

*Privy Council Appeals Nos. 27, 28 and 29 of 1946*

**Lala Manmohan Das** - - - - - *Appellant*

v.

**The United Provinces and others** - - - - - *Respondents*

**The United Provinces** - - - - - *Appellant*

v.

**Lala Manmohan Das and others** - - - - - *Respondents*

**The United Provinces and others** - - - - - *Appellants*

v.

**Lala Manmohan Das and others** - - - - - *Respondents*

*Consolidated Appeals*

FROM

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

---

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 19TH DECEMBER, 1949**

---

*Present at the Hearing:*

LORD SIMONDS

LORD MACDERMOTT

LORD RADCLIFFE

SIR JOHN BEAUMONT

SIR LIONEL LEACH

[*Delivered by* SIR JOHN BEAUMONT]

---

These consolidated appeals are from a decree of a Division Bench of the High Court of Judicature at Allahabad, dated the 22nd August, 1941, and from an earlier decree of a Division Bench of that Court, dated the 30th April, 1940, both decrees being made in the winding-up of the Lower Ganges and Jumna Electricity Distributing Co. Ltd. (hereinafter called the company).

The question which calls for decision is whether certain mortgage debentures issued by the company for the purpose of securing a sum of Rs.3 lacs with interest, and secured by a debenture trust deed, constitute a valid charge on the undertaking and assets of the company, or whether the charge upon the undertaking intended to be created in favour of the debenture holders is void by reason of the provisions of section 9, sub-sections 2 and 3 of the Indian Electricity Act IX of 1910 (hereinafter called the Act). These sub-sections are in the following terms:—

“9.

(2) The licensee shall not at any time assign his licence or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Provincial Government.

(3) Any agreement relating to any transaction of the nature described in . . . sub-section (2) unless made with, or subject to, such consent as aforesaid, shall be void."

The relevant facts giving rise to this appeal are not in dispute and are as follows. In July, 1929, the United Provinces Government, acting under section 3 (1) of the Act, granted a licence for the distribution and supply of electrical energy within certain specified limits to a firm known as P. L. Jaitly & Co. The licence provided *inter alia* for the supply of electrical energy in bulk by the Public Works Department (Irrigation Branch) of the said Government to the licensees, and for the assignment of the licence and transfer of the undertaking by the licensees to a company formed, or to be formed, under the Indian Companies Act.

On the 11th February, 1930, Messrs. P. L. Jaitly & Co. transferred their licence and interests under the agreement to the company, which was incorporated for the purpose of taking over the licence. It is conceded that the licence was validly assigned to the company, and the supply of electricity by the Government to the company commenced on the 1st November, 1930, and continued thereafter in accordance with the terms of the said supply agreement.

On the 7th May, 1932, the company made an issue of mortgage debentures for securing the sum of Rs.3 lacs repayable with interest at the rate of  $7\frac{1}{4}$  per cent. per annum free of income tax. Before making the said issue the company did not ask for, or obtain, the written consent of the said Provincial Government in accordance with the provisions of section 9 of the Act. The appellant Lala Manmohan Das is the holder of the bulk of the said debentures.

The said debentures were secured by a debenture trust deed Ex. D.4 dated the 7th May, 1932, and made between the company of the one part and the Central Bank of India Ltd. and Lala Manmohan Das as trustees of the other part.

The trust deed was in common form and nothing turns upon the construction of any particular provision thereof. By such deed the company mortgaged to the trustees specific assets including the benefits arising from the said licence. Clause 6 created a floating charge on all the assets of the company. The security was to be enforceable on the happening of various events including the making of an order for the winding-up of the company. When the security became enforceable the trustees were to have power to enter into possession of the mortgaged properties and to sell the same and the proceeds of sale were to be applied for discharging the amount due on the said debentures.

On the 19th March, 1937, an order was made in the High Court at Allahabad for the winding-up of the company.

The question as to the validity of the charge in favour of the said debenture holders or their trustees early engaged the attention of the Court, and on the 24th November, 1939, Mr. Justice Allsop, who was the Judge in winding-up, directed the Official Liquidators of the company to insert an advertisement in three newspapers to the effect that the question of the validity of the debentures would be considered by the Court on the 18th December, 1939, on which date persons interested should appear and make their submissions to the Court. Accordingly on the said 18th December, 1939, the Official Liquidators applied to the Judge for instructions as to whether they should treat the holders of debentures as entitled to have preference over the other creditors. The Central Bank of India Limited and Lala Manmohan Das as trustees for the debenture holders, and P. L. Jaitly & Co. as managing agents of the company, appeared at the hearing, but the United Provinces Government did not appear.

On the 20th December, 1939, Mr. Justice Allsop on the said application held that the said debentures by reason of section 9 of the Act created no valid charge and that the debenture holders should rank only as unsecured creditors.

From the order of Mr. Justice Allsop, Lala Manmohan Das, as a debenture holder, preferred an appeal under the Letters Patent to the High Court at Allahabad, citing as respondents the Official Liquidators of the Company, The Central Bank of India Ltd., and Messrs. P. L. Jaitly & Co. The Government of United Provinces was not made a respondent.

The said appeal was heard by a Division Bench consisting of Thom C.J. and Ganga Nath J. who, by their judgment dated 30th April, 1940, reversed the decision of Mr. Justice Allsop. The view which the learned Judges took was that, whilst the specific mortgage in favour of the trustees contained in the said trust deed was invalid under section 9 of the Act, the floating charge created by such deed did not fall within the prohibition contained in section 9 (2). There was accordingly an effective charge in favour of the debenture holders upon the undertaking of the company, and the debenture holders were accordingly secured creditors.

On the 20th December, 1940, the United Provinces made an application in the winding-up of the company, claiming that they were not bound by the decision in the Letters Patent appeal, to which they had not been parties, and claiming further that they were entitled to an equitable lien on the assets of the company for the cost of electrical energy supplied to the company and not paid for, and that such lien ranked in front of the said debentures.

The said application came up for hearing before a Division Bench of the said High Court, consisting of Sir Iqbal Ahmad, A.C.J. and Allsop, J. when the Court referred to a Full Bench of such Court the question "whether a charge is or is not a transfer within the meaning of clause 2 of section 9 of the Indian Electricity Act IX of 1910".

This question was considered by a Full Bench consisting of Sir Iqbal Ahmad, A.C.J., Allsop, J. and Yorke, J. The Full Bench held unanimously that a charge was a transfer within section 9, sub-section 2 of the Act.

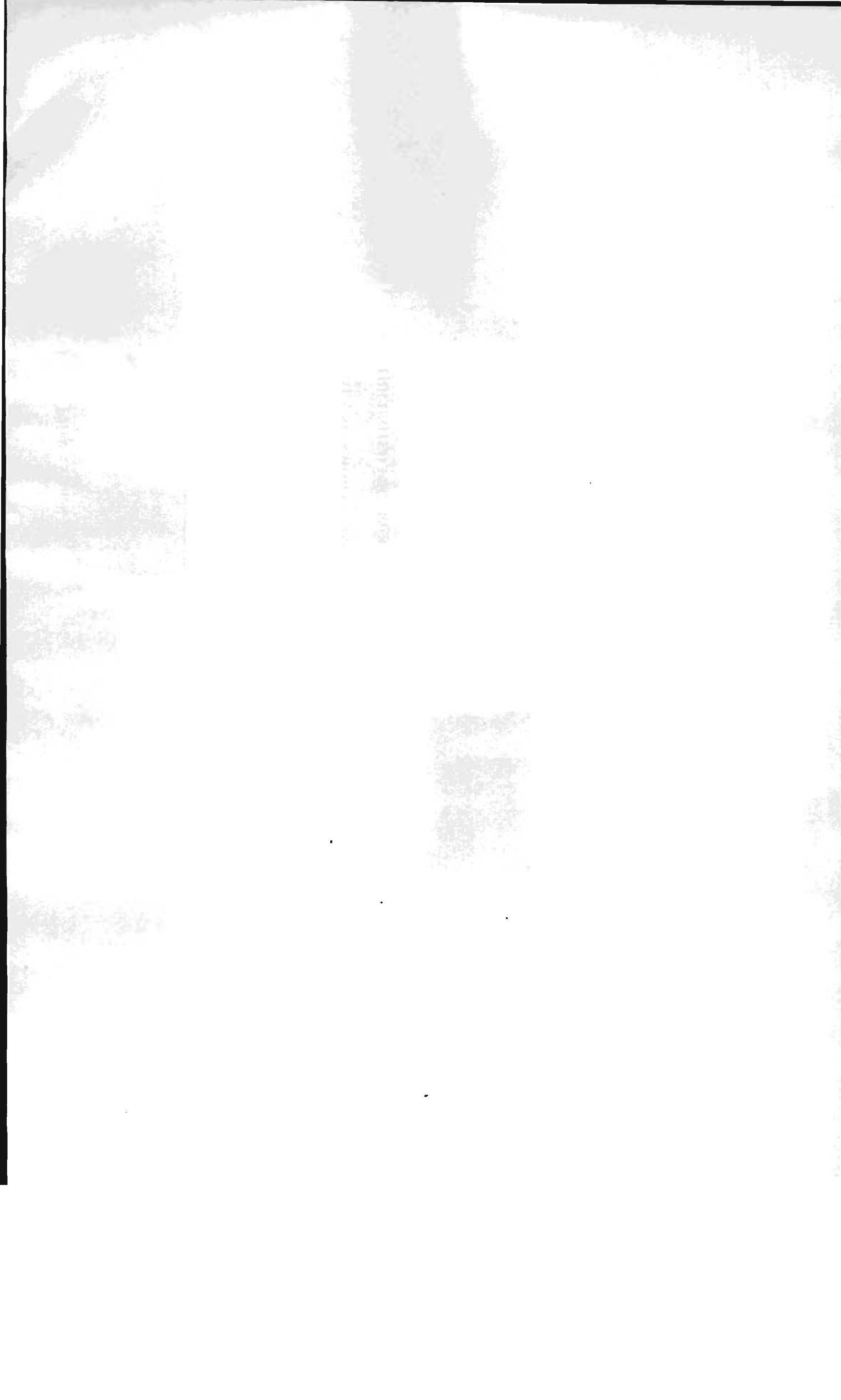
The hearing of the application of the United Provinces before the Division Bench was then resumed and the Bench, acting on the opinion expressed by the Full Bench that the debenture holders were not secured creditors, ordered and directed the Official Liquidator not to treat the holders of the debentures as secured creditors. The Court further held that the United Provinces Government had no equitable lien on the assets of the company and directed the Official Liquidator to treat the Government and the holders of the debentures equally as unsecured creditors.

Appeal No. 27 of 1946 is an appeal by Lala Manmohan Das against the last mentioned order of the Court so far as it directs the Official Liquidator not to treat the debenture holders as secured creditors. The contention of the appellant is that although the specific mortgage of the licence purported to be created by the said trust deed is void under section 9 of the Act, the floating charge embraced the undertaking and all the assets of the company not specifically and effectively mortgaged and such charge is not within the prohibition imposed by the said section and is valid. Their Lordships, therefore, are called upon to decide between the view taken by the Division Bench of the Allahabad High Court in the Letters Patent Appeal that a charge is not a transfer by sale, mortgage, lease, exchange or otherwise, within section 9 (2), and the contrary view taken by the Full Bench of such Court. This question depends entirely upon the construction of the Act and their Lordships, without committing themselves to the whole of the reasoning of the learned Judges of the Full Bench, think that they have come to the right conclusion in this matter. They are therefore of opinion that the direction given by the said High Court to the Official Liquidator not to treat the debenture holders as secured creditors was justified. This disposes of appeal No. 27 of 1946.

Appeal No. 28 of 1946 is an appeal by the Government of the United Provinces against the dismissal of their claim to be entitled to an equitable lien on the property of the company. No argument has been presented to the Board in support of such claim and the appeal will be dismissed.

Appeal No. 29 of 1946 is an appeal by the United Provinces and the company against the decision of the Allahabad High Court in the Letters Patent appeal, holding that the debenture holders were secured creditors. Having regard to the view which their Lordships have taken in appeal No. 27 of 1946, this appeal has become ineffective and will be dismissed.

Their Lordships will therefore humbly advise His Majesty that all three appeals be dismissed. The appellant Lala Manmohan Das must pay the costs of the United Provinces in appeal No. 27. The United Provinces must pay the costs of Lala Manmohan Das in appeals Nos. 28 and 29. There will be a right of set-off.



In the Privy Council

---

LALA MANMOHAN DAS

v.

THE UNITED PROVINCES AND OTHERS

THE UNITED PROVINCES

v.

LALA MANMOHAN DAS AND OTHERS

THE UNITED PROVINCES AND OTHERS

v.

LALA MANMOHAN DAS AND OTHERS

*(Consolidated Appeals)*

---

DELIVERED BY SIR JOHN BEAUMONT