since all the assets including the moneys of the Company were in possession of Respondent 2, the Official Receiver was unable to take charge of anything except the records of the Company.

Soon after the order for winding up the Respondent 2 advertised in the newspapers on the 23rd January, 1954 for the sale of the properties and assets of the Company. At the end of the conditions of sale he stated in paragraph 7 that "the sales are for the time being subject to the approval of the High Court at Madras and it will be for the undersigned to obtain such approval for accepted offers free of all costs to the purchaser".

At the time of the order of winding up, two suits were pending in the High Court, C.S. No. 191 of 1952 filed by the Company against the State of Madras for Rs. 1,33,204-9-0 and interest thereon being electric charges alleged to have been collected by the State of Madras in excess of those payable by the Company and paid by the company under protest and C.S. No. 368 of 1953 filed by the State of Madras against the Company for the recovery of Rs. 9,26,123-2-3 with interest thereon, being the difference alleged to be due in respect of the electric charges under the old rates and the revised rates applicable to the Company. During the pendency of the said suits Respondent 2 gave an undertaking in Application No. 4533 of 1953 in Civil Suit No. 368 of 1953 that he would not without the orders of the High Court dispose of any of the assets of the Company which were in his possession till the disposal of the suit C.S. No. 368 of 1953. The two suits aforesaid were tried together and were disposed of by a common judgment on the 16th March 1954. On the 16th July 1954 Respondent 2 agreed to sell and Respondent 3 agreed to buy the movable properties of the Company the particulars of which were set out in the agreement entered into on that date, for a price of Rs. 4,01,658 of which half was paid on the signing of the agreement and the other half was agreed to be paid out of the proceeds of sale to be made by the purchasers of the assets as scrap.

On the 23rd July 1954 the Official Receiver, High Court, Madras (Respondent 5 herein) filed an application No. 3542 of 1954 for setting aside the said sale of the assets of the Company on the grounds, inter alia, that it was prejudicial to the interests of the General body of unsecured creditors, that the same had been concluded with undue haste and without adequate publicity and in violation of Respondent 2's said undertaking to the Court. It also asked for an injunction restraining the Respondent 2 from handing over and the Respondent 3 from either taking over or breaking up the assets purchased by him pending, the disposal of the said application.

This application was based on a report of the Official Receiver in which after setting out the relevant facts he submitted that even though under section 229 of the Indian Companies Act the Company which was admittedly insolvent was governed by rules prevailing with regard to the respective rights of the secured and unsecured creditors and to debts provable and valuation of annuities governing the administration in insolvency and secured creditors generally stood outside the liquidation and were entitled to have the remedy of realising the security and proving before him for the deficiency, if the properties of the Company could be sold for a price higher than the amount due to the Trustees of the debenture holders there was a possibility of a surplus coming into his bands for the benefit of the unsecured creditors. If the Respondent 2 proved before him for any deficiency due to the secured creditors, it would certainly affect the rights of unsecured creditors, and moreover

though the secured creditors might realise the security, it will be in the interests of the unsecured creditors to see that a fair and proper price was obtained. He therefore submitted that in the interests of the unsecured creditors it was just and necessary to have a fair valuation ascertained and an enquiry held to ascertain whether the sale by the Respondent 2 in favour of Respondent 3 was bona fide and for a proper price. Respondent 2 filed an affidavit in reply in August 1954 contending inter alia, (1) that the offer by the Respondent 3 was the highest, that he had received and that this had been accepted bona fide, (2) that in the advertisement the condition as to the previous sanction of the Court was inserted because of the undertaking that be had given to the Court in C.S. No. 368 of 1953 and that this undertaking lapsed with the dismissal of the said suit on the 16th March 1954, (3) that he had been advised by the Solicitors in England for the debenture trustees that it was unnecessary for him to obtain the sanction of the Court and that he had been instructed not to apply for such sanction and (4) that the sale was bona fide and he had secured as good a price as could be obtained.

By its judgment and order dated the 9th August 1954 Mr. Justice Balakrishna Ayyar (in Chambers) dismissed the said application with costs. The learned Judge held that the question whether Respondent 2 had violated the undertaking given by him was not germane to the application before him, that undoubtedly the Respondent 2 did give wide publicity of his intention to sell the assets of the Company, that it could not be said that the sale was sub rosa on the ground of want of wide publicity to the intended sale of the Company's assets and that the Respondent 3's offer was the best offer received by the Respondent 2 looking both to the abstract of offers appended to the affidavit of the Respondent 2 in the said application, and looking to the other offers pointed out to him by Respondent 5. The learned Judge further referred to the offer of the Corporation of Madras and said that the said Corporation had not made any firm offer at all and that the offer of one A. Chettiar of Rs. 4,25,000 made on 5th August 1954 during the hearing of the application was an offer made by a person who did not appear to him to be of a man of sound financial status. The learned Judge in his judgment also recorded the fact that during the hearing of the application the Respondent 3 offered to sell to the Madras Municipal Corporation the entire assets he had purchased at the same price which he paid for it but the Corporation were not prepared to accept the offer.

The Respondent 5 accepted the said judgment and decision and did not prefer any appeal against the same. But the Appellants who were not parties to the proceedings applied for and obtained from the High Court leave to appeal from the said decision. This appeal also was dismissed by the High Court with costs on the 24th September 1954. The High Court differed from the finding of the Trial Court and held that due publicity had not been given to the intended sale and observed that if the matter rested merely on a decision of that point they would have allowed the appeal and set aside the sale. They how-' ever held that in the absence of fraud or want of bona fides on the part of the seller along with that of the buyer the sale in favour of the Respondent 3 could not be set aside. The High Court further considered the question whether the said sale was void as being without the leave of the Court in view of section 232 of the Indian Companies Act and answered that question in the negative. The High Court further held that a secured creditor had a right to realise his security without seeking the assistance of the court and remaining outside the winding up.

Being aggrieved by the said judgment and decree of the High Court the Appellants applied for leave to appeal to this Court and such leave was granted by the High Court on the 24th September 1954.

The bona fides of the Respondent 2 in the matter of the sale were not challenged either in the Courts below or before us and there were concurrent findings of fact that the price obtained by Respondent 2 was the best price available under the circumstances. It was however urged by the learned Solicitor-General for the Appellants:-(I) that the High Court, having found that due publicity had not been given to the intended sale, ought not to have allowed the Respondent 3 at that stage to raise the question as to whether the Court had any power or jurisdiction to set aside the sale except on the ground that it was vitiated by fraud or for want of bona fides and (2) that the sale- by Respondent 2 being a sale held without leave of the winding up Court was void under section 232(1) of the Indian Companies Act. The High Court bad allowed the Respondent 3 to raise the question even at that late stage inasmuch as it was a pure question of law and the learned Solicitor-General therefore rightly did not press the first contention before us. The main argument centered round the second contention, viz., whether the sale effected by the Respondent 2 without leave of - the winding up Court was void and hence liable to be set aside.

The decision of this question turns upon the true construction of section 232 of the Indian Companies 'Act, which runs as under:-

> "(I) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects or any sale held without leave of the Court of any of the properties of the company after the commencement of the winding up shall be void.
> (2) Nothing in this section applies to proceedings by the Government".

It may be noted that the words "or any sale held without leave of the Court of any of the properties" underlined above were inserted by Act XXII of 1936. Before this amendment section 232(1) was almost in identical terms with section 228(1) of the English Companies Act of 1948. Two other sections of the Indian Companies Act may be noted in this context, viz. section 171:"When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose." and Section 229:-

> "In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section;"

which correspond respectively to sections 231 and 317 of the English Companies Act of 1948.

The position of a secured creditor in the winding up of a company has been thus stated by Lord Wrenbury in Food Controller v. Cork(1):

> "The phrase 'outside the winding up' is an intelligible phrase if used, as it often is, with reference to a secured creditor, say a mortgagee. The mortgagee of a company in liquidation is in a position to say "the mortgaged property is to the extent of the mortgage my property. It is immaterial to me whether my mortgage is in winding up or not. I remain outside the winding up' and shall enforce my rights as mortgagee". This is to be contrasted with the case in which such a creditor prefers to assert his right, not as a mortgagee, but as a creditor. He may say 'I will prove in respect of my debt'. If so, he comes into the winding up".

It is also summarised in Palmer's Company Precedents Vol. II, page 415:

> "Sometimes the mortgagee sells, with or without the concurrence of the liquidator, in exercise of a power of sale vested in him by the mortgage. It is not necessary to obtain liberty to exercise the power of sale, although orders giving such liberty have sometimes been made".

The secured creditor is thus outside the winding up and can realise his security without the leave of the winding up Court, though if he files a suit or takes other legal proceedings for the realisation of his security he is bound under section 231 (corresponding with section 171 of the Indian Companies Act) to obtain the leave of, the winding up Court before he can do so although such leave would almost automatically be granted. Section 231 has been read together with section 228(1) and the attachment, sequestration, distress or execution referred to in the latter have reference to proceedings taken through the Court and if the creditor has resort to those proceedings he cannot put them in force against the estate or effects of the Company after the commencement of the winding up without the leave of the winding up Court. The (1) 1923 Appeal Cases 647.

provisions in section 317 are also supplementary to the provisions of section 231 and emphasise the position of the secured creditor as one outside the winding up, the secured creditor being, in regard to the exercise of those rights and privileges, in the same position as he would be under the Bankruptcy Act.

The corresponding provisions of the Indian Companies Act have been almost bodily incorporated from those of the English Companies Act and if there was nothing more, the position of the secured creditor here also would be the same as that obtaining in England and he would also be outside the winding up and a sale by him without the intervention of the Court would be valid and could not be challenged as void under section 232(1) of the Indian Companies Act. It was however urged that the addition of the words "or any sale held without leave of the Court of any of the properties" had changed the position of the secured creditor and even though the secured creditor realised the security without the intervention of the Court such sale, if effected by him without the leave of the winding up Court, was void. It was pointed out that these words did not find their place in the corresponding section 228(1) of the English Companies Act and therefore even though any

attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding up was void under the terms of the section 232(1) as it originally stood, the words "or any sale held without leave of the Court of any of the properties" of the company were wide enough to include not only a sale held through the intervention of the Court but also a sale effected by the secured creditor without the intervention of the Court whether the sale was by private treaty or by public auction. It was contended on the other hand on behalf of the contesting Respondent, Respondent 3, that the amendment was made in order to get over the decision of the Allahabad High Court in Kayastha Trading and Banking Corporation Ltd. v.

Sat Narain Singh(1) and that in any event on a true construction of section 232(1) as amended the words "any sale held" had reference in the context only to sales held by or effected through the intervention of the Court and not sales effected by the secured creditor without the intervention of the Court.

The decision of the Allahabad High Court above referred to had held on a construction of section 232(1) as it then stood, that an execution was not put in force merely when the property of the judgment debtor was sold in pursuance thereof, but it was put in force when the property was attached and hence where the property of an insolvent company was attached prior to the date of the commencement of the winding up but was actually sold subsequent to such date, the sale was not void and could be upheld. There was an earlier decision of the Patna High Court in Baldeo Narain Singh v. The, United India Bank Ltd.(1) in which a contrary decision had been reached exactly under similar circumstances. It is well-known that this conflict was resolved and the decision of the Allahabad High Court was got over by inserting this amendment by Act XXII of 1936. The statement of objects and reasons is certainly not admissible as an aid to the construction of a statute. But it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. State of West Bengal v. Subodh Gopal Bose and Others(3). The amendment of section 232(1) inserted by Act XXII of 1936 was designed to prevent such sales as were upheld by the decision of the Allahabad High Court in Kayastha Trading and Banking Corporation Ltd. v. Sat Narain Singh(1) and it would be permissible to refer to that portion of the statement of objects and reasons for the purpose of ascertaining the extent and urgency of the evil which was sought to be remedied by introducing the amendment. It follows therefore that the (1) [1921] I.L.R. 43 Allahabad 433 (2) [1915] 38 Indian Cases 91.

(3) [1954] S.C.R. 587, 628.

amendment could not have been intended to bring within the sweep of the general words "or any sale held without the leave of the Court of any of the properties" sales effected by the secured creditor outside the winding up. Even apart from this intendment there are certain canons of construction which also tend to support the same conclusion. Prior to the amendment the law was well-settled both in England and in India that the secured creditor was outside the winding up and he could realise his security without the intervention of the Court by effecting a sale of the mortgaged premises by private treaty or by public auction. It was only when the intervention of the

Court was sought either by putting in force any attachment, distress or execution within the meaning of section 232(1) as it stood before the amendment or proceeding with or commencing a suit or other legal proceedings against the company within the meaning of section 171 that leave of the Court was necessary and if no such leave was obtained the remedy could not be availed of by the secured creditor. The sale of the mortgaged premises was also brought by the amendment on a par with the attachment, distress or execution put in force at the instance of the secured creditor and having regard to the context such sale could only be construed to be a sale held through the intervention of the Court and not one effected by the secured creditor outside the winding up and without the intervention of the Court.

It is a well-recognised rule of construction that "when two or more words which are susceptible of analogous meaning are coupled together noscunter a sociis, they are understood to be used in their cognate sense. They take, as it were, their colour from each other., that is., the more general is restricted to a sense analogous to the less general. (Maxwell on Interpretation of Statutes, Tenth Edition, p.

332). The Judicial Committee of the Privy - Council also expressed itself in similar terms in Angus Robertson & Others v. George Day(1):-

(1) [1879] L.R. 5 A.C. 63, 69.

> "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them".

Having regard therefore to the context in which these words "any sale held without leave of the Court of any of the properties" have been used in juxtaposition with "any attachment, distress or execution put into force without leave of the Court against the estate or effects" it would be a legitimate construction to be put upon them that they refer only to sales held through the intervention of the Court and not to sales effected by the secured creditor outside the winding up and without the intervention of the Court.

There is also a presumption against implicit alteration of law and that is enunciated by Maxwell on Interpretation of Statutes, 10th Edition, at page 81 in the following terms:-

> "One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness..... This passage from Maxwell was approved of by Their Lordships of the Privy Council in Murugian, P. v. Jainudeen, C. L.(1) and Their Lordships agreed that the law was correctly stated in the passage just cited. To the same effect are also the observations

of the Court of Appeal in National Assistance Board v. Wilkinson(1) where it was held that the Statute is not to be taken as affecting a fundamental alteration in the general law unless it uses words pointing unmistakably to that conclusion. In that case at page 658 Lord Goddard, C.J. observed:-

(1) [1954] 3 Weekly Law Reports 682, 687, (2) [1952] 2 Q.B. 648 "But it may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares. In Minet v. Leman(1), Sir John Romilly, M. R. stated as a principle of construction which could not be disputed that 'the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched' ".

If the construction sought to be put upon the words "or any sale held without leave of the Court of any of the properties" by the Appellants were accepted it would effect a fundamental alteration in the law as it stood before the amendment was inserted in section 232(1) by Act XXII of 1936. Whereas before the amendment the secured creditor stood outside the winding up and could if the mortgage deed so provided, realise his security without the intervention of the Court by effecting a sale either by private treaty or by public auction, no such sale could be effected by him after the amendment and that was certainly a fundamental alteration in the law which could not be effected unless one found words used which pointed unmistakably to that conclusion or unless such intention was expressed with irresistible clearness. Having regard to the circumstances under which the amendment was inserted in section 232(1) by Act XXII of 1936 and also having regard to the context we are not prepared to hold that the Legislature in inserting that amendment intended to effect a fundamental alteration in law with irresistible clearness. Such a great and sudden change of policy could not be attributed to the Legislature and it would be legitimate therefore to adopt the narrower interpretation of those words of the amendment rather than an interpretation which would have the contrary effect. (Vide the observations of the Privy Council in Vasudeva Mudaliar & Others v. Srinivasa Pillai & another(1). (1) [1855] 20 Beav. 269.

(2) (19O7) I.L.R. 30 Madras 426, 433, It may be observed in this connection that section 171 enacts a general provision with regard to suits or other legal proceedings to be proceeded with or commenced against the company after a winding up order has been made and lays down that no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose. This general provision is supplemented by the supplemental provisions to be found respectively in sections 229 and 232(1) of the Act. Section 229 speaks of the application of insolvency rules in winding up of insolvent companies and section 232(1) speaks of the avoidance of certain attachments, executions, etc., put into force without the leave of the Court against the estate and effects of the company and also of any sale held without the leave of the Court of any of the properties of the company after the commencement of the winding up. Section 229 recognises the position of the secured creditor generally as outside the winding up but enables him in the event of his desiring to take the benefit of the winding up proceedings to prove his debt, to value the same and share in the distribution pro rata of the assets of the company just in the same way as he would be able to do in the case of

insolvency under the Presidency Towns Insolvency Act or the Provincial Insolvency Act. Section 232(1) also has reference to legal proceedings in much the same way as legal proceedings envisaged by section 171 of the Act and the attachment, distress or execution put in force or the sale held are all of them legal proceedings which can only be resorted to through the intervention of the Court. The word "held" in connection with the sales contemplated within the terms of the amended section also lends support to this conclusion and this conclusion is further fortified by the terms of section 232(2) which says that nothing in this section applies to proceedings by the Government, thus in effect indicating that what are referred to in section 232(1) are proceedings within the meaning of that term as used in section 171 of the Act.

The Federal Court also put a similar construction on the provisions of section 171 read with section 232(1) of the Act in The Governor-General in Council v. Shiromani Sugar Mills Ltd. (In Liquidation)(1) "Section 171 must, in our judgment, be construed with reference to other sections of the Act and the general scheme of administration of the assets of a company in liquidation laid down by the Act. In particular, we would refer to section 232. Section 232 appears to us to be supplementary to section 171 by providing that any creditor (other than Government) who goes ahead, notwithstanding a winding-up order or in ignorance of it, with any attachment, distress, execution or sale, without the previous leave of the Court, will find that such steps are void. The reference to "distress" indicates that leave of the Court is required for more than the initiation of original proceedings in the nature of a suit in an ordinary Court of law. Moreover, the scheme of the application of the company's property in the pari passu satisfaction of its liabilities, envisaged in section 211 and other sections of the Act, cannot be made to work in co-ordination, unless all creditors (except such secured creditors as are "outside the winding-up" in the sense indicated by Lord Wrenbury in his speech in Food Controller V. Cork(1) at page 671) are subjected as to their actions against the property of the company to the control of the Court. Accordingly, in our judgment, no narrow construction should be placed upon the words "or other legal proceeding" in section 171. 'In our judgment, the words can and should be held to cover distress and execution proceedings in the ordinary Courts. In our view, such proceedings are other legal proceedings against the company, as contrasted with ordinary suits against the company". We are therefore of the opinion that the sale effected by Respondent 2 as the Receiver of the Trustees of the debenture-holders on the 16th July 1954 was valid and binding on all parties concerned and could not be challenged as it was sought to be done by the (1) [1946] F.C.R. 40, 55.

(2) 1923 A.C. 647.

Official Receiver. The position was rightly summed up by the High Court as under:-

> "We thus reach the position that no leave of Court was needed before the Receiver appointed by the mortgagee debenture-holders exercised the power of sale and that as there is no allegation of want of bona fides or recklessness or fraud against the Receiver in exercising such a power, it would follow that the sale held by the Receiver is valid and effectual to convey title to the purchaser and that such a sale cannot be avoided on the ground either of want of due notice given by the Receiver before effecting the sale or on the ground of undervalue".

The result therefore is that the appeal fails and must be dismissed with costs of the contesting Respondent

3. The other Respondents who have appeared before us will bear and pay their own costs of the appeal.