1952 *Present:* **Pulle J. and L. M. D. de Silva J.**

CEYLON TEXTILES LTD. *et al.*, Appellants, *and*
CHITTAMPALAM GARDINER *et al.*, Respondents

S. C. 504—D. C. Colombo, 365/S

Companies Ordinance, No. 51 of 1938—Section 162 (6)—Public Company—Winding up by Court—Deadlock—Perverse use of voting power—"Just and equitable cause"—Scope of functions of Court.

Where an application to Court was made under section 162 (6) of the Companies Ordinance for the winding up of a public company on the ground of a deadlock in the management and conduct of the company's affairs owing to disputes between the directors and the agents and secretaries of the company and between the directors *inter se*—

Held, that the constitution of a public company generally made it possible for disputes to be resolved in a domestic forum or at the worst in a court of law. Only if it was impossible to arrive at a solution by such means would a Court pronounce a winding up order. The embarrassment caused by conflicts between directors and the possible delays inevitable in litigation in achieving their resolution do not necessarily lead to the conclusion that a company should be wound up under section 162 (6) of the Companies Ordinance.

Observations on perverse and oppressive use of voting power as a ground for winding up a company.

APPEAL from an order of the District Court, Colombo.

H. V. Perera, Q.C., with *N. Nadarasa*, for the appellants.—The question is whether, in the circumstances found by the trial Judge in this case, the order for the winding up of the Ceylon Textiles Limited should have been made. Under section 162 (6) of the Companies Ordinance, No. 51 of 1938, a company may be wound up by the Court if the Court is of opinion that it is "just and equitable" that the company should be wound up. The words "just and equitable" do not mean "whenever the Court thinks it reasonable". They are words of limitation. The particular sets of circumstances which fall within the "just and equitable" clause have not been laid down, but the categories are three:—first, where the substratum of the company has disappeared; secondly, where an individual or group with a majority of shares makes a perverse use of the majority power; and thirdly, when there is a deadlock. These categories are not illustrative but nearly exhaustive. English Courts have refused to give relief in cases falling outside these categories—*Re Anglo-Continental Produce Co. Ltd.* [1]

The state of deadlock must be complete to justify an order for winding up. Mere interruptions or disputes, which can be resolved by resort to the domestic forum or by the ordinary processes of Court, do not constitute a complete deadlock—*Re Yenidje Tobacco Co. Ltd.* [2]; *Re American Pioneer Leather Co.* [3]. See also *Re Eastern Telegraph Co. Ltd.* [4]

[1] *(1939) A. E. R. 99.*
[2] *(1916) 2 Ch. 426.*
[3] *(1918) 1 Ch. 556.*
[4] *(1947) 2 A. E. R. 104.*

2——J. N. B 24036-1,592 (1/53)

and *Re Taldua Rubber Co. Ltd.* [1]. The mere fact that there may be a deadlock in the future is insufficient. There must be a present deadlock incapable of solution. In the present case the deadlock, if it did in fact exist, was remediable.

With regard to the question of unconscionable use of majority voting power, it is submitted that the trial Judge has misapplied the words of Lord Clyde's judgment quoted in *Loch v. John Blackwood* [2]. Where there is an illegality for which there is no adequate remedy available either under the Articles of Association or through the ordinary processes of Court then only is an order of winding up made. Winding up by order of Court is only the last resort. See *Re Langham Skating Rink Co.* [3]; *Re Cuthbert Cooper* [4]; *Re Anglo-Continental Produce Co. Ltd.* (*supra*).

D. S. Jayawickreme, with *E. R. S. R. Coomaraswamy*, for the 1st to 7th petitioners respondents.—It is implicit in the contract that the business of the company shall be carried on in a particular way, that is, in accordance with the Articles of Association in this case. If the three conditions set out in Lord Clyde's judgment, quoted in *Loch v. John Blackwood* (*supra*), are not complied with, then clearly it is "just and equitable" that the company should be wound up. Where impropriety falls short of perversity the Court must examine three matters, viz., what the impropriety is; the nature and degree of impropriety; and the impact on the business concerned. In the present case, for instance, the failure of banks to honour cheques owing to disputes must have had an impact on the business. Oppression of a minority is a sufficient ground for a winding up order. In regard to the suggestion that the domestic forum is the proper place where a shareholder should go in such circumstances, it is submitted that, where a full investigation is necessary, the Court should order winding up—*Palmer's Company Law*, 19th ed., p. 378; *Re Peruvian Amazon Co.* [5]

Deadlock is nothing more than a conflict of the dominant interests. The Court must investigate the question of propriety and not merely the question of legality. The Court must look into the relationship between the parties in an action for winding up. Deadlock arose when Chellappah wanted a particular thing done in a particular way. There is ample material to show that a deadlock exists and that it would continue to exist due to the conduct of one person, that is Chellappah. The only remedy is to separate Chellappah from the company, and the only legal way to do this is by winding up the Company.

H. V. Perera Q.C., in reply.—The one and only ground for a winding up in the present case is deadlock. The need for a full investigation of the company's affairs is not by itself a ground for winding up. In the case of *Re Peruvian Amazon Co.* (*supra*) there was already a voluntary winding up. In the present case there was no abuse of voting power. The fact that a wrong view is taken is not deadlock—*Re Cuthbert Cooper and Sons Ltd.* (*supra*). Lack of "commercial probity and efficiency"

[1] (*1946*) *2 A. E. R. 763.*
[2] (*1924*) *A. C. 783.*
[3] (*1877*) *5 Ch. D. 669.*
[4] (*1937*) *2 A. E. R. 466.*
[5] (*1913*) *29 T. L. R. 384.*

is not deadlock. The words of Lord Clyde's judgment are not applicable to the facts of the present case. The phrase " just and equitable " must not be taken out of its context. The cases show that these words must be taken in conjunction with the fact that a company is a self-governing body. With regard to the carrying on of a business " ultra vires " see *In re Crown Bank* [1].

Cur. adv. vult.

December 9, 1952. L. M. D. DE SILVA J.—

This is an appeal from an order made by the learned Additional District Judge of Colombo dated the 7th March, 1951, by which he allowed an application for the winding up by Court of the Ceylon Textiles Limited, a public company incorporated in 1942 under the Companies Ordinance, No. 51 of 1938. The application was made under section 162 (6) of this Ordinance on the grounds—

(1) that there was a complete deadlock in the management and conduct of the company's affairs, and

(2) that a full investigation of the company's affairs was necessary.

The second ground was not pressed seriously either in the Court below or before us. Section 162 (6) is to the effect that " a company may be wound up by the court if the court is of the opinion that it is just and equitable that the company should be wound up ". After having heard the arguments addressed to us we feel it would be useful before proceeding to consider the facts to ascertain the scope of the functions of the court under this section, that is to say, in what circumstances a court ought to order winding up under the section.

The rights of shareholders are very limited and, generally, the remedy of shareholders dissatisfied with the management of a company, such as the one under consideration, is to replace an existing board of directors by one more acceptable, either by a special resolution, if a three-fourths majority is obtainable for the purpose, or at an annual general meeting or series of annual general meetings. Apart from this right there are certain statutory rights given to shareholders in very exceptional circumstances, one of which is the right given by the section under which the present application is being made. But it has to be remembered that the effective working of a company demands that internal disagreements between shareholders among themselves, between shareholders and directors and among directors between themselves are matters essentially for solution and settlement in a domestic forum. Indeed in general all the internal questions which arise in the course of the working of a company are matters for discussion and solution in such a forum. They are matters in which the Courts rarely interfere. If such questions could be brought up without restriction or limitation in review before the Courts many evils would result. Litigation could clog the effective working of a company. Moreover the Courts would be called upon to decide whether the judgment of directors or groups of directors was sound, a function

[1] *L. R. (1890) 44 Ch. 634 at p. 646.*

which they would properly be reluctant to exercise, particularly as they may be called upon to review decisions taken upon purely commercial matters. James L.J., in the case of *In re Langham Skating Rink Company* [1] (which incidentally was an application for winding up) made the remark, " It really is very important to these companies that the Court should not, unless a very strong case is made, take upon itself to interfere with the domestic forum which has been established for the management of a company ". In our view that remark made in 1877 still holds good though the statute law relating to companies has been considerably altered.

The language of section 162 (6) is on the face of it extremely wide. But upon a review of the decisions it appears to us that so far the Courts have acted under this subsection only in three classes of cases.

First, where an individual or group holding a majority of shares which ensures for him or them a controlling interest have used the overwhelming power so possessed perversely, that is, for example, to do what they are legally entitled to do in a perverse and oppressive manner. For instance, a director with such power may use it to pack the board and vote an unconscionable sum as remuneration for himself. That would be a perverse using of voting power. In such instances the courts would not normally be able to give relief in ordinary proceedings as the acts, though perverse, have been done under cover of legality. They are instances where a winding up under section 162 (6) is called for.

Secondly, where the substratum of the company has for one reason or another disappeared. We need not dwell here on this class of case as it is not contended that such a thing has happened in the case before us.

Thirdly, where there is a deadlock. In the decided cases the deadlock has been complete. In fact no deadlock can truly be called a deadlock unless it is complete but the word " complete " serves to direct attention to the true nature of the deadlock that must be shown to exist before a liquidation can be ordered. It must be complete not only at any given moment but it must appear reasonably that no remedy can be hoped for by recourse to the courts or otherwise.

In the case of *The Anglo-Continental Produce Co., Ltd.*,[2] Bennett J. held in an application under section 186 (6) of the Companies Act, 1929 (which is identical with the section of our Companies Ordinance under which the application is made) that the petitioners to succeed must establish that the facts bring them " within any one of the decided cases as to what is just and equitable ". We feel the same reluctance as Bennett J. to extend the scope of the grounds under which an application can be made under the section in question although we are not altogether sure that one may not have to do so in an extreme case. Be that as it may, it is clear that no grounds emerge from the facts of this case for an extension. Indeed the only ground upon which the application was based which has been pressed is the ground of deadlock. Argument has also been addressed to us with regard to the perverse use of voting power although it was not a ground in the application. These grounds will be dealt with later. It is convenient at this stage to consider the facts.

[1] *(1877) 5 Ch. D. 669.* [2] *(1939) 1 A. E. R. 99.*

The facts are fully and accurately set out in the judgment of the learned District Judge. We do not agree with all the inferences of fact he draws from them. It appears to us, however, that even if a view as favourable as possible to the respondents were taken of the facts, no case of deadlock or of the perverse use of voting power is made out and that, therefore, the order for the winding up of the company has been wrongly made by the learned District Judge with regard to whom we would like to say with all respect that he could not have had the advantage of the full argument that has taken place before us.

Ceylon Textiles Limited for the winding up of which the petitioners pray is a public company. The original shares were of the par value of Rs. 100,000 divided into 10,000 shares of Rs. 10 each but it is now Rs. 300,000 divided into 30,000 shares. All the shares have been issued and fully paid up. Of these the appellants hold more than half, namely, 15,158 shares. The principal object of the company was and is the carrying on of a business as dealers in textiles and piece goods of every description. Senator Gardiner is a life director and chairman of the company. On 31st August, 1944, one John Chellappah was appointed managing director. In June, 1945, the managing director was replaced by John Chellappah and Company Limited who were appointed agents and secretaries for ten years with effect from 1st April, 1945, on an annual fee of Rs. 18,000 and a commission of 10 per cent. on the net profits. John Chellappah & Company Limited is a private company in which John Chellappah, the former managing director, holds a controlling interest. It could be regarded as the learned Judge observes as a domestic concern of John Chellappah. John Chellappah remained a director of Ceylon Textiles Limited after he ceased to be its managing director. Differences arose between John Chellappah and the other directors which reached a climax in the year 1949. They appear to have commenced with an objection by Chellappah to the investment of Rs. 200,000 out of a total capital of Rs. 300,000 in the purchase of shares in two firms, namely Cargills Limited and Millers Limited. Later Chellappah appears to have pressed for a sale of these shares when a profit could have been made by a sale, apparently apprehensive that the value of the shares would fall later (as they in fact did) and further because he thought that the money used for the purposes of the business would bring in a higher return. The other directors, in particular Senator Gardiner, did not agree to Chellappah's proposal and the displeasure which arose must have been aggravated by the fact that Senator Gardiner was Chairman of the Boards of Directors of Cargills and Millers. The learned District Judge has found " no doubt Senator Gardiner and the other directors honestly believed that the retention of these shares was beneficial to the company ". There is no sufficient reason to disagree with this finding but, however that be, the foundation for the subsequent unpleasant events which took place appears to have been laid. Matters came to a head in 1949 and on the 7th September of that year the Board of Directors passed a resolution making five specific complaints against the agents and secretaries, namely,

" (*a*) They did not take steps to have the company's cheques countersigned by J. R. Thampapillai as ordered by the directors ;

(*b*) They did not open a current account in the Bank of Ceylon and operate on it as ordered by the directors ;

(*c*) They did not furnish replies to Mr. Kamil's questions regarding the remittance of Rs. 100,000 to Bombay ;

(*d*) They acted in an arbitrary manner in suppressing certain resolutions forwarded by one of the directors, Mr. Kamil, for inclusion in the agenda for the meeting of August regarding independent audit ; and

(*e*) They do not summon monthly meetings of the directors every third Wednesday of the month as decided by the directors. "

The resolution proceeded further to state that the agents and secretaries were not acting in the best interests of the company and as their continuance was detrimental to the progress of the company called upon them to hand over the account books, &c., to J. R. Thampapillai, another director, on or before 10th September. The one dissentient to this resolution was Chellappah. On the same day Thampapillai was appointed managing director and one Gnanakoon was appointed secretary with effect from 7th September, 1949.

On this decision of the board John Chellappah & Company should have surrendered the books and other documents of the company and ceased to function as agents and secretaries. If they had a grievance that they had been wrongfully dismissed that was a matter, which, if not satisfactorily adjusted, might have formed the subject matter for an action for wrongful dismissal. The refusal of John Chellappah and Company (which was virtually John Chellappah himself) to surrender office cannot be justified but it does not, even when combined with other facts which will shortly be stated, afford good ground for an order for winding up.

It is scarcely necessary to consider the charges made against John Chellappah & Company in any detail but as a great deal of evidence has been led, and as the learned District Judge has made certain observations regarding them, we will deal with them shortly.

The first charge was that John Chellappah and Company " did not take steps to get the company's cheques countersigned by J. R. Thampapillai as ordered by the Board of Directors ". The cheques of the company were signed by the agents and secretaries and one of the directors and it was decided in June, 1949, that the director should be a director other than John Chellappah, namely, J. R. Thampapillai. This decision was understandable—indeed desirable. In a number of instances John Chellappah & Company failed to carry out this instruction. John Chellappah says that in all but one instance the failure occurred on cheques for which Thampapillai had made a requisition. This is not an acceptable excuse. It is not suggested however that John Chellappah has been guilty of any act of dishonesty either in this or in any other matter. It nevertheless deserved the condemnation passed by the learned District Judge.

The next charge was an alleged failure to open an account in the Bank of Ceylon as ordered by the directors. This decision of the directors was taken because the Bank of Ceylon appeared to afford better credit facilities than the company enjoyed at the moment. John Chellappah says that the cash balance did not permit the opening of such an account as there was already an unpaid overdraft from the Eastern Bank and we agree with the learned District Judge that this charge cannot be supported.

The third charge relates to a failure on the part of John Chellappah & Company to furnish replies to a questionnaire with regard to a remittance in 1947 of a sum of Rs. 100,000 to Bombay. This relates to a transaction where in the course of purchasing textiles in Bombay the Indian Exchange Control Regulations appear to have been infringed. It would appear that this money was remitted to purchase textiles and that in the course of the transaction a sum of Rs. 26,500 was expended in buying export licences in breach of Indian Regulations, a sum of Rs. 1,000 in brokerage fees and the balance utilised in paying for textiles. The price was again paid in Colombo by way of complying with the Indian Exchange Control Regulations with money loaned by the agents and secretaries to the company as these regulations appear to have required such payment. The money expended in India for the purchase was by some private arrangement returned to Ceylon and Ceylon Textiles did not in fact pay twice over for the same goods. This circumlocutory process must have led the other directors to believe that not only the Indian Exchange Regulations but the Ceylon Exchange Regulations had been violated. John Chellappah's position in Court in his evidence and in the argument before us was that the practice of purchasing export licences contrary to Indian Regulations was largely resorted to by the trade and was known to the other directors. It is suggested by counsel that he refused to give any details because it would have led to a prosecution of a person or persons who aided him in India and that the person who prepared the questionnaire, a fellow director by the name of Kamil, was also a dealer in textiles and a hostile competitor. This deliberate violation of the Exchange Control Regulations of India is something which cannot be excused. But to say the least, it is doubtful whether the other directors really took a serious view of this transaction because in their resolution of 7th September, 1949, dismissing John Chellappah & Company from the position of secretaries they appointed Gnanakoon as the secretary. Gnanakoon is a son-in-law of Chellappah and had been employed by the latter in Bombay to put through the transaction, and must have been the person most directly connected with the breach of the Exchange Control Regulations.

The next charge relates to the failure on the part of the agents and secretaries to summon monthly meetings of the Board of Directors. At a meeting held on the 14th January, 1949, the board decided " that monthly statements of sales and expenditure made up as correctly as possible should be tabled at monthly meetings ". It was argued in spite of this decision monthly meetings of the board had not been summoned regularly. It is doubtful whether the decision worded in the form quoted above could be read as a directive to the agents and secretaries to summon monthly

meetings. If emphasis is laid on the preparation of monthly sales and expenditure the decision may be interpreted to mean that these statements should in the normal course of business be tabled at monthly meetings. It was undoubtedly taken for granted that the board would meet monthly and that is quite a different matter from saying that the decision amounted to a directive failure to comply with which was an act of disobedience. What might properly be regarded as a directive on this point is a resolution of the board passed on the 21st June, 1949, " that monthly meetings be held monthly and as far as possible on the third Wednesday at 9.30 a.m. after consulting the convenience of the Chairman ". It was not suggested at the argument in appeal that if this resolution was the only clear directive there was no substantial compliance with it. Nevertheless the learned District Judge held that this charge was made out on Senator Gardiner's evidence that prior to 21st June it had been pointed out to the agents and secretaries by the Board that monthly meetings should be convened.

The most that can be said to arise upon these charges was that the agents and secretaries were behaving badly and not functioning as they should have done.

Upon the dismissal of the company, John Chellappah addressed a requisition signed by himself and five other shareholders to the Board of Directors requesting that an extraordinary general meeting be held to pass certain resolutions the object of which was to reinstate John Chellappah & Company as Managing Agents and Secretaries and to remove all the directors other than the life director from the Board. The requisition was made on the 10th October, 1949, and asked for a meeting on the 22nd of that month. The directors correctly took the view that the nature of the resolutions required a *special* resolution and fixed the meeting for the 30th November. John Chellappah requested the board to postpone this meeting and this request was complied with. On the 16th November, John Chellappah and his fellow requisitionists again requested the board to summon a meeting on or before the 30th November and contended that no special resolution was necessary. The board persisted in its opinion and fixed an extraordinary general meeting for the 22nd December. John Chellappah then by a notice dated the 25th November convened an extraordinary general meeting to be held on the 3rd December presumably on the ground that as the Board of Directors had failed to comply with a lawful requisition he had a right to do so under section 112 (3) of the Ordinance. Thereupon three of the directors Thampapillai, Kamil and Ernst of the Ceylon Textiles Limited instituted action No. 22165 in the District Court of Colombo in which, among other things, they asked for an interim injunction restraining John Chellappah from holding or taking part in the meeting convened by him for the 3rd December. On the following day the court issued the injunction. It was addressed to John Chellappah but it was not served upon him. The Chairman, Senator Gardiner, arrived at the time and place fixed. The fiscal's process server was also there. John Chellappah was not there but his proxy holder was present. The enjoining order was read by Senator Gardiner to such shareholders as were present but 15 or 20

minutes later after Senator Gardiner had left the shareholders proceeded to hold a meeting at which they purported to re-appoint John Chellappah & Company as Agents and Secretaries, to pass a vote of no-confidence in the Board of Directors, to dislodge the existing directors except the life director and to substitute for them John Chellappah and his son A. Chellappah.

The absence of John Chellappah on the 3rd December appears to have been an evasion of the enjoining order issued by the Court. This evasion is again conduct which is blameworthy.

It is now conceded by learned counsel for the appellants that the resolution passed at this meeting of the 3rd December was of no effect for two among possibly other reasons. First, because a special resolution was necessary to displace the Board of Directors and no such resolution was passed ; secondly, because even if it is assumed that the directors were in default in not summoning a meeting, the conveners of the meeting of the 3rd December did not before they summoned a meeting themselves let the time required by law under section 112 (3) to elapse. It is also to be remembered that an injunction had been issued restraining the holding of the meeting. Chellappah, his son A. Chellappah and the Ceylon Textiles Limited, however, instituted action No. 22326 of the District Court of Colombo against the three directors Ernst, Kamil and Thampapillai the 1st, 2nd and 3rd defendants respectively in the action and Senator Gardiner praying for a declaration that the 1st, 2nd and 3rd defendants had ceased to be directors of the company, that John Chellappah and his son were duly elected directors, and for an order requiring the 1st, 2nd and 3rd defendants to hand over the management of the company. They also asked for an injunction restraining them from acting as directors and an enjoining order was in fact issued on the 25th January, 1950. Thereafter Messrs. Ernst, Kamil and Thampapillai refrained from functioning as directors. It is clear that the attempt to dislodge the old directors was ineffective in law and that an injunction should not have issued but, however that be, the fact that Chellappah went to Court immediately after the meeting of 3rd December indicates that he desired to obtain covering sanction from Court for the decisions taken at the meeting of 3rd December, 1949.

Subsequent to this there are two matters which deserve mention. On 1st February, 1950, Chellappah (who was a director in any case) entered the business premises of the company for the purpose of examining its books. He says that the examination revealed a number of irregularities and towards evening he decided that the premises should not be left in charge of the Secretary, Gnanakoon. He then attempted to close the premises when Gnanakoon with the help of one or two rowdies thrust him out. On the 2nd February, 1950, Chellappah forcibly re-entered the premises and this re-entry was the subject of a prosecution for house-breaking. The learned District Judge mentions these events as part of the narrative but makes no comment on them. Chellappah says that his action with regard to re-entry was prompted by the belief that irregularities were being committed and this belief receives some support

from the evidence of Mr. N. de Costa a member of a firm of chartered accountants who examined the books of the company at the request of the provisional liquidator. We are unable upon this material to say that what Chellappah did on both occasions was prompted by a desire to take the business into his exclusive control and not by a desire to protect it.

The evidence led in the Court below discloses a great deal of recrimination between Senator Gardiner and Chellappah. The undue importance attached to this has somewhat blurred the essential point in this case, namely, whether there was a deadlock such as was necessary in law to sustain an order for winding up. The learned District Judge has expressed certain views on the accusations made by Senator Gardiner and Chellappah against each other but we do not think it necessary to go into them in detail. As an instance we would refer to the accusation made by Senator Gardiner that John Chellappah & Company induced him to sign a contract of service for 10 years and that he signed it without realising that it was for 10 years. This is somewhat curious. Senator Gardiner's position appears to be that the contract was unduly favourable to Chellappah & Company and in his evidence he expresses discontent with Chellappah on that ground. Senator Gardiner also accuses Chellappah of having resisted the payment of dividends with the object of depressing the price of shares in order to buy them up himself. The learned District Judge has held " this charge of deliberately depressing the share of this company levelled against Chellappah has no basis whatsoever " and we have no reason to think that the learned District Judge is wrong.

The course of events since the 7th of September, 1949, appears without doubt to have been turbulent and the unfortunate turns which they took must have impaired the efficient working of the company. But in spite of this it is clear from the evidence that the company is prosperous and doing well. It might have done even better but for the unfortunate events which we have recapitulated. But however turbulent these events might have been and however violent the disputes that have taken place they are not incapable of being resolved. The machinery of the Courts can be invoked in the cases already filed or in others to restore to effective authority the directors entitled to function and to give relief against recalcitrant agents and secretaries.

The appellants cited to us certain cases on the question of deadlock. They all relate to private companies which it is possible, for the reason that they were private, to deal with on the same footing as partnerships in so far as the question of winding them up arose. Learned counsel on both sides were unable to cite to us a case in which a public company had been wound up under the corresponding section of the English Act. Such cases, if they can arise at all, are bound to be rare because the constitution of a public company generally makes it possible for disputes to be resolved in a domestic forum or at the worst in a court of law. In the decided cases, as it appears to us, it was the impossibility of arriving at such a solution that led the Courts to pronounce a winding

up order. The embarrassment caused by conflicts between directors and the possible delays inevitable in litigation in achieving their resolution do not in our opinion necessarily lead to the conclusion that a company should be wound up under section 162 (6) of the Companies Ordinance, No. 51 of 1938. A case which we do not have to consider in which such an order may be justified is one where such conflicts and embarrassment are shown to exist, and it is further established that owing to lack of means of solution they will continue indefinitely so as to make business impossible or at any rate to the serious detriment of the company. It is not the case here that the matters of disagreement between Senator Gardiner and Chellappah and their respective supporters will, for lack of means of solution, be of such a permanent character as either to bring the business of the company to a standstill or to cause irreparable damage to the shareholders.

In *re Yenidje Tobacco Company Limited* [1], a private company with only two shareholders was under consideration. An application for winding up the company was consequently treated on the same principles as an action for dissolution of parternship by one partner against another. A deadlock was alleged. Warrington L.J. said, " I am prepared to say that in a case like the present, where there are only two persons interested, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the company ought to be wound up if there exists such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other ". Before disposing of the case, Warrington L.J. dealt with an article of the company which provided for reference to arbitration in the event of disputes arising. He found that this article did " not provide the means of getting rid of the difficulties which are encountered in the present case ". There is some indication here that a Court should not hold that a deadlock has arisen if some means other than a winding up exists for the resolution of difficulties that may have arisen.

It appears from the argument in the case of *Cooper and Sons Limited* [2] that the Court was asked "to exercise its general equitable jurisdiction " under section 168 of the Companies Act, 1929. Commenting upon certain grievances which were urged as grounds for an order for winding up Simonds J. (as he was then) though he does not say in so many words appears to indicate that if " appropriate relief in appropriate proceedings" was available in respect of them such grievances would not influence him to make an order for winding up.

The respondents in the Court below and before us relied strongly upon the judgment of the Privy Council in *Loch and another v. John Blackwood, Limited* [3]. That case makes no pronouncement upon the question of deadlock and relates to the perverse and oppressive use of voting power by those holding a majority of votes. When this was pointed out the

[1] *(1916) 2 Ch. 426.* [2] *(1937) 1 Ch. 392.*
[3] *(1924) A. C. 783*

respondents sought to suggest that in the case before us also there had been attempts perversely to use voting power and that successful attempts would occur in the future. In the case of *Cuthbert Cooper & Sons Ltd.* [1] the petitioners were confined to the grounds stated in the petition and perverse use of voting power is not one of such grounds in this case. But as the learned Judge has made some observations upon the use that John Chellappah may make of voting power we will examine the arguments adduced.

Learned counsel for the respondents argued before us that the circumstances surrounding the ineffective meeting of 3rd December, 1949, indicate an attempt to use voting power perversely and oppressively. We do not think so. However misguided they were their actions cannot fairly be described as a perverse or oppressive use of voting power.

The fact that a majority through the medium of legal forms persistently use overwhelming voting power perversely and in oppression of a helpless minority will influence a Court in favour of making an order for winding up. An exhaustive statement of the cases in which the courts will wind up a company on such grounds would be difficult to make and no such statement has been attempted—but the general nature of the grounds is evident from the decided cases. Thus in the case referred to a public company was formed to carry on the engineering business of one John Blackwood, deceased, which to all intents and purposes was the domestic concern of the sister of the deceased, one Mrs. MacLaren, a nephew named Rodger and a niece named Mrs. Loch. What was called the McLaren group had a majority of six votes which were persistently used to the detriment of the minority. They omitted to hold general meetings or submit accounts or recommend a dividend in spite of the fact that the business was prosperous. Their whole aim was to keep the minority in ignorance of the state of the business with the object ultimately of buying them out at an undervalue. This was a perverse use of voting power.

We have attempted to obtain a report of the case of *Baird v. Lees* referred to by the Privy Council with approval in the case just referred to. Lord Clyde there said, "I have no intention of attempting a definition of the circumstances which amounts to a 'just and equitable' cause. But I think I must say this. A shareholder puts his money into a company on certain conditions. The first of them is that the business in which he invests shall be limited to certain definite objects. The second is that it shall be carried on by certain persons elected in a specified way. And the third is that the business shall be conducted in accordance with certain principles of commercial administration defined in the statute, which provide some guarantee of commercial probity and efficiency. If shareholders find that these conditions or some of them are deliberately and consistently violated and set aside by the action of a member and official of the company who wields an overwhelming voting power, and if the result of that is that, for the extrication of their rights as shareholders, they are deprived of the ordinary facilities which compliance with

[1] *(1937) 2 A. E. R. 466 at p. 469.*

the Companies Acts would provide them with, then there does arise, in my opinion, a situation in which it may be just and equitable for the court to wind up the company ". Although we have not been able to obtain verification from the report it is fairly clear that the violation of the conditions referred to by Lord Clyde was committed by a member and official who wielded overwhelming voting power and used such voting perversely to keep himself in office while violating the conditions referred to. In that case " appropriate relief in appropriate proceedings " does not appear to have been available to other shareholders. No such grounds exist in this case. In the first place John Chellappah has only 34 per cent. of the shares (and votes). At the meeting of the 3rd December he appears to have commanded a majority. On this petition he and the others opposing winding up command a majority of votes. But these majorities were commanded presumably by John Chellappah persuading others to support him on the particular questions which arose. Persuasion of this character is legitimate. It was addressed to the merits of particular questions. John Chellappah might have been right or wrong on the views for which he has found support but he has not formed a block which uses a majority of votes perversely in the same sense as that word is used of directors who by commanding a majority of votes keep themselves in office and vote themselves unconscionable amounts as remuneration.

John Chellappah has in fact not been successful up to now in achieving the objects in respect of which he commanded majorities. The resolutions of the meeting of 3rd December were for the reasons already stated ineffective. For this reason the respondents were constrained to plead before us that although in the past voting power has not oppressed a minority, it will do so in the future. It was contended before us that it is probable that at the next annual general meeting John Chellappah will command the same degree of support among shareholders as he has done on this petition and will be able to place on the board, directors of his choice. This might happen ; but if it does it could not be called a perverse use of voting power. Then it was argued that there will be a deadlock because John Chellappah was likely to quarrel with the other directors even though they be of his choice because in the past it is alleged he has done so. The allegation is that Ernst and Kamil were of Chellappah's choice and that Chellappah has quarrelled with them. We find it entirely impossible to make a judicial forecast as the one we are asked to make and we feel quite unable to sustain an order for winding up on the ground of deadlock on the kind of probabilities that we are asked to assume for the future. We are of the opinion that no deadlock such as would justify a winding up order has been established.

For the reasons given we would allow the appeal, set aside the decree entered by the learned District Judge, and dismiss the petitioners' application. The petitioners will pay costs in both courts.

PULLE J.—I agree.

Appeal allowed.