

**APPELLATE CIVIL.**

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*Before Mr. Justice Scott-Smith and Mr. Justice Fforde.*

SRI RAM, LIQUIDATOR, NATIONAL }  
WEAVING & MOTOR WORKS, DELHI, } Appellant

1924

*versus*

March 31.

NUR MUHAMMAD, Respondent.

Civil Appeal No. 2599 of 1923.

*Indian Companies Act, VII of 1913, section 235—  
whether applicable to enforce payment of sums due under  
a contract of tenancy between the Company and the defend-  
ant who was a director of the Company.*

The defendant, a director of the Company, had taken certain premises on lease from the Company. The Company went into voluntary liquidation and the liquidator applied under section 235 of the Companies Act, 1913, for recovery of arrears of rent on foot of the lease. It was admitted that the lease was not entered into by the defendant by virtue of his position as a director but precisely as any other private person unconnected with the Company could have done.

*Held*, that section 235 of the Indian Companies Act, 1913, is not applicable to the case of a debt due by a director to the Company upon foot of an ordinary contract which he has failed to pay and that the application had therefore been rightly rejected by the lower Court.

*In re Kingston Cotton Mill Co. (No. 2)*, per Lindley, L. J. and Lopes L. J. (1), referred to.

*Miscellaneous first appeal from the order of Dew-  
wan Som Nath, District Judge, Delhi, dated the 1st  
September 1923, dismissing the application.*

M. L. PURI, for Appellant.

AZIZ AHMAD, for Respondent.

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The judgment of the Court was delivered by—  
FFORDE J.—The sole question to be determined in this appeal is whether the provisions of section 235 of the Indian Companies Act, apply to the circumstances of this particular case. The respondent admitted that he was a director of the company which is in the process of voluntary liquidation, the appellant being the liquidator. But it is also admitted that the contract of tenancy, which he entered into with the company in respect of the premises in question, was not entered into by him by virtue of his position as such director, but that he took these premises precisely as any other private person unconnected with the company could have taken them. The application in respect of which this appeal arises was an application by the liquidator to recover arrears of rent due on foot of this contract. The Court below has held that the provisions of section 235 cannot be invoked for the purpose of enforcing payment for the arrears of rent. With this finding I agree. The terms of section 235 show that that section is intended to provide a summary procedure for the recovery of money or property misapplied or retained by a director or other officer of the company or money or property which such officer or director has become liable for by misfeasance or breach of trust in relation to the company. It is not in terms meant to be applied for the purpose of enforcing sums due under contracts between the company and other persons, whether such persons happen to be directors or not. The operative part of the section makes this clear. The terms of it are as follows :—

“ The Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the

money or property or any part thereof respectively with interest," and so forth.

This shows that the section may be invoked for the purpose of compelling the persons enumerated in that section to repay or restore sums which have come into their hands by virtue of their position as there defined. I find it hard to see how a debt due by a director to the company upon foot of an ordinary contract, and which he has failed to pay, can be held to be money of the company. A person clearly cannot be compelled to repay or restore money which he never received. The present application is brought to compel a former director to pay money for the company which is alleged to be due on a contract, not to repay or restore money which has come into his hands and which he refuses to account for. The scope of the section seems to be clearly defined in the judgment of Lindley L. J. in *re Kingston Cotton Mill Co.* (No. 2) (1). The material part of the judgment in question is given at page 283 and is as follows:—

“ The object of that section (namely, section 10 of the Companies Winding-up Act of 1890) is the same as that of section 165 of the Companies Act, 1862 (which is identical with section 215 English Companies Act, and which again is in the same terms as section 235, Indian Companies Act), which it has replaced. That object was to facilitate the recovery by the liquidator of assets of a company improperly dealt with by its promoters, directors or other officers. This section applies to breaches of trust and to misfeasances by such persons. I agree that the section does not apply to all cases in which actions will lie by the company for the recovery of damages against the persons named. It is easy to imagine cases of breach of con-

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tract, trespasses, negligences, or other wrongs to which the section is inapplicable and some such have been the subject of judicial decision ; but I am not aware of any authority to the effect that the section does not apply to the case of an officer who has committed a breach of his duty to the company, the direct consequence of which has been a misapplication of its assets, for which he could be made responsible by an action at law or in equity.”

Lopes L. J. expresses much the same view :—

“ The learned Judge in the Court below held that misfeasance covered any misconduct by an officer of the company as such for which such officer might have been sued apart from the section. In my judgment this is too wide. It would cover any act of negligence—any actionable wrong by an officer of a company which did not involve any misapplication of the assets of the company. The object of this section of the Act is to enable the liquidator to recover any assets of the company improperly dealt with by any officer of the company, and must be interpreted bearing that object in view. It doubtless covers any breach of duty by an officer of the company in his capacity of officer resulting in any improper misapplication of the assets or property of the company.”

No authority has been cited by Mr. Mukand Lal Puri, who appears for the liquidator, to show that section 235 has ever been applied in a case like the present.

For the reasons given above, I am of opinion that the present appeal must fail and should be dismissed with costs.

SCOTT-SMITH J.—I agree.

A. N. C.

*Appeal dismissed.*