1940 *Present :* **Soertsz and Nihill JJ.**

ANUJEE *et al. v.* LEWIS *et al.*

IN THE MATTER OF AN APPLICATION FOR A WRIT OF PROHIBITION.

Company—Jurisdiction to wind up Bank—Powers of District Court—Courts Ordinance, s. 62—Writ of prohibition:

A District Court has jurisdiction by virtue of section 62 of the Courts Ordinance to entertain proceedings for the winding up of a Banking Company not registered in Ceylon.

THIS was an application for a writ of prohibition against the District Judge of Jaffna, prohibiting him from proceeding further with the compulsory winding up of the Tranvancore and Quilon National Bank.

It was contended on behalf of the petitioners that the District Court of Jaffna had no jurisdiction to wind up a bank that has not been incorporated by registration under the provisions of Ordinance No. 4 of 1861 and Ordinance No. 2 of 1897.

N. E. Weerasooria, K.C. (with him *E. B. Wikremanayake* and *J. A. T. Perera*), for the petitioners.—A District Court in Ceylon has no jurisdiction to wind up the bank in question. The bank is not registered in Ceylon; it is incorporated and registered in Quilon, in the Native State of Travancore. In our law there is provision for the winding-up of only such companies as come under Ordinance No. 4 of 1861 or Ordinance No. 2 of 1897.

Jurisdiction must necessarily be expressly conferred upon a Court. There is no statutory provision which confers jurisdiction on our Courts regarding companies which are not registered in Ceylon. *In re Lloyd Generale Italiano* [1] is a relevant English case which was decided at a time when the law in England was similar to that which governs the present case. See also *8 Halsbury (2nd ed.) page 530, para. 1173, and page 533, para. 1179* summarizing the position.

When an inferior Court is exceeding its jurisdiction, a superior Court is bound to grant a writ of prohibition—*The Mayor and Aldermen of the City of London v. Cox et al.* [2]; *Worthington v. Jeffries* [3]; *Farquharson v. Morgan* [4].

[1] *(1885) 29 Ch. D. 219.*
[2] *(1867) 2 H. L. 239 at 254, 277 et seq.*
[3] *(1875) 10 C. P. 379.*
[4] *(1894) 1 Q. B. 552.*

H. V. Perera, K.C. (with him *T. K. Curtis* and *C. C. Rasa Ratnam*), for first respondent.—It is not disputed that the Bank, though a foreign company, is resident in Jaffna. A company is subject to the laws of the land. When a company which can sue and be sued and is thus given legal recognition in Ceylon enters into contracts and disappears, it cannot be said that our Courts are powerless to do anything with the property left behind. It can be wound-up—*In re Commercial Bank of India* [1]. Section 62 of the Courts Ordinance (Cap. 6) deals with the jurisdiction of various courts in the larger sense of the word, and section 63, with the civil jurisdiction of a District Court. The whole of the residuary jurisdiction with regard to civil matters is thus conferred on the District Courts. The District Court has unlimited and plenary jurisdiction in civil matters and cannot be compared to an inferior Court in England—*Thevagnanesekeram v. Kupparumal* [2]. The conferring of a power implies the conferring of everything that is necessary for the regulation of that power. The process of winding-up is merely a matter of procedure. The Civil Procedure Code does not provide for every contingency that may arise. The Court has, under these circumstances, inherent power to order a winding-up—*Hukm Chand Boid v. Kamalanand Singh* [3].

Section 3 of Cap. 66 read with section 18 of the Interpretation Ordinance (Cap. 2) is large enough to embrace a matter of this kind, and English law would be applicable in relation to all joint stock companies, whether foreign or local. A foreign company registered abroad, is not denied a separate existence, and an unregistered foreign company can be wound up—*Bateman v. Service* [4]; *Russian and English Bank et al. v. Baring Brothers & Co., Ltd.* [5]; *Palmer's Company Law (16th ed.) p. 461.*

N. Nadarajah, for second, third, and fourth respondents.

N. E. Weerasooria, K.C., in reply.—"Civil matter" in section 62 of Cap. 6 is too wide a term to embrace a subject of a special nature like winding-up proceedings. If it is to be given such an extensive meaning, section 69 of the same Ordinance (Cap. 6) which was introduced by way of amendment in 1904 as the result of a decision of the Supreme Court would be an unnecessary provision in relation to lunatics, idiots, &c. Section 4 of the Insolvency Ordinance (Cap. 82) expressly conferring jurisdiction on the District Court would also be superfluous. It has been held that all matters regarding insolvency proceedings are of a special nature—*In re Goonewardene* [6]. Section 62 of Cap. 6 cannot, therefore, be construed so as to confer residuary jurisdiction on the District Court. The District Court is not in the position of a Superior Court—*In the matter of the Application of John Ferguson for a Writ of Prohibition against the District Judge of Colombo* [7]; *In the matter of Daisy Fernando* [8]. Sections 6, 7, and 42 of the Courts Ordinance are conclusive on this point. See also *8 Halsbury (2nd ed.) pp. 527-531, paras. 1168-1175.*

The expression "the law to be administered" in section 3 of Cap. 66 refers to substantive law only and not to questions of procedure. Where English procedure is adopted, it would be on terms similar to those of

[1] *(1868) 6 Eq. C. 517.*
[2] *(1934) 36 N. L. R. 337.*
[3] *I. L. R. (1905) 33 Cal. 927 at 930.*
[4] *(1881) 6 A. C. 386.*
[5] *(1936) 154 L. T. Rep. 602.*
[6] *4 C. L. Rec. 215.*
[7] *(1874) 1 N. L. R. 181.*
[8] *(1896) 2 N. L. R. 249.*

section 100 of the Trusts Ordinance (Cap. 72). In Straits Settlements, an enactment similar to Cap. 66 was passed but the Privy Council held that although, under that enactment, the mercantile law of England was introduced, the Moneylenders' Act of England would not be applicable—*Abdullah Bajerai v. Sockalingam Chettiar* [1]. Winding-up proceedings are of a special nature. Even assuming that a District Court is a superior Court, special legislation would be necessary on a matter which is of a special nature. In England, special legislation was passed conferring jurisdiction on the High Court regarding winding-up proceedings —*8 Halsbury (2nd ed.) paras. 1278, 1284; Sections 338, 163, &c., of the Companies Act.* Even in regard to the High Court, only particular Judges appointed by the Chancellor have power to wind up—*section 164 (1) of the Companies Act.* It is impossible, therefore, to import into Ceylon English procedure.

Cur. adv. vult.

March 6, 1940. SOERTSZ J.—

The three petitioners, whose petitions have been submitted to us for consideration, are decree-holders against the Travancore National and Quilon Bank, Limited. They make their petitions to ask us to exercise the jurisdiction conferred on us by section 42 of the Courts Ordinance, and issue a writ against the District Judge of Jaffna prohibiting him from proceeding further with the compulsory winding-up of that Bank on which he has been engaged in Case No. L/2 of his Court, initiated at the instance of the second, third, and fourth respondents. The first respondent is the Official Liquidator.

The petitioners' case is that the District Court of Jaffna usurped a jurisdiction that was never given to District Courts in this Island, when it addressed itself to the winding-up of a Bank that has not obtained incorporation by registration under the provisions of Ordinance No. 4 of 1861 and Ordinance No. 2 of 1897, but is a Bank incorporated by registration in Quilon in the Native State of Travancore in South India.

If we are satisfied that District Courts as constituted by our laws have no jurisdiction to wind up companies other than those incorporated by registration in Ceylon, for the winding-up of which provision is made by the Joint Stock Company Ordinance, we are at once face to face with a case of a patent lack of jurisdiction, and we are bound *ex debito justitiæ* to grant the writ applied for regardless of the motives of the petitioners or their delay in preferring their petition. Questions of motive and delay may have an important bearing in cases in which there has been encroachment by one Court on the jurisdiction apportioned to another Court of the same class and not in cases in which there has been a manifest usurpation of jurisdiction. This fact emerges clearly in the judgment of Brett J. in the case of *Worthington v. Jeffries* [2] and in the judgments of Lord Halsbury and Lopes L.J. in *Farquharson v. Morgan* [3]. I indulge in these observations only because Counsel for the respondents commented strongly on the motives and the delay imputable to the petitioners.

[1] *(1933) 149 L. T. 26.*

[2] *(1874) 10 C. P. 379.*

[3] *(1894) 1 Q. B. D. 552.*

The sole question, then, that we have to answer is whether the petitioners have made out their case that in the matter of the winding-up of companies, District Courts have jurisdiction only by virtue of the Joint Stock Company Ordinance and only so far as companies falling within the provisions of that Ordinance are concerned. In regard to this question, the submission made to us by petitioners' Counsel in the course of the able and learned arguments he addressed to us may be summarized as follows: Ordinance No. 4 of 1861 provides in Part IV. for the winding-up of companies registered under that Ordinance *and of no other companies,* by the District Court having jurisdiction in the district in which the registered office of the company in question is situate. (See sections 67 and 68.) Banking and Insurance Companies were not within that Ordinance (see section 3) till it came about that the passing of Ordinance No. 2 of 1897 brought Banks registered under that Ordinance within the purview of Ordinance No. 4 1861 in so far as the provisions of that Ordinance were not inconsistent with its own provisions (see section 2 of Ordinance No. 2 of 1897). The Bank with which we are here concerned is not a bank registered by virtue of Ordinance No. 2 of 1897, and, therefore, the provisions of Part IV. of Ordinance No. 4 of 1861 do not apply to it, and such jurisdiction as was conferred by sections 67 and 68 on District Courts in regard to winding-up proceedings does not extend to a case such as this, that is to say, to a case of the winding-up of a Bank registered abroad. The conclusion reached by this line of reasoning is that a company or Bank registered abroad cannot be wound up in Ceylon. It will be observed that this submission of the petitioners is based on a major premise that jurisdiction is conferred on District Courts in regard to the winding-up of companies by sections 67 and 68 of Ordinance No. 4 of 1861 and that apart from those sections District Courts have no jurisdiction. The validity of this submission must therefore necessarily depend upon the validity of that premise. Is the premise valid ? To answer that question, we must examine the Ordinance that provides for the establishment of our Courts and defines their powers, that is to say, the Courts and their Powers Ordinance. (Vol. I., Cap. 6 of Leg. Enactments of Ceylon.) Section 3 of that enactment says that " the Courts for the *ordinary* administration of justice, *civil* and *criminal,* within this Island shall continue as heretofore to be as follows:—

(*a*) The Supreme Court;
(*b*) District Court;
(*c*) Court of Requests;
(*d*) Magistrate's Court; "

The proviso appended to this section leaves unaffected certain jurisdictions created by Imperial Statute or by certain local Ordinances, but with them we are not at all concerned in this case.

The matter of the winding-up of companies is undoubtedly a matter arising in the course of the ordinary administration of justice in a country, and, I think, it must be assumed that it is, at least, antecedently probable that provision will be made in such an Ordinance as the Courts and their Powers Ordinance for some Court or other to have jurisdiction over such a matter. The question, then, is whether the words used in the

Ordinance in conferring and apportioning jurisdiction on and among various Courts have or have not resulted in the realization of that *a priori* probability.

It is conceded that a winding-up proceeding is not within any original Civil jurisdiction of the Supreme Court. It, obviously, is not within the jurisdiction of Courts of Requests, or of Magistrates' Courts. It, therefore, follows that it must be within the jurisdiction of District Courts or must be regarded as an unfortunate *casus omissus,* unfortunate, because it is deplorable that local Courts should have no jurisdiction to wind up companies which, though not registered here, have largely lived and moved and had their being here. In other countries, in England for instance, certain Courts are empowered to wind up foreign and colonial companies having assets and *liabilities* there—*In re Mercantile Bank of Australia* [1]; *North Australia Co. v. Goldsborough* Co.[2]. The new local Companies Ordinance, No. 51 of 1938, makes provisions in Part X. for the compulsory winding-up of unregistered companies. Have we, then, heretofore occupied an exceptional position? I think the answer to that question must be found in chapter VI. of the Courts and their Powers Ordinance, and does not depend upon whether District Courts are superior or inferior Courts of Record, I refer to this because there was a great deal of argument on the point, and if it were necessary to find whether a District Court is a superior or inferior Court of Record, I should have no difficulty in holding that it is not a superior Court in the sense in which that term is understood in English Jurisprudence. That was the view taken in "*In the matter of the application of John Ferguson for a Prohibition against the District Judge of Colombo*[3], a ruling by a Collective Court.

Section 62 of chapter VI. of the Courts and their powers Ordinance is in these terms: "Every District Court shall be a Court of Record and shall have original jurisdiction *in all civil, criminal, revenue, matrimonial, insolvency and testamentary* matters, save and except such of the aforesaid matters as are herein, or by virtue of the said Criminal Procedure Code or any other enactment for the time being in force, exclusively assigned by way of original jurisdiction to the Supreme Court, and shall also have jurisdiction over the persons and estates of lunatics, minors, and wards, over the estates of cestuis que trust, and over guardians and trustees, and in any other matter in which jurisdiction has heretofore been, is now or may hereafter be given to District Courts by law". I read these words as meaning that when all the powers given to the Supreme Court are put on one side the entire residuary original jurisdiction in regard to *all civil, criminal, revenue* . . . . matters is vested in District Courts. Now, in my opinion, a "winding-up" proceeding is a civil matter and falls within that jurisdiction. This view is, I think supported and not controverted by sections 67 and 68 of Ordinance No. 4 of 1861 on which reliance was placed. Section 68 says: "The expression 'the Court' as used in this Ordinance shall mean the District Court *having jurisdiction in the place in* which the registered office of the company is situate; and any Court to which jurisdiction is given by this

[1] *(1892) 2 Ch 204.*

[2] *61 L. T. 716.*

[3] *1 N. L. R. 181.*

Ordinance shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it in pursuance of this Ordinance as it has in relation to other matters within the jurisdiction of such Court respectively". It will be observed that in the first part of this section it is said the word "Court" shall be taken to mean the District Court *having jurisdiction in the place* in which the registered office of the Company is situate". The words "having jurisdiction" must mean in the context, *already* possessed of a jurisdiction that comprises the relevant jurisdiction, namely, the jurisdiction to wind up for on the occasion on which the draftsman is using his words, it is not at all to the point that the Court he envisages has every other kind of jurisdiction if it has no jurisdiction to take steps to wind up a company. He is concerned, at that point of time, with winding-up proceedings, and with nothing else, and when he uses the words "*having jurisdiction*" he must be understood to mean jurisdiction to wind up. The words *having jurisdiction* are, by no means, apt if the intention of the draftsman is to confer a new jurisdiction. The later words "and any Court to which jurisdiction is given by this Ordinance" create no difficulty, for when he uses those words, the draftsman is clearly referring to the exclusive jurisdiction given by the Ordinance to that District Court *within the limits of which the registered office is situate.* In other words, the draftsman when confronted with a number of Courts that may be said to have jurisdiction on the usual grounds on which jurisdiction is conferred, namely, residence of the parties, situation of property, the arising of the cause of action, &c., ignores them all and selects the Court within the limits of which the registered office is situate as the Court that shall function in winding-up proceedings. In the concluding part of section 68, the draftsman goes on to say that the Court singled out, because it is the Court within whose limits the registered office is situate, shall, in addition to its ordinary powers, have the power to enforce any orders made in the course of the winding-up. The contention of the petitioners' Counsel might have appeared to be stronger if section 68 of Ordinance No. 4 of 1861 had been worded in the manner of section 161 of the new Companies Ordinance, No. 51 of 1938. That section reads: "The District Court of the district in which the registered office of a company is situate *shall have jurisdiction*". The words "shall have jurisdiction" as contrasted with the words "the District Court *having jurisdiction*" might have afforded more plausible support to the submission that the conferment of a new jurisdiction is in contemplation. But even so the support obtained would have been plausible, and no more, for it seems clear that the words of section 161 in the new Ordinance are not meant to confer a new jurisdiction on District Courts, but only to provide a new test as the sole test by which to ascertain the particular District Court which shall function in any particular winding-up proceeding.

The question then arises in regard to the position of a Company not registered under the provisions of Ordinance No. 4 of 1861 and not governed by the new Ordinance. Is there no way of winding-up such a company? The answer seems to be provided by section 3 of the "Introduction of the Law of England" Ordinance (Cap. 66, Vol. 2, Leg. Enactments) which provides that "in all question or issues which may hereafter arise or which

may have to be decided in this Island with respect to the law of partnership, Joint Stock Companies, Corporations, Banks and banking . . . . the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England", "with such formal alterations as to names, localities, Courts, offices, persons, moneys, penalties and otherwise as may be necessary to make the same applicable to the circumstances of this Island".

For these reasons I come to the conclusion that jurisdiction to wind up companies is conferred on District Courts by section 62 of the Courts and their Powers Ordinance, and that sections 67 and 68 of the Ordinance No. 4 of 1861 do no more than provide the test for ascertaining the particular District Court for any given winding-up proceeding in regard to companies under that Ordinance.

In this view of the matter the major premise as I described it, on which Petitioners' Counsel based his submission proves to be invalid and invalidates his submission that District Courts have no jurisdiction to wind up companies not registered locally. Consequently the petitioners' application in the way in which it was presented to us fails. The petitioners made no request that the District Court of Jaffna be prohibited for some particular reason, as for instance, for the reason that Jaffna was not the principal place of business of this Bank in this Island, and I wish to state quite clearly that this order does not consider or deal with that aspect or with the propriety of several District Courts in the Island being engaged simultaneously in the winding-up of this Bank as was said, in the course of the argument, to be the case.

The application fails and must be dismissed with costs.

NIHILL J.—I agree.

Application refused.