

## CRIMINAL REVISION.

*Before Teunon and Richardson JJ.*

DEBENDRA NATH DAS GUPTA

v.

REGISTRAR OF JOINT STOCK COMPANIES.\*

1917  
June 7

*Company—Balance sheet of a company—Omission of director to call annual general meeting and to place before it a properly audited balance sheet—Liability of director for default in filing copy of the same—Indian Companies Act (VII of 1913), ss. 76, 131, 134—Jurisdiction.*

The director of a company is liable, under s. 134 (4) of the Indian Companies Act (VII of 1913), for default in filing a copy of the annual balance sheet duly prepared and audited, in the office of the Registrar of Joint Stock Companies at Calcutta, and cannot plead, in answer to a charge under s. 134, his own omission to call the annual general meeting of the company required by s. 76, and to place before it such balance sheet.

*Park v. Lawton* (1) referred to.

The offence under s. 134 (4) is triable in Calcutta, whether or not, if the prosecution had been laid under s. 76 or 131 of the Act, the Presidency Magistrate might have had jurisdiction to try the offences committed under the latter sections.

In 1892 the Darjeeling Press Co., Ltd., was formed and registered under the Indian Companies Act (VI of 1882) with a share capital of the nominal value of Rs. 10,000. The registered office of the company was in Darjeeling. In 1914 the petitioner was appointed one of its directors. The company met with losses and went into liquidation at the close of the year 1916.

It appeared that no annual general meeting of the shareholders had been held in 1915, as required by s. 76

\* Criminal Revision No. 503 of 1917 against the order of K. B. Das Gupta, Fourth Presidency Magistrate, Calcutta, dated April 4, 1917.

of the Indian Companies Act, 1913, that the annual list of members of the company for the year ending 31st October 1915, and the summary prescribed by s. 32 of the Act had not been filed with the Registrar of Joint Stock Companies at Calcutta, though a list and summary made up to 31st March 1915 had been so filed on 2nd January 1916. It was also proved that the balance sheet for the year ending 31st March 1915, required under s. 131 of the Act, was not filed with the Registrar till the 11th December 1916.

On the 13th March 1917, two separate complaints under s. 32(4), and s. 134(4), respectively, were laid against the petitioner before the Chief Presidency Magistrate who made over the cases to the Fourth Presidency Magistrate for trial. The petitioner was tried separately under these sections, and convicted and sentenced, on the 4th April 1917, in each case, to a fine of Rs. 30 and in default to 30 days' simple imprisonment. The petitioner thereupon moved the High Court and obtained two Rules on the 27th April.

*Mr. I. B. Sen* (with him *Babu Probodh Kumar Das*), for the petitioner. Until the prosecution proved that the preliminary stages had been gone through, viz., that a balance sheet was *actually* prepared, audited, and placed before the company at the general meeting, the offence under s. 134(4) of default in filing the same with the Registrar is not made out. The section requires the filing of a copy which was audited and laid before the company at a general meeting. No such meeting was held in 1915, and the balance sheet could not, therefore, be put up. The accused might have been charged, under ss. 76 and 131 of the Companies Act, with failure to hold a general meeting and to prepare and lay before it a properly audited balance sheet, but in such a case the offences would

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have been triable in Darjeeling and not by a Presidency Magistrate in Calcutta.

*The Off'g. Deputy Legal Remembrancer (Mr. J. Camell)*, for the Crown. It was the duty of the directors, both under the articles of association and under the Common Law, to call a general meeting annually and to lay before it a properly audited balance sheet. He cannot plead his own omission to do so: *Park v. Lawton* (1). The offence charged, viz., the omission to file a copy of the balance sheet, was committed in Calcutta.

*Mr. I. B. Sen*, in reply. There was no evidence that the petitioner was in Darjeeling and a party to the omission to call a general meeting. Further, the English case was decided under s. 26 of the English Companies (Consolidation) Act, 1908, and is differently worded.

TEUNON AND RICHARDSON JJ. In this case it appears that the petitioner was one "of the directors of a Joint Stock Company known as the Darjeeling Press Company, Limited." He has been convicted under section 134(4) of the Indian Companies Act (VII of 1913) in respect of a default made in filing with the Registrar the balance sheet for the year 1914-15.

It is not disputed that as a matter of fact, in respect of the filing of the balance sheet with the Registrar of Companies a default was made, and the defence of the petitioner, as placed before us, is that in fact in that year there was no general meeting and that being so no balance sheet was laid before the company at any such general meeting. His contention then is that these preliminaries not having been fulfilled it was impossible for him or his company to comply with the requirements of section 134, and that he should have been convicted, if at all, not under section 134 but

under section 76 or 131. But it is not disputed, and in fact it is admitted, that as one of the directors the petitioner himself was responsible for insuring that all the necessary preliminaries to be observed prior to the filing of the balance sheet with the Registrar had been duly observed. That being so, on the principles laid down in the case of *Park v. Lawton* (1), we are of opinion that we ought to hold that it is not open to the petitioner to plead in answer to a charge under section 134 his prior default in respect of the calling of the prescribed general meeting and of placing before the company at such meeting a duly prepared and audited balance sheet.

The second contention on behalf of the petitioner is that, if he had been prosecuted under section 76 or section 131 of the Act, the Presidency Magistrate in Calcutta, before whom his conviction has been had, would have had no jurisdiction to try the offences charged under those sections, and that the jurisdiction would have lain exclusively with the Magistrates in Darjeeling. However that may be, that does not take away the jurisdiction which the Presidency Magistrates in Calcutta clearly possess in a charge under section 134: the office of the Registrar, with whom the balance sheet should be filed, being in fact in Calcutta. For these reasons we discharge this Rule.

E. H. M.

*Rule discharged.*

(1) [1911] 1 K. B. 588.

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