Privy Council Appeal No. 73 of 1933

D. Davis and Company, Limited - - - - *Appellants*

v.

Brunswick (Australia), Limited, and others - - *Respondents*

FROM

THE SUPREME COURT OF NEW SOUTH WALES IN ITS EQUITABLE JURISDICTION

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JANUARY, 1936.

Present at the Hearing:

LORD BLANESBURGH.
LORD MAUGHAM.
SIR SIDNEY ROWLATT.

[*Delivered by* LORD MAUGHAM.]

This is an appeal from an order dated 9th September, 1932, of the Full Court of the Supreme Court of New South Wales allowing by a majority (Long Innes and Davidson JJ. Halse Rogers J. dissenting) an appeal by the present respondents from an order dated the 9th October, 1931, of the Chief Judge in Equity of the Supreme Court of New South Wales (Harvey J.) for the compulsory winding-up of the respondents, Brunswick (Australia), Limited, hereinafter called "the Company". The apparently simple question which arises is whether the Company ought or ought not to be wound up compulsorily on the ground that that course is just and equitable within the meaning of section 84 (*e*) of the New South Wales Companies Act, 1899 (No. 565 of 1931), or, more accurately, whether such an order was properly made on the petition to be next mentioned. As will be seen the date of the commencement of the winding-up (if any) is of primary importance in this case.

The proceedings were begun by a petition presented on the 8th July, 1931, by the appellants, D. Davis and Company Limited, as holders of 30,000 £1 preference shares and 10,000 ordinary shares in the Company. The petition was opposed by two American trading companies, Brunswick Balke Collender Company (called below " the Brunswick Company "), and Brunswick Radio Corporation (called below " the Radio Corporation "). The former company is the registered holder of 20,000 ordinary shares of the Company and the latter is a creditor of the Company, and, as will be seen, is or may be entitled in equity to the 20,000 ordinary shares just mentioned. The Chief Judge in Equity

on the evidence before him was satisfied that the Company had no liquid assets and no capital with which to carry on, and that its prospects appeared to be hopeless. He also inferred from certain cables dated in December, 1930, that the main object of the American companies was to tide over the two years period of a certain guarantee, and not the *bona fide* object of carrying on the business of the Company with a view to profit. He accordingly made an order on the 9th October, 1931, for the compulsory winding-up of the Company. The respondents appealed from that order and the appeals came on for hearing on the 12th November, 1931. They were adjourned from time to time until the 25th November when on the application of the respondents (the appellants before the Full Court) an order was made for a Commission to take further evidence in New York on a defined issue which may shortly be stated as the question whether the persons who controlled the action of the American companies in opposing the petition were acting with the object of carrying on the business of the Company to advantage or merely for the purpose of rendering the guarantee above referred to inoperative. It should be explained that the petition itself did not contain any allegation of want of good faith in the respondent companies (a matter on which some reliance was placed by the Chief Judge), and it was therefore urged that material witnesses in the United States were not asked to make affidavits or called before the Chief Judge in Equity; and this contention was accepted by the Full Court. Sittings of the Commissioner in the United States were held in February and March, 1932, the greater part of the time being taken up with the cross-examination of Mr. Herman Starr, President of the Radio Corporation, who was called on behalf of the present respondents. A considerable number of further documents were put in evidence; and it is clear that the materials before the Full Court placed that Court in a position to form a better opinion on the questions of fact involved in the petition than the imperfect materials on which the Chief Judge in Equity had to form his conclusion. After a long and careful hearing the Full Court delivered considered judgments on the 9th September, 1932, and in the result the petition to wind up was dismissed.

In order to appreciate the issues which are involved it is necessary to give a short history of the Company and to mention the salient facts which emerge from the lengthy evidence placed before their Lordships. Prior to the year 1930 the Brunswick Company carried on a large business in America as manufacturers of gramophones and gramophone records under the mark " Brunswick ". The appellants, a Company registered in Australia, carried on a large and profitable business in Australia and New Zealand as distributors of Brunswick gramophones and makers and distributors of Brunswick records as licensees of the Brunswick Company under an agreement dated the 1st October,

1926. The shares in the appellant Company were held at all material times by Herbert Davis Klippel and Jacob Davis Klippel, these two gentlemen being commonly known as Herbert Davis and Jack Davis respectively. On the 9th April, 1930, an agreement was entered into between the Brunswick Company and Warner Brothers Pictures Incorporated, another American company of very ample means (called below " the Warner Company "). The agreement is contained in a proposal by letter dated 9th April, 1930, addressed by the Brunswick Company to the Warner Company, and an acceptance by the Warner Company of the same date. The letter of proposal is only partially set out in the record which creates a difficulty in taking an accurate view as to its true construction and effect. It appears, however, to amount to an agreement by the Brunswick Company to transfer to the Warner Company the musical part of its business, that is to say, the business of manufacturing and selling in a number of countries phonograph records, radio receiving sets and equipment, and also its shareholding in certain subsidiary companies, including the whole of the share capital of the respondents, the Radio Corporation, and the benefit of its licence agreement with the appellants. There was, however, excluded from the agreement for sale any business in Australia or New Zealand. Since shortly after the date of this agreement, the Warner Company has been the holder or owner of all the shares in the Radio Corporation. The Brunswick Company is an independent concern.

On the 13th May, 1930, three agreements were entered into. The first of these agreements was made between the Brunswick Company, the appellants, and certain other parties, and it provided for the incorporation of the Company in New South Wales with a capital of £50,000, divided into 30,000 preference shares (preferential as to dividend and capital) and 30,000 ordinary shares all of £1 each, and the transfer to it by the appellants of the benefit (as licensees) of the agreement of the 1st October, 1926, and the goodwill and other assets of the appellants relating to their gramophone and record business, and also for the transfer to the Company by the Brunswick Company of its goodwill and trading rights in Australia and New Zealand and the sole right to use in Australia and New Zealand the trade name of " Brunswick " as applied to phonographs and records. The appellants were to take the 30,000 £1 preference shares in the Company for the assets transferred by them, other than goodwill and the benefit of the said agreement, and 10,000 £1 ordinary shares for the last mentioned assets. The Brunswick Company was to take the remaining 20,000 £1 ordinary shares for the rights transferred by it. The agreement conferred upon the Brunswick Company and the appellants respectively pre-emption rights over the shares to be taken by them in the Company. It was mentioned in the

agreement that the preference shares were to be " guaranteed both as to the half-yearly payment of dividend and return of capital by the Brunswick Company, its successors or assigns," for a period of two years after the allotment of the said preference shares.

The second of the said agreements was made between the appellants, Herbert Davis and Jack Davis, and the Company, and was in substance a sale and purchase agreement between the appellants and the Company of the goodwill and other assets of the appellants relative to their gramophone and record business. The Company agreed to employ Herbert Davis and Jack Davis as consulting manager and consulting engineer respectively for two years at salaries of £1,000 a year each. The agreement further provided that the brothers Davis were to be free to devote a portion of their time to any other business or businesses including those of a company called Clifford Industries, Limited, and of the appellants. It should be explained here that Clifford Industries was a company carrying on business in Australia and New Zealand in the manufacture and sale of cheap records. The Brunswick records were of a more expensive kind.

The third agreement was made between the Brunswick Company and the Company. It was in substance a sale agreement between the two companies in relation to the assets which the Brunswick Company had agreed to sell; and further it contained a guarantee " that a dividend (duly earned as certified by the auditors of the Company during the year) of £8 per cent. per annum should be paid to the preference share holders " of the Company " for each of the first two years after the allotment of the preference shares to be allotted in pursuance of the " first mentioned " agreement of the 13th May, 1930, and that the amount of nominal capital invested in such preference shares should be paid in full to the holders of such preference shares in the event of " the Company " going into liquidation either voluntarily or compulsorily at any time before the expiration of such period of two years." The Brunswick Company further agreed " within six months after the end of the first and/or second of such years to pay to " the appellants " any sum or additional sum requisite to pay such dividend if " the appellants " had not fully earned it and also within 6 months after such liquidation to pay to " the appellants " such sum as with the amount available in the liquidation would enable the sum of 20s. per preference share to be paid to the preference shareholders.". All such sums were to be received by the appellants or the appellants' liquidator for distribution to the preference shareholders. It is the existence of this somewhat curiously worded guarantee which has occasioned the main difficulty in the decision of the present case.

It will be noted that the Radio Corporation was not a party to any of these agreements; but by an agreement dated the 30th June, 1930, and made between the Brunswick Company and the Warner Company, after recital of the agreements of the 9th April, 1930, and the 13th May, 1930, the Brunswick Company amongst other things agreed to use its best endeavours to procure the consent of the appellants to a transfer of the Brunswick Company's shares in the Company to the Radio Corporation, and subject to such consent being obtained the Warner Company agreed that it would cause the Radio Corporation to assume the obligations of the Brunswick Company under the third of the contracts of the 13th May, 1930. It would appear from the evidence before their Lordships that the assent of the appellants to the said transfer was never in fact given in an unconditional form; and that the Brunswick Company has continued to be liable on the guarantee according to its terms, though whether the Radio Corporation is liable to indemnify the Brunswick Company in that respect has been left in doubt. The agreement of the 30th June, 1930, is not altogether easy to construe and their Lordships have not before them a complete copy of all the cables and letters which have passed between the parties. The position therefore is that it appears to be uncertain who is the beneficial owner of the 20,000 ordinary shares in the Company held by the Brunswick Company, though it is beyond doubt that those shares continued to stand in the name of the Brunswick Company at the date of the petition and that that Company was entitled to appear and to resist the proposed order. The Radio Corporation was also formally entitled to be heard since it was a creditor of the Company. In fact, however, the Radio Corporation has acted since the 30th June, 1930, on the footing that it either had acquired the interest of the Brunswick Company in the Company or that it was about to acquire that interest. It nominated the directors of the Company, and gave instructions to them from time to time, and it took upon itself the burden of providing the Company with funds.

The Company was plainly a private company possessing in effect two shareholders only, formed to take over the assets in Australia and New Zealand of the appellants on the one hand, and of the Brunswick Company on the other. The articles of association of the Company provided that each member should have one vote for each ordinary share and one vote for every five preference shares, with the result that the holders of the 20,000 ordinary shares would have voting control of the Company. The articles further provided that the number of directors should be five, of whom three should always be nominated by the Brunswick Company or its assigns, so that the Brunswick Company were to have a majority at any board meeting. These provisions in the articles were contained in the first agreement of 13th

May, 1930, and they obviously formed an important part of the bargain between the parties. It must have been clear that a liquidation on the petition of creditors could always be prevented by the Brunswick Company or its assigns, and that a voluntary resolution for winding-up could never be passed without their consent. Whether the fact that the Court of New South Wales would have power to wind up the Company on the petition of a shareholder on the ground that it was just and equitable so to do was present to the minds of the parties who made these agreements in the United States is a matter for conjecture. It may be assumed that all parties contemplated a successful future for the Company. The appellants in fact had made a profit of over £20,000 per annum out of the business which they were transferring to the Company, and no one probably foresaw the disastrous effects of the great trade depression which began about this time and spread all over the world. The Company differed from an ordinary company formed as the result of public subscription in this respect, that it was not provided with any liquid assets for working capital, and the inference may fairly be drawn that it was contemplated that such working capital as was needed until the Company began to make considerable profits would be provided by the Brunswick Company or its assigns.

The Company took over the business as from the 12th May, 1930, just at the time when the general decline in trade in Australia began. The first audited account of the Company as at the 30th June, 1930, showed a small net loss for the seven weeks of trading. The second audited account as at the 12th December, 1930, showed a net loss for the 5½ months of £296. The third and last audited account as at the 30th June, 1931, showed a net loss in the whole year from 1st July, 1930, to the 30th June, 1931, of £7,032. In January, 1931, the Company had obtained from the Radio Corporation a loan of £3,500 on the security of its factory at 8 per cent. per annum interest. It is clear that the Davis brothers, who were directors of the Company, nominated by the appellants, as well as its consulting manager and consulting engineer, were not displaying any great zeal in the interests of the Company. The exceptional difficulties due to general trade depression and the competition of wireless broadcasts with the sale of gramophone records were further complicated by the competition of the appellants in the rival record business of Clifford Industries, Limited, by the liquidation of various important distributors in Australia, by the high salaries payable to Herbert and Jack Davis and by attempts by the appellants to secure the immediate winding up of the Company. The attitude of the Davis brothers only three months after the formation of the Company, is well shown by a cable of the 19th August, 1930, to one C. S. Brice who was acting as representative of the Company at the time. It was in these terms : " Confidentially Brunswick

unable make cheap records and only fooling you with promises Suggest you meet vocalion competition with new two shillings six pence Clifford record quality equal any four shilling record." It went on to say, " offer you New Zealand exclusive for 200 thousand annum."

Brunswick in this cable means the Company. Clifford refers to Clifford Industries Limited, and the offer of an exclusive New Zealand agency for the sale of 200,000 Clifford records per annum to a man employed as a distributor in New Zealand for the Company shows that the Davis brothers and the appellants were construing very liberally the right which they had under the agreement of the 13th May, 1930, to devote a portion of their time to the interests of Clifford Industries Limited, and of the appellants. The Davis brothers, further took steps through Clifford Industries Limited to oppose the registration by the Company of the name " Melotone " for a cheap record which the Company proposed to put upon the market, though it is difficult to see what interests of Clifford Industries Limited were involved. It appears that as early as the 30th October, 1930, the Radio Corporation received from Sydney a report that the appellants were endeavouring to force a liquidation of the Company, relying on the guarantee of the preference shares, and Herbert Davis did not deny that he had on several occasions suggested that the Company would be in liquidation by Christmas, 1930. In the month of December, 1930, certain cables passed between the officers of the Radio Corporation in the United States and the solicitors of the Company in Australia from which the Chief Judge in Equity drew the inference that the main object of the American company was to tide over the two years' period of the guarantee; but further cables which were exchanged between the same parties in the months of January and February, 1931, were put in evidence on the hearing before the Commissioner and these cables went far to, if they did not entirely, displace the inference drawn by the Chief Judge in Equity. The Radio Corporation acting either for themselves alone or for the Brunswick Company and themselves were prepared to purchase the interests of the appellants in the Company including their preference and ordinary shares and including also in the terms the settlement of certain disputes the nature of which does not appear. They offered first £30,000 and, this being refused by the Davis brothers and by a Mr. Hill a mortgagee of the preference shares (for a sum of £23,000), the offer was increased to £35,000; but this again was refused. On the 27th February, 1931, there took place in New York an interview at which Mr. Herman Starr, Mr. Herbert Davis, Mr. Julian T. Abeles, Mr. Maurice Goodman and others were present. Mr. Davis at this interview was asking $175,000 for his interests in the Company above referred to, a sum largely in excess of £35,000 at the rate of

exchange then ruling between the United States and Australia. Mr. Herman Starr declined to give such a sum and made a counter offer of £17,500 which was contemptuously refused. It was alleged by Mr. Abeles but wholly denied by Mr. Herman Starr that the latter had stated that the Radio Corporation intended to carry on the Company until the guarantee expired. The cross-examination of Mr. Herman Starr by counsel for the petitioners on this point seems to indicate that he himself placed little reliance on it; Mr. Maurice Goodman who was present was called to support Mr. T. Abeles but failed to do so; and their Lordships note that Mr. Herbert Davis (who was admittedly present) was completely silent on the subject of the alleged statement when he made an affidavit in support of the petition in the following September. In these circumstances their Lordships have little difficulty in holding that the making of the alleged statement was not proved. In any case if it is remembered that the appellants could not by enforcing the guarantee get more than par for their preference shares it becomes evident that there was at this time nothing to suggest that either of the American Companies was " acting in bad faith "—a phrase which in this connexion can only mean determining to keep the Company alive without any hope of its future success solely with a view of depriving the appellants of any benefit from the guarantee. It is plain that if that had been their unique object the Radio Corporation was in a position in the spring of 1931 to cut down expenses to a very low figure and yet to prevent liquidation at the instance of a creditor. The value of the preference shares to the Radio Corporation on that footing would have been no more than the expense of keeping the Company alive, and the offers in fact made would be scarcely intelligible. By the month of March, 1931, the position of the Company seemed to be better. A cheap record had been introduced under the name of " Panachord " and it appeared to have good prospects of taking the fancy of the public, though the cost of production at this time was too high. A cable was sent on the 31st March to the Radio Corporation stating that the Company had turned the corner and that the prospects were bright, but that there was temporary embarrassment in financing the distributors of the records; and as a result of further cables the Radio Corporation advanced further sums to the Company.

The trade depression in Australia continued to deepen with the result of great distress and many liquidations. In such circumstances it is not altogether surprising that a luxury trade such as that of the Company made during its first year, in lieu of the large profits previously made by the appellants, a loss exceeding £7,000. The situation doubtless called for a reduction of working expenses, and a re-organisation of the business. The Radio Corporation, according to the evidence, were willing to finance the business till a real

opportunity had been afforded to the Company of proving its ability to make a profit in the business it had been formed to carry on. No disastrous event had occurred between the time when the Davis brothers and their mortgagee had refused £35,000 for their interests in the Company and the month of June, 1931. There was plenty of time before the guarantee of the preference shares would expire. But the appellants were not disposed to wait to see whether the position would improve. They called upon the Radio Corporation and the Brunswick Company to consent to a voluntary liquidation, and this being refused the petition for a compulsory winding-up was presented on the 8th July, 1931. It does not seem to their Lordships that any useful end will be served by considering in detail the evidence in support of and in opposition to the petition as it came before the Chief Judge in Equity since that position has been substantially altered by the further evidence. The question is whether considering the evidence as a whole it was just and equitable that the Company should be wound up on the petition of the appellants. Three facts have to be borne in mind. The Company had lost the sum of £7,000 by its trading since its incorporation and there were at this time no immediate prospects of carrying on business at a profit. Secondly, the appellants were the holders of the whole of the preference share capital and, having regard to the preference as to capital on the winding-up, there was no chance of the ordinary shareholders receiving any distribution as the result of an immediate winding-up. Thirdly, the appellants were in a position, if there was a winding-up before the month of May, 1932, to rely on the guarantee given by the Brunswick Company in the third agreement of the 13th May, 1930. As already pointed out the Company had not at this time, and indeed it never had had, any working capital; but the Radio Corporation had supplied it when necessary with funds and Mr. Herman Starr had sworn that the Radio Corporation, of which he was the president, was ready to continue to finance the Company. It was suggested on the part of the appellants, as we have seen, that the attitude of the opposing companies was dictated solely by an endeavour to prevent the guarantee coming into force, and not the *bona fide* one of carrying on business with a view to profit, which was said to be hopeless. Their Lordships think that it is plain beyond controversy that the attitude both of the appellants and of the respondents has been actuated by the existence of the guarantee. The appellants at the date when the petition was presented had nothing to gain by a continuance of the Company, since the solvency of the American companies is not in doubt; and it is easily understood that they were unwilling to run the risk of losing the benefit of the guarantee even if there were a reasonable probability of the Company making substantial profits when

the world depression should have passed away. On the other hand the American companies no doubt opposed the petition partly at least with a view to preventing the liability of the guarantee accruing to one or other of them. These motives were natural and in the circumstances not improper. The position of the Court in determining whether it is just and equitable to wind up the Company requires a fair consideration of all the circumstances connected with the formation and the carrying on of the Company during the short period which had elapsed since the 12th May, 1930; and the common misfortune which had befallen the two shareholders in the Company does not, in their Lordships' view, involve the consequence that the ultimate desires and hopes of the ordinary shareholders should be disregarded merely because there is a strong interest in favour of liquidation naturally felt by the holders of the preference shares. In this connexion it should be remembered that the Company was formed to exploit in Australia and New Zealand an enterprise which originated with the Brunswick Company. It is well settled that the sub-section in the (Imperial) Companies Act giving power to the Court to wind up a company on the just and equitable ground—a sub-section similar in terms to the section obtaining in New South Wales—is not confined to causes in which there are grounds analogous to those mentioned in the other parts of the section. (*Loch* v. *John Blackwood Limited* [1924] A.C. 783, where the previous cases are referred to.) Nor on the other hand can any general rule be laid down as to the nature of the circumstances which have to be borne in mind in considering whether the case comes within the phrase. Holding an even hand between the two conflicting interests in the present case their Lordships are of opinion that the decisive question must be the question whether at the date of the presentation of the winding-up petition there was any reasonable hope that the object of trading at a profit, with a view to which the Company was formed, could be attained. In considering that question, the guarantee of the preference shares should be left out of sight, except in so far as it may have biassed the evidence on either side. It should be observed that in this case there is no question of a deadlock, nor is there any question of shareholders who have the voting power using that power for their own commercial interests outside the Company in disregard of the interests of a minority. Nor again, is there any question involved of an improper management of the Company by the directors who are in control. The problem involved is of the nature of a business problem. If there was at the relevant time a reasonable hope of tiding over the period of deep depression and of emerging into a region in which the Company might reasonably expect to carry on at a profit, there would seem to be no sufficient reason why the Court, regard being had to the essential character of the bargain made between the parties on the

formation of the Company, and considering the matter from much the same standpoint as if the Company were a private partnership, should wind up the Company under the just and equitable clause.

On this ultimate question of fact their Lordships have considered the elaborate evidence that has been laid before them and they fully accept the evidence of J. M. Hardie so far as it relates to the position of the Company in July, 1931. They are unable however to place much reliance on his view that before the Company can cease to carry on at a loss it must increase its turnover by a percentage so great as to leave no reasonable hope of success, for this must be a matter on which persons with knowledge of the trade can alone express a useful opinion. There is obviously a great difference between a question of positive fact such as the pecuniary position of a trading company at a particular date, and a question of the prospects of such a company in the future, a matter which must depend on all sorts of views as to the state of world trade, the confidence of the public, the price at which articles can be sold—a matter which depends very largely upon the number of such sales—and an infinity of other considerations very difficult either to summarise or to define. It is not the function of a Court to determine such a matter on its own views as to probable success or failure, but to form the best opinion it can upon the evidence given by persons with a practical knowledge of the trade in question and the local conditions where these affect the matter. No doubt the views of persons who have not taken the trouble to consider the problem are worth little, and the views of those who have an interest in a particular direction must be considered in the light of the bias thereby occasioned. The question in this case must depend to a considerable extent upon the testimony of Mr. Herman Starr. Their Lordships, whose attention has been called to the whole of this lengthy evidence, are unable to take the view that the evidence of Mr. Starr was substantially shaken in cross-examination or that he displayed any reluctance to answer any proper questions that were put to him; and they observe that the Commissioner before whom such evidence was given expressed his opinion on two occasions that the witness was endeavouring to answer the questions fairly. Further, their Lordships do not consider that the constantly repeated questions as to whether the Radio Corporation had become liable on the guarantee or not were unfairly dealt with in the circumstances by Mr. Herman Starr, or that the fact that there was and is a doubt as to whether the Radio Corporation has become so liable or is now the equitable owner of the 20,000 ordinary shares detracts largely from the opinion of Mr. Starr as to the prospects of the Company, or from his statement that his company was prepared to find a substantial sum for the purpose of financing the Company and providing for an advertising campaign in Australia in the interests of

the Company. Mr. Herman Starr's view was founded no doubt to a considerable extent on reports obtained from Australia, and to some extent on his own wide knowledge of the radio and gramophone trade in which he is an expert. He declined to take the view which the Chief Judge in Equity had taken that there was no future for the record business in Australia, and their Lordships on a consideration of all the evidence see no reason for doubting that with improved conditions and with reasonable financial support from the Radio Corporation the business of the Company had at the date of the hearing fair prospects of commercial success. There is the greater reason for coming to this conclusion from the circumstance that the Davis brothers themselves have acted as if future success in such a business in Australia and New Zealand was a probable outcome of better times. They have admitted that there was a reasonable prospect for a company selling cheap records in Australia and New Zealand with a moderate capital; and without going into other items of evidence which tend in the same direction it may be observed that Herbert Davis in paragraph 37 of his affidavit of the 4th September, 1931, tells Mr. Brice already mentioned that if the petition was successful " and my brother Jack tells me that counsel has advised that it will be successful, your supply will be disturbed until a reconstruction takes place and if you are wise you will make your arrangements accordingly." It is clear then that Mr. Davis did not take the view that there was no future for this business in Australia or New Zealand. Their Lordships like the presiding judge in the Full Court are inclined to the opinion " that the influence of the competition of radio on the fortunes of the Company has been exaggerated," and they see no reason to doubt that it would be " possible to secure a considerable reduction in the cost of production, including overhead expenses, and of distribution," and that the Company might ultimately achieve commercial success provided it was afforded sufficient financial support to enable it to survive the period of depression. Moreover they have formed the view that there was no reason, having regard to the evidence obtained on the commission to America, to believe that the necessary financial assistance would not have been forthcoming. With the results which may have followed from the existence of a winding-up order for nearly a year their Lordships have no concern in this case.

In these circumstances their Lordships are of opinion that the appellants have not discharged the onus that was upon them of showing that it was just and equitable that the Company should be wound up. They will therefore humbly advise His Majesty that the appeal should be dismissed with costs.

(33695—3A) Wt. 8034—41 4,90 2/38 P. St. G 338

In the Privy Council.

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