1916.

Present: Wood Renton C.J. and De Sampayo J.

SANKARA IYER *v.* VANDERSTRAATEN.

445—D. C. Colombo, 43,044.

Indian Companies Act, 1882—Serving of orders on persons living outside India—Service by post office.

In the proceedings for the compulsory winding up of a Joint Stock Company incorporated under the Indian Companies Act, the District Court of Tinnevelly (India) settled the list of contributories, and ordered that the contributories (including defendant) should within four days after service of that order pay the amount of the contribution.

Held, that the posting of the order to defendant, who was living in Ceylon; was not due service of the order.

"The rules under the Indian Companies Act do not, so far as I can see, refer to the specific case of foreign shareholders, and I doubt whether, when rule 83 spoke of 'due course of delivery by the post office' it contemplated the post office of any other country than India."

THE facts are set out in the judgment.

A. St. V. Jayawardene (with him *Mahadeva*), for plaintiff, appellant.

Drieberg (with him *F. H. B. Koch*), for defendant, respondent.

Cur. adv. vult.

December 14, 1916. DE SAMPAYO J.—

The plaintiff is the official liquidator of the Swadeshi Steam Navigation Co., Ltd., which was incorporated under the Indian Companies Act of 1882, and which is being compulsorily wound up by the District Court of Tinnevelly in India. He sues the defendant for the recovery of Rs. 431.45, being the balance principal and interest due one 15 shares which had been allotted to the defendant on his application. In the winding-up proceedings the plaintiff included the defendant in the list of contributories, of which it is admitted the defendant had notice. On the application of the plaintiff the Court on October 9, 1912, settled the list of contributories, and ordered that the contributories, including the defendant, should within four days after service of that order pay into Court or to the official liquidator the amount of their contributions. According to Company law such an order creates a new liability on the part of the shareholders, and it is not disputed that the necessary preliminary to the enforcement of the liability is notice

of the order. The defendant denies that the order was served on him, or that he had any other notice thereof. The issue in this case accordingly is whether the order of the Tinnevelly Court was duly served on the defendant. The plaintiff's case is that a copy of the order was sent by post to the defendant. This raises two questions: (1) Whether the mere posting of the order is due service, and (2) whether a copy of the order was in fact posted to the defendant as alleged.

On the first point the plaintiff depends on rule 83 of the rules under the Indian Companies Act of 1882, which is to the following effect:—

> "Services upon contributories and creditors shall be effected, except when personal service is required, by sending the notice or a copy of the summons or order or other proceedings through the post in a prepaid letter addressed to the attorney or vakil of the party to be served, if any, or otherwise to the party himself . . . . . ., and such notice or copy, summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in due course of delivery by the post office, and notwithstanding the same may be returned by the post office."

Reference was also made to Article No. 188 of the Articles of Association of the Company, which also provided for service of notice through the post. But this article obviously refers to notices required in the ordinary course of business of the Company, and has nothing to do with winding-up proceedings in Court. The plaintiff must, therefore, justify the service of the Court's order, if at all, by rule 83 under the Indian Companies Act. When a person becomes a shareholder in a foreign company, he no doubt thereby submits himself to be governed by the articles of the Company, but with regard to proceedings in a foreign Court different considerations apply. The rules under the Indian Companies Act do not, so far as I can see, refer to the specific case of foreign shareholders, and I doubt whether, when rule 83 spoke of "due course of delivery by the post office," it contemplated the post office of any other country than India. If I am right here, then the rule does not assist the plaintiff in the contention that the Ceylon Post Office must be taken to have delivered the notice to the defendant. This rule is similiar to rule 23 under the English Companies Acts, and the question of its applicability to service out of the jurisdiction has been discussed in the English Courts. The Joint Stock Companies (Winding-up) Act of 1848, section 108, provided for service of summons, notices, or orders upon any party by being sent by the post, though the party might be out of the jurisdiction of the Court. But this provision was repealed in 1862, and no similar provision has been substituted by that Act or by the

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Act of 1890. *In re The Gen. Intern. Agency Co.*,[1] an application was made to Court for leave to serve through the post the summons for making a call upon certain shareholders resident abroad. The Master of the Rolls had doubts about the jurisdiction of the Court, and referred the matter to the Court of Appeal. Their Lordships also thought there was a risk that such service might be defective, but considered that it ought not to be made an impediment to the making of the call upon all the contributories, and they allowed the application, observing that the making the call would be only the foundation of proceedings in the foreign Courts to enforce payment of the call, and that, of course, in those proceedings the question might be raised whether the service was good or not. It will be seen that the question was practically left undecided, except so far as the Court thought that the summons to show cause why the call should not be made might be served through the post. The fact that the summons which was authorized to be so served was one for that limited purpose only was emphasized in *In re Anglo-African Ship Co.*,[2] which commented on and distinguished that case, and where the application was for leave to serve the order for the call itself out of the jurisdiction by sending the same through the General Post Office, the Court refused the application, and laid down broadly that the Court had no jurisdiction to give leave to serve notices of orders and other proceedings in the winding up of a Company on persons residing out of the jurisdiction. For the principle governing this subject the Court referred to the earlier case of *In re Busfield*,[3] where Cotton L.J. said: "Service out of the jurisdiction is an interference with the ordinary course of the law, for generally Courts exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction. If an Act of Parliament gives them jurisdiction over British subjects wherever they may be, such jurisdiction is valid, but, apart from statute, a Court has no power to exercise jurisdiction over any one beyond its limits." In the present case leave of the Tinnevelly Court was not even asked for or given, and the method of service through the post appears to have been adopted by the official liquidator himself. It seems to me obvious that if, according to the principle enunciated by the above decisions, the Court itself had no jurisdiction to authorize that method of service, the act of the official liquidator in adopting it could have no greater validity. Mr. A. St. V. Jayawardene, for the plaintiff, conceding that the service might be bad if the Tinnevelly Court itself was trying to recover the money, suggests that as this was an independent action in the defendant's own *forum* it did not matter what the form of service was. I do not think that this advances the plaintiff's case. The liability of a contributory as such arises from the order of the

[1] *(1867) 16 L. T. 725.* [2] *(1886) L. R. 22 Ch. D. 348.*
[3] *(1886) L. R. 32 Ch. D. 123.*

Court making the call, and it appears to me to follow that the order must be communicated to the contributory in a legally regular form.

However the law on this subject may be, the plaintiff failed to prove the actual posting of the order. The posting was said to have been effected, not by the official liquidator himself, but by his clerk, who was the only witness called in the case, but whose evidence the District Judge did not credit. I see no reason to disagree with the finding of the District Judge that the order of the Tinnevelly Court was not posted to the defendant.

I think this appeal should be dismissed with costs.

WOOD RENTON C.J.—I agree.

Appeal dismissed.