

(1935) 03 CAL CK 0046
In the Calcutta High Court

In Re: Sathgram Coal, Co., Ltd., (in liquidation)

Date of Decision : 25-03-1935

Acts Referred:

Citation : (1935) 03 CAL CK 0046

Final Decision : Dismissed

Judgement

Panckridge, J.—In my opinion this application must be refused. The creditor, who now seeks to proceed with the execution against the Company in liquidation obtained two decrees in respect of two mortgages which admittedly were not registered under sec. 109 of the Indian Companies Act. His argument is that the section has no application in this case because the charges have been merged in the decrees. I do not think this can be the case because it is clear that an unregistered charge is void against all creditors irrespective of the date on which their debts accrued. In my opinion, to hold that in circumstances like the present the decree-holder can stand outside the winding up and realise his security, thereby diminishing the assets divisible amongst the creditors, would be to defeat the policy of the Act. It was pointed out to me that the creditors were not parties to the suits filed on the charges, nor had they any opportunity of knowing of the existence of the charges or of the proceedings taken. To hold that the proceedings are binding on creditors would, in my opinion, have the effect of rendering the protection afforded to creditors of limited Companies, by sec. 109 of the Indian Companies Act, illusory.

2. The application is dismissed with costs.