

sumed. * * * * * The mere fact of subsequent indebtedness is not evidence of a fraudulent intent against subsequent creditors ”.

The *onus* thus being on the plaintiff, and he having failed to place on the record any materials to discharge it, it cannot be said that the gift was made with intent to defeat or delay the plaintiff.

I, therefore, concur in the conclusions arrived at by my learned brother.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Harrison.

BILLIMORIA, OFFICIAL LIQUIDATOR, DEVELOPMENT
CORPORATION OF INDIA, APPELLANT

versus

MRS. CECILIA MARY DESOUZA AND OTHERS,
Respondents.

Civil Appeal No. 2526 of 1926.

Indian Companies Act, VII of 1913, section 235—Winding up—Proceedings against deceased Director—Legal representatives—appeal against—whether proceeding survives—Indian Succession Act, XXXIX of 1925, section 306—whether applies to executive action under Companies Act—Appeal by liquidator—costs—Indian Acts taken from English Statutes—Construction of.

In the course of the winding up of a Company, an application by the Liquidator against a Director under section 235 of the Companies Act was dismissed, whereupon the Liquidator appealed. The respondent-Director had meanwhile died. The Liquidator contended that though the wording of section 235 of the Indian Act had been borrowed from

1927

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1926

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1926
 BILLIMORIA
 v.
 MRS. DESOUZA.

the corresponding section of the English Statute, the responsibilities of legal representatives in this country were wider than in England and, further, that as the granting of the relief claimed, namely, the actual return of the Company's property, had not become nugatory, the proceedings survived under section 306 of the Indian Succession Act.

Held, that a section of an Indian Act copied from an English Statute governing proceedings in a highly technical branch of the law, cannot be said to have been intended to have a different meaning in India from that of the parent Act.

And, though the Liquidator was not debarred from seeking his remedy by a regular suit, section 235 of the Companies Act contemplates executive action only as against the particular individuals described in that section, and does not permit proceedings legally instituted under it against an officer of the Company to be continued after his death, unless his legal representative is himself capable of being defined or described by any of the words of the section.

In re East of England Bank, Felton's Executors Case (1), *In re British Guardian Life Assurance Company* (2), *Stibel's Company Law*, Volume II, page 1195, *Buckley on the Companies Act*, page 509, *Lindley on Companies*, Volume II, page 944, and *Halsbury's Laws of England*, Volume V, pages 479 and 813, referred to.

Held further, that the liquidator having instituted the appeal without first obtaining the permission of the Court, had rendered himself personally liable for costs, but that (in the circumstances) costs should be allowed in the first place against the assets of the Company in liquidation.

Kayastha Trading and Banking Corporation Limited v. Sat Narain Singh (3), followed.

Buckley on the Companies Act, page 377, referred to.

Miscellaneous first appeal from the order of D. Johnstone, Esquire, District Judge, Delhi, dated the 18th August 1925, dismissing the application.

(1) (1865) L. R. I. Equity Cases 219. (2) (1880) 14 Ch. D. 335.

(3) (1921) I. L. R. 43 All. 493.

MEHR CHAND MAHAJAN and D. C. RALLI, for
Appellant.

1926

BILLIMORIA

v.

MRS. DESOUSA.

TEK CHAND, for Respondents.

JUDGMENT.

HARRISON, J.—An application was presented under sections 185 and 235 of the Indian Companies' Act against Mr. deSouza, Director of the Development Corporation of India, Limited, in liquidation, Mr. Billimoria, the liquidator, being the applicant. Two preliminary objections were taken as to the Court's jurisdiction and as to the petition being barred by limitation under article 36. The first was decided against the respondent, the second in his favour, and the application was dismissed on the 18th August 1925. On the 8th October 1925 Mr. deSouza died and on the 12th October 1925 an appeal was lodged by the liquidator against the order of dismissal. HARRISON J.

At the hearing two preliminary objections were taken by Mr. Tek Chand, who appeared for the respondent, the first being that section 185 is wholly inapplicable inasmuch as it only deals with action taken where there is no contest, and, in his reply, Mr. Mehr Chand admitted this to be so. He further contended that section 235 did not apply as Mr. deSouza's death put an end to the proceedings and that this is shown both by the wording of the section itself and the English authorities which deal with section 215 of the English Act. This section is practically word for word the same as the section 235 in our present Act.

As against these contentions it has been urged that the liabilities of representatives in this country are wider than in England, that the Legislature has made them so because of the peculiar circumstances of this country, that both section 306 of the Succes-

1926

BILLIMORIA

v.

MRS. DESOUZA.

HARRISON J.

sion Act and Act XII of 1855 make it clear what these liabilities are and that, although the latter Act deals only with actions, it should be held by analogy that the liabilities are equally wide in the event of an application of this sort being presented. In the second place, Mr. Mehr Chand has pointed out that section 214 of the old Act of 1882 did not reproduce word for word section 165 of the English Act of 1862 inasmuch as, while it provided for repayment of moneys and the payment of compensation, it did not provide for the return of property or securities. To this section of the Act of 1882 there was an explanation making it quite clear that proceedings could not be taken against representatives. The section of the present Act is not followed by any explanation and this Mr. Mehr Chand contends is due to the fact that the present section is precisely the same as the corresponding section of the English Act and includes the return of property, and, therefore, he says, the necessity of safeguarding and protecting the representatives disappeared and the omission of the explanation can only be read as meaning that the Legislature deliberately altered the law on the subject, and made it different from the law of England. He further contends that of the two leading English cases, which have made the law on the subject, *In re East of England Bank, Feltom's Executors Case* (1) and *In re British Guardian Life Assurance Company* (2), the latter contemplates the possibility of a broader view being taken of the wording of the English Act and thus makes it possible, and indeed desirable when combined with the omission of the explanation, to interpret this particular section of the Indian Act in a different way from what has been done in England.

(1) (1865) L. R. I. Equity Cases 219. (2) (1880) 14 Ch. D. 335.

These arguments are ingenious and have been carefully worked out, more especially that dealing with section 306 of the Succession Act. The relief sought is the return of the property and the granting of it would not be nugatory but, in spite of this, the section does not apply, in my opinion, for the good reason that section 235 does not permit the proceedings, legally instituted, to continue. It is undoubtedly true that the omission of the explanation in the present Act is a fact, to which due weight must be given. Mr. Tek Chand's explanation of the omission is that the English Law was so clear on the subject that it was considered unnecessary to retain the explanation. The law was just as clear in 1882 when the explanation was introduced, for both the rulings bear an earlier date. Whatever the reason may have been for the omission, I cannot believe that the draftsman or the Legislature were in any way influenced by this consideration, for the trial Courts in this country who have to interpret the Succession Act are not supposed to be well versed in English authorities or English Statutes. I can only suppose that it was thought that the actual wording of the section required no explanation at all. This speaks of the Court examining the conduct of the promoter, director, etc., and compelling "him" to repay or restore money or property, etc., or to contribute such sum, etc. It has been pointed out in many text-books that a representative or an executor could only be brought within the purview of this section, which deals with the promoter, director, etc., if he were himself capable of being defined or described by any of the words used therein. The barring of an application under this section does not debar the liquidator from seeking his remedy by a regular suit and it is contemplated that this executive action

1926

BILLIMORIA

v.

MRS. DE SOUZA.

HARRISON J.

1926

BILLIMORIA
v.
MRS. DESOUZA.
HARRISON J.

will only be taken against the particular individuals described in this section. The two ruling cases on the subject, which have been mentioned already, are *In re East of England Bank, Feltom's Executors Case* (1) and *In re British Guardian Life Assurance Company* (2). The standard text-books on the subject which are all unanimous in accepting these two rulings as sound law are Stiebel, Volume II, Company Law, page 1195, Buckley on the Companies Act page 509, Lindley on Companies, Volume II, page 944, and Halsbury's Laws of England, Volume V, pages 479 and 813. I think it impossible to hold that the section copied into an Indian Statute from an English Statute can be meant by the Legislature to have any different meaning from that of the parent Act, more especially when it is to be found in a highly technical Statute governing proceedings in one of the most technical branches of law, which has been borrowed wholesale from England. I dismiss the appeal with costs.

Counsel for the respondent asks for costs to be awarded against the liquidator personally and relies on Buckley on the Companies Act, page 377. Following the procedure adopted in *Kayastha Trading and Banking Corporation Ltd. v. Sat Narain Singh* (3) I allow costs in the first place against the assets of the company in liquidation, and, in the event of their being insufficient, against the liquidator personally. It is true that he did not obtain permission of the Court before the institution of the appeal, but the Court appears to have been aware that the appeal was being instituted and I think the point was worth raising on appeal.

N. F. E.

Appeal dismissed.

(1) (1865) L. R. I. Equity Cases 219. (2) (1880) 14 Ch. D. 335.
(3) (1921) I. L. R. 43 All. 433.