Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The New Zealand Loan and Mercantile Agency Company, Limited, v. *Christina Morrison, from the Supreme Court of Victoria; delivered 15th December* 1897.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

On the 23rd January 1893 the Respondent in Victoria placed 3,700*l.* on deposit with the New Zealand Loan and Mercantile Agency Company Limited the present Appellants. This Company was incorporated in England under the English Companies Acts with its head office in England but carried on business in New Zealand and the Australian Colonies including the Colony of Victoria. On the 12th July 1893 a creditor's petition was presented to the Court in Victoria for winding up the Appellant Company. A provisional liquidator was appointed but no order was ever made on this petition and there has been no winding-up of the Appellant Company in Victoria. On the same 12th July 1893 the Appellant Company itself presented a petition to the High Court of Justice in England and on the 21st July 1893 an order was made by that Court for the

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compulsory winding-up of the Appellant Company. Subsequently a scheme of arrangement was prepared and submitted to meetings of the creditors and contributories of the Appellant Company and accepted by the requisite statutory majorities of creditors and contributories in compliance with the provisions of the English Joint Stock Companies Arrangement Act, 1870. By an Order of the 13th April 1894 the High Court in England sanctioned the scheme of arrangement with immaterial amendments and declared the same to be binding on all the creditors and contributories of the Company and also on the official receiver and liquidator thereof. By this scheme it was provided that a new Company should be formed with the same name to acquire the undertaking and property of the old Company (*i.e.* the present Appellants) and to assume and provide for its liabilities in manner thereinafter mentioned and that the new Company should pay to each unsecured creditor of the old Company 12*l.* 10*s.* per cent. on the amount of his claim in cash with interest capitalised to 30th June 1894 and for the remaining 87*l.* 10*s.* per cent. should issue to such creditor debenture stock. And it was further provided that forthwith after the scheme should have become finally binding on all parties each creditor of the old Company should subject to the carrying out of the scheme hold his claim in trust for the new Company and release or deal with the same as the new Company should direct. The new Company was formed and is carrying on business in Victoria and has acquired or has title to all the property of the Appellant Company. The Respondent had due notice of the scheme and of the meetings of creditors to consider the same.

On the 4th January 1895 the Respondent commenced an action in Victoria against the Appellant Company to recover her deposit of

3,700*l.* and interest. By their defence the Appellant Company stated (paragraph 5) the winding-up petition in Victoria (paragraph 6) the winding-up order in England (paragraphs 7, 8 and 9) the proceedings under the Arrangement Act 1870 (paragraphs 10 and 11) the material provisions of the scheme and (paragraph 13) submitted that the Respondent was bound by the scheme as by a new contract and further that she had no longer any beneficial interest in or right to receive the money claimed by her. In her reply the Respondent objected that the Joint Stock Arrangement Act had no force or effect in the Colony of Victoria and that the acceptance of the scheme by the three-fourths majority of creditors would not make it binding upon the Respondent or be an answer to the action. There was a rejoinder and sur-rejoinder which it is not necessary for the present purpose to notice.

The points of law raised by the above stated paragraphs of the defence and reply were set down for argument before trial and by an Order of Mr. Justice Hodges of the 7th August 1895 it was ordered and adjudged that those paragraphs of the defence afforded no answer to the Respondent's claim. At the trial of the action before the Chief Justice judgment was given for the Respondent. Both orders were appealed to the Full Court and by two orders of the 1st September 1896 were affirmed. The present appeal is against these orders.

It was contended before their Lordships that the Arrangement Act 1870 extended to all the Colonies as well as the United Kingdom and that the Colonial Courts were therefore bound to take notice of the proceedings under that Act and give judicial effect to them. It was the intention of the Act (it was said) to bind all the creditors of the Company and the Act should be construed

so as to give effect to that intention so far as possible and as the Parliament of the United Kingdom can bind the Colonies it must be assumed to have done so. The analogy of bankruptcy was referred to and reliance was placed on a decision of the Court of Common Pleas in *Ellis* v. *McHenry* (L.R. 6 C.P. 228).

Their Lordships do not think that the Arrangement Act of 1870 when read by itself and detached from the other Companies Acts does either by express words or by necessary implication extend to the Colonies. That Act however cannot be regarded by itself but is only one of a collection of Acts together containing the statutory law relating to Joint Stock Companies in the United Kingdom which are compendiously referred to as the Companies Acts and ordered to be read together. It is impossible to contend that the Companies Acts as a whole extend to the Colonies or are intended to bind the Colonial Courts. The Colonies possess and have exercised the power of legislating on these subjects for themselves and there is every reason why legislation of the United Kingdom should not unnecessarily be held to extend to the Colonies and thereby overrule qualify or add to their own legislation on the same subject.

It is quite true that the provisions of the Arrangement Act are expressed to extend to all creditors and so they do to foreign as well as Colonial creditors but only when their rights are in question in the Courts of the United Kingdom. Their Lordships adopt what was said by Mr. Justice Holroyd on this point:—

"I am quite willing to admit, indeed I entertain no doubt, "that the compromise spoken of in section two is one between "a company and all its creditors or all of a particular class, "that all are to be summoned to any meeting which the Court "may order, and that the votes of all who attend either in "person or by proxy are to be counted. 'All' means 'all,'

" wherever the creditors may be found, whether in the United " Kingdom or in the Colonies or in foreign countries; and " within the jurisdiction of the English Courts, all, wherever " domiciled, will be bound by the result. But we are asked to " say, looking at this one section only, that the same clause " has a different import according as it is applied to foreign " countries or to the Colonies; that with respect to the former " its operation is confined to the jurisdiction of the English " Courts, while upon the latter it imposes a new law, and one " in derogation of the legislative powers possessed by those " colonies which enjoy self-government. It seems hardly " probable that, if such was the purpose of the Imperial " Parliament, it should have been expressed in a manner so " ambiguous."

Nor do their Lordships think that any assistance is to be derived from what has been held with regard to the application of the Bankruptcy Acts to the Colonies. It has been decided that by the express words of the Bankruptcy Acts all the property real and personal of an English bankrupt in the Colonies as well as in the United Kingdom is vested in his assignees or trustees. Their title must therefore receive recognition in the Colonial Courts from which it has been considered to follow that the bankrupt being denuded of his property by the English law is also entitled to plead the discharge given him by the same law. But how does this assist the Appellants? We have to deal with the winding up of a Company not with bankruptcy and there is a material distinction between the effect of bankruptcy and that of winding up. In the former case the whole property of the bankrupt is taken out of him whilst in the latter case the property remains vested in title and in fact in the Company subject only to its being administered for the purposes of the winding up under the direction of the English Courts. Their Lordships are not called upon to criticize the decision in *Ellis* v. *McHenry* which in their opinion does not apply to the present case.

If as their Lordships hold the Arrangement Act of 1870 does not extend to the Colonies the

proceedings in the English Court are for this purpose proceedings in a foreign Court and cannot be pleaded in Victoria as a defence to an action by a Victorian creditor as was decided in England with reference to a French winding up in *Gibbs* v. *Société des Métaux* 25 Q. B. D. 399.

One other argument was used which should be noticed. It was said that everybody who deals with a Corporation has notice of its origin and constitution and contracts with it subject to all the incidents which according to the law of its constitution may affect its liability upon its contracts. This argument is specious but when examined is found to beg the question or rather to be the same point over again. The incident of the constitution of this Company which is relied on is that it may be discharged from its liabilities by the order of an English Court. But it should be added "so far as the jurisdiction of that Court extends" and that brings us back to the same point.

Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed. The Appellants will pay the costs of it.