

APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Fforde.

DAULAT RAM (DEFENDANT)—Appellant,

versus

BHARAT NATIONAL BANK,
LTD., DELHI (PLAINTIFF) AND
BRIJ LAL AND OTHERS (DEFENDANTS) }—Respondents.

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July 28.

Civil Appeal No. 993 of 1918.

Indian Limitation Act, IX of 1908, section 10, articles 36, 90—suit against a local Director of a Banking Company for recovery of loss incurred through his gross negligence—whether a suit by a Principal against an Agent—Limitation.

The plaintiff Bank sued for recovery of certain advances made by their Hoshiarpur branch to defendants 1-10 and impleaded D. R., the chairman of the local directorate, as co-defendant on the ground that he had made these advances improperly, *mala-fide* and negligently. The trial Court granted a joint decree against defendants 1-10 and D. R. The suit was instituted on the 28th August 1913, and the last item advanced with which D. R. was concerned was on the 17th July 1911.

Held, that in each case it is a question of fact as to whether the director whose acts are brought into question was under the circumstances of that particular case in the position of a trustee, a partner, or an agent, to the company, or to the body of share-holders.

Halsbury's Laws of England, Volume V, article 358, Palmer's Company Law, 9th Edition, page 179, *In re Forest of Dean Coal Mining Co.* (1), *In re Land Allotment Co.* (2), and *Automatic Self-cleansing Filter Syndicate Co. Ltd. v. Cunningham* (3), referred to.

Held also, that upon the facts of the present case the defendant-appellant in acting as chairman of the local board of directors was, so far as the transactions in respect of which he has been sued are concerned, acting as the Agent of the Bank

(1) (1878) 10 Ch. D. 450, 453.

(2) (1894) 1 Ch. 617, 638.

(3) (1906) 2 Ch. 34, 45.

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and the suit therefore being so far as he is concerned a suit by a Principal against an Agent for neglect and misconduct is governed by article 90 of the Limitation Act, and was consequently not barred by limitation.

Bank of Multan, Ltd. v. Hukam Chand (1), distinguished.

BADRI DAS, for Appellant—The Bank in the present case sues the defendant Daulat Ram who was a chairman of the local Board of Directors on three grounds:—(1) that the Chairman (defendant) advanced monies to persons whose position was shaky to his knowledge; (2) that the Chairman exceeded the limit of credit allowed to certain persons and (3) was guilty of gross negligence. All these acts constitute misfeasance within the meaning of article 36 of the Limitation Act, and the suit is consequently barred under this article, see *Srinivasa Ayyangar v. Municipal Council of Karur* (2) and *Mangun Jha v. Dolhin Golab Koer* (3) and compare section 235 of the Indian Companies Act. The defendant was not a trustee—Gore Brown's Joint Stock Companies, page 271. Misfeasance is defined in Halsbury's Laws of England, Volume 27, pages 481, 482, and in Stroud's Law Dictionary, page 1208. The point was recently considered in *Hukam Chand v. Bank of Multan, Ltd.* (4) confirmed on appeal in *Bank of Multan, Ltd. v. Hukam Chand*, (1).

GOKAL CHAND, for Respondent—The position of Daulat Ram is made clear by the articles of Association, see article 109 (c), also 16. He was a nominee of the General Board of Directors. He is thus the Agent of the Board. Hence article 90 of the Limitation Act applies. A Director of a local Board is an Agent of the General Board of Directors. He is not a Sub-Agent, see sections 182 and 194 of the Indian

(1) (1922) 71 Indian Cases 899.

(2) (1899) I. L. R. 22 Mad. 342.

(3) (1898) I. L. R. 25 Cal. 692, 699 (F.B.).

(4) (1922) 69 Indian Cases 255.

Contract Act, which apply in the present case. See also Halsbury's Laws of England, Volume V, article 358, page 220, to the effect that the true position of directors is that of Agents for the Company, and Palmer's Company Law (9th Edition), page 179, which says that general principles of the Law of Principal and Agent regulate in most cases the relationship of the Company and its directors. Article 36 only applies if there is no other specific article applicable. In *Bank of Multan, Ltd. v. Hukum Chand* (1), article 90 of the Limitation Act was not considered.

BADRI DAS, for Appellant (in reply)—Agency was never alleged. Defendant is not an Agent. He was in charge of the local affairs with powers to supervise the Bank's Agent, *i.e.*, the Manager who holds a power-of-attorney. The defendant has nothing to do with the actual working. Directors may have different positions in different matters. According to the Articles of Association defendant is not an Agent. Sections 182 and 194 of the Contract Act do not apply. The English authorities define the position clearly.

First appeal from the decree of Lala Ghanshyam Das, Subordinate Judge, 1st Class, Hoshiarpur, dated the 17th December 1917, granting the plaintiff a decree.

The judgment of the Court was delivered by—

FFORDE J.—The only question which has been fought in this appeal is as to the liability of Daulat Ram for certain losses incurred by the Hoshiarpur Branch of the Bharat National Bank, Limited, upon loans to defendants 1 to 10.

An objection has been raised by Mr. Badri Das for the defendant Daulat Ram that the suit is barred by time under the provisions of Article 36 of Schedule I of

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the Indian Limitation Act which provides a two years' period of limitation for "compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for."

The time starting from the date when the malfeasance, misfeasance or nonfeasance takes place. In the present case the last item advanced by the Bank, for which Daulat Ram is alleged to be liable in tort, was on the 17th July 1911. The suit was brought on the 28th August 1913, and, accordingly, if Article 36 governs this case the suit was late and should be dismissed. In support of his contention Mr. Badri Das relies on *The Bank of Multan, Limited in Liquidation v. Hukam Chand* (1), where it was held that "an application under section 235 of the Companies Act of 1913 to recover compensation from an *ex-Director* of a Company in respect of an alleged act of misfeasance or breach of trust is, by virtue of clause (3) of the section, governed by Article 36 of Schedule I to the Limitation Act, and is barred unless made within two years of the act complained of."

It is true that an application under this section is in the same position as a suit for the purposes of the Limitation Act, and accordingly the decision in the case referred to does give support to Mr. Badri Das's contention. But it has to be borne in mind that the only question argued in that case on the matter of limitation was whether Article 36 or section 10 applied. As the application in question was made in 1920 and the misfeasance complained of was committed in 1910, the only provision of the Limitation Act which could save the application from being barred is contained in section 10 which enacts that no suit against express trustees and their representatives shall be barred by any length of

(1) (1922) 71 Indian Cases 899.

time. As Directors of a Company are not express trustees—the assets of the Company not being vested in them—the Court held that section 10 did not apply. Had the present question been presented to us as it was presented to the Court in the Bank of Multan case, we would have come to the same conclusion, namely, that this suit was barred by Article 36.

Dr. Narang, however, in his very able and forcible argument has contended that the matter of limitation is governed not by Article 36 or section 10 but by Article 90 of the first Schedule of the Act which provides that in “other suits,” that is to say, suits other than those referred to in Articles 88 and 89 “by principals against agents for neglect or misconduct” the period of limitation is three years from the date when the neglect or misconduct becomes known to the plaintiff.

Article 358 of Volume V of Halsbury's Laws of England states that “the true position of directors is that of agents for the company,” and in Palmer's Company Law (9th edition) at page 179 the position is stated as follows “Directors, whether they are called ‘directors’ or a ‘council’ or a ‘managing committee,’ are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors.”

It is true that there are many *dicta* of English Judges to the effect that Directors are not mere agents, but may in certain cases be regarded as Trustees, as for instance, of “assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company.” [Sir George Jessel in *In re Forest of Dean Coal Mining Company* (1), quoted by Ray L. J. in *In re Land Allotment Company* (2)].

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In *Automatic Self-cleansing Filter Syndicate Co. Ltd. v. Cunninghame* (1) Cozens-Hardy L. J., observed—" I do not think it true to say that the directors are agents. I think it is more nearly true to say that they are in the position of managing partners appointed to fill that post by a mutual arrangement between all the shareholders." In the same case, however, at page 42, Collins M. R. says " no doubt for some purposes directors are agents. For whom are they agents? You have, no doubt, in theory and law one entity, the company, which might be a principal, but you have to go behind that when you look to the particular position of directors. It is by the consensus of all the individuals in the company that these directors become agents and hold their rights as agents."

It is not necessary for the purpose of deciding the question before us to enter into an elaborate discussion of all the authorities which have dealt with this vexed question as to the exact relationship in law of a director to the company and to the shareholders. In each case it is a question of fact as to whether the director, whose acts are brought into question, was under the circumstances of that particular case in the position of a trustee, a partner, or an agent, to the company or to the body of shareholders.

Upon the facts of the case before us we have no doubt whatsoever that the defendant Daulat Ram, in acting as chairman of the local board of directors, was, so far as the transactions in respect of which he has been sued are concerned, acting as the agent of the Bank, and the suit, therefore, being so far as he is concerned, a suit by a principal against an agent for neglect and misconduct, the provisions of Article 90 of the Limitation Act apply.

We accordingly hold that the suit is not barred by time, but though we agree with the finding of the learned Subordinate Judge on this point, we do not agree with the ground of his decision. He has held that the question of limitation is governed by Article 120 of the Limitation Act. This Article, however, is only applicable to suits for which no period of limitation is provided elsewhere in Schedule I. In the present case as we have pointed out above, a period of limitation has been provided by Article 90.

Having considered the whole of the evidence in the case we are of opinion that the defendant in question has been proved to have been guilty of gross neglect in regard to the advance of Rs. 2,500. If he did not know that the sanctioned sum of Rs. 500 had been fraudulently altered in the Company's books to the figures Rs. 2,500, he failed in an elementary duty to satisfy himself on this point, and he must accordingly be held liable for the excess of Rs. 2,000. We also find that he was grossly negligent in sanctioning the advance of Rs. 300 to Chhaju Mal-Birju Mal. We are not, however, satisfied that the liability of this defendant has been established as regards the remaining items decreed by the Court below, and we, therefore, allow his appeal to the extent of the balance above the sum of Rs. 2,300.

The result is that with interest the amount decreed against Daulat Ram comes to Rs. 3,000 which both Dr. G. C. Narang and *Rai Bahadur* Badri Das accept as correct.

The appeal is accordingly accepted to the above extent with proportionate costs.

A. N. C.

Appeal accepted in part.

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