

(1935) 03 CAL CK 0011
In the Calcutta High Court

In Re: Jalpaiguri Banking and Trading Company, Ltd.

Date of Decision : 11-03-1935

Acts Referred:

Citation : (1935) 03 CAL CK 0011

Judgement

Cunliffe, J.—I think that the objection raised in this summons, which I caused to be adjourned into Court for the benefit of fuller arguments on the part of Counsel, ought to be dismissed. It is raised in relation to a proposed scheme of reconstruction put forward by share-holders and persons interested in a concern, called the Jalpaiguri Banking and Trading Company. That Company, I am informed, was operating very largely in the tea trade. It carried on its business by making advances on loans to persons engaged in that trade. Bad times came on the trade; the assets of the Company in the shape of loans and so on, became frozen or difficult to realise and consequently, rather than wind up the Company, the scheme to which I have referred was framed.

2. Now, the objector here was a unsecured creditor differing from the other unsecured creditors of the Company because he had a decree at his back and it is said, on an interpretation of sec. 153 of our Companies Act, he should have had a separate meeting to himself, because he represented a definite and distinct class of creditors and within the meaning of that section he had that right. The section is a well-known one and one which, has been reproduced from the English Company Act and it deals both with creditors of the Company and also with their depositors. It seems to me that it is much easier to divide the depositors of a Company into their separate classes than it is to divide the creditors of a Company. It is not very difficult to visualise that a debenture-holder has quite, a different outlook from, shall I say, a holder of ordinary shares, but when it comes to creditors, it seems to me to be much more difficult. It is said that the creditor here has, if I may paraphrase the argument, an established right rather than an unestablished right against the Company. He has much more chance of succeeding, in part or in whole, in realising his debt than an unsecured creditor who may have difficulty in bringing his action, and that difficulty may lead to debts which possibly terminated in being time-barred.

3. It seems to me on the question whether the suggestion ought to be given effect to, the classic test to which Counsel referred me, is contained in a dictum of Lord Justice Bowen in the case of *The Sovereign Life Assurance Company v. Dodd* [1892] 2 K. B. 573 (583), a case to which I have had occasion to refer in an unreported judgment. The reference is probably to *In re Melanda Loan Office*, since reported in 39 C. W. N. 690.--Reporter of mine on this very same section. The Lord Justice said in this case, bending his mind to a proper working use of the word "class" as follows:--

The word "class" is vague, and to find out what is meant by it we must look at the scope of the section, which is a section enabling the Court to order a meeting of class creditors to be called. It seems plain that we must give such meaning to the term "class" as will prevent the section being so worded as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

4. Applying that test, I have to ask myself whether the interests or the right of an unsecured creditor with a decree behind him, is so dissimilar from the interests of an unsecured creditor without a decree behind him, that it is impossible for them to consult together in common interest in the Company and to bring about a prolongation of its life. In my opinion, an unsecured creditor who is also a decree-holder is not, within the purview of the section, entitled to force those who manage the Company to regard him as a defined and distinct class of persons as opposed to an unsecured creditor who has not got a decree.

5. There is a well-known and often-quoted phrase which I think was used by Lord Justice James in relation to a reconstruction scheme and it is this-- It is not for the Court to sanction a scheme which allows one class of creditor or depositor to feast upon the rights of another class.--

and if I thought here that lumping together the unsecured creditors, whether they have got decrees or not, would possibly bring about such a result, I should apply Lord Justice Bowen's dictum and constitute a separate body which ought to be consulted. It is to be noted again that notice was given to this objector, but he has denied the receipt of the notice, but I think it is quite certain that he did get it in spite of his denial. For these reasons, I dismiss the objection and it only remains for me to consider on the next motion day an objection, by another interested party, to the scheme as a whole on the basis that the life of the Company should be ended and an order for its winding up be made.

The costs of this application are reserved.