

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Parker.*

RAMASAMI (APPELLANT), PETITIONER,

v.

STREERAMULU CHETTI AND OTHERS (RESPONDENTS),  
COUNTER-PETITIONERS.\*

1895.  
December 20.  
1896.  
January 6.

*Limitation Act—Act XV of 1877, sched. II, art. 36—Misfeasance—Indian Companies Act—Act VI of 1882, s. 214—Application against directors for refund of money improperly distributed.*

An application was made in 1894 under Indian Companies Act of 1882, section 214, by an official liquidator appointed in 1891 praying that the directors of the company in liquidation be ordered to pay over to him a sum of money which had been improperly distributed among the shareholders :

*Held*, that the application was not barred by limitation.

APPEAL against an order of Mr. Justice Shephard in the matter of a limited company in liquidation dismissing an application under Indian Company's Act, 1882, section 214. The application was made by the official liquidator for the refund by the directors and trustees of a sum alleged to have been wrongfully distributed among the shareholders more than two years before the date of the application.

The official liquidator preferred this appeal.

*Pattabhiramu Ayyar* for appellant.

*Mr. J. G. Smith* for respondents.

JUDGMENT.—The learned Judge has written no judgment in this case, but, as far as we can gather his reasons for the dismissal of the application, he held that it was barred under article 36 of the second schedule of the Limitation Act. The application was made under section 214 of the Indian Companies Act, 1882, by the liquidator appointed by the Court in 1891 praying that the directors and trustees of the company be ordered to pay over to the liquidator the sum of Rs. 5,550 which had been distributed among the shareholders.

The application seems to have been before the learned Judge on several occasions, and on 27th February 1895 he had apparently

\* Original Side Appeal No. 35 of 1895.

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decided to make an order against the directors, reserving for consideration the form of the order. But on the 7th March 1895 the objection was first started by Mr. R. F. Grant, the Counsel for the directors, that the application was barred under article 36, inasmuch as the act complained of was a misfeasance and not a breach of trust, and that the application was made more than two years after the liquidator became aware of the facts. The learned Judge allowed the objection and dismissed the application, but without costs.

It appears to have escaped the notice of the learned Judge that article 36 of the second schedule of the Limitation Act refers only to suits and not to applications. A clear distinction is drawn under the Limitation Act between suits, appeals and applications. They are treated in three distinct divisions of the second schedule. The present case is not a suit, but it is an application under section 214, Act VI of 1882, to compel the directors to repay money which has been misapplied. Article 36 has therefore no application.

On the question whether the act complained of was a breach of trust or not we may point out that in an application under section 165 of the English Companies Act, 1862 (which corresponds with section 214 of the Indian Companies Act, 1882), it was held that the relationship of trustee and *cestui que trust* subsists between the directors of Joint Stock Companies and the shareholders; see *In re Exchange Banking Company*(1); also *In re National Funds Assurance Company*(2), and *In re Oxford Benefit Building and Investment Society*(3). In the *New Fleming, Spinning and Weaving Company v. Kessouji Naik*(4) it was held that the misfeasance of a director was a breach of trust. The case referred to by the learned Counsel *Poole's case*(5) is one of an entirely different character.

We must reverse the order of the learned Judge and remand the application to the original side in order that a fresh order may be passed. The appellant is entitled to the costs of this appeal and the costs on the original side will follow the result.

(1) L.R., 21 Ch. D., 519.

(2) L.R., 10 Ch. D., 118.

(3) L.R., 35 Ch. D., 502.

(4) I.L.R., 9 Bom., 373.

(5) L.R., 9 Ch. D., 322.

[Reporter's Note.—The same point is decided in *Connell v. Himalaya Bank*, I.L.R., 18 All., 12.]