

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Fforde.

BHIM SINGH (DEFENDANT) Appellant

1926

versus

Oct. 21.

OFFICIAL LIQUIDATOR, UNION BANK OF INDIA, LTD., (PLAINTIFF) BRAHAM NARAIN AND OTHERS (DEFENDANTS)	}	Respondents.
---	---	--------------

Civil Appeal No. 2776 of 1922.

Indian Companies Act, VII of 1913, section 235—Misfeasance by directors—Summary remedy—Application by Liquidator—Limitation—2 years—Indian Limitation Act, IX of 1908, Articles 36, 90, 120.

Held, that section 235 of the Indian Companies Act does not create new rights, but merely provides a summary remedy of enforcing existing rights, which apart from that section might have been vindicated by means of a suit.

In re City Equitable Fire Insurance Company, Limited (1), and *The Bank of Multan v. Hukam Chand* (2), followed.

Held further, therefore, that an application under that section, made more than two years after the act of misfeasance complained of is alleged to have taken place, is barred by article 36 of the Limitation Act.

The Bank of Multan v. Hukam Chand (2), followed.

In the matter of the Union Bank, Allahabad, Limited (3), per Walsh J, dissented from.

Daulat Ram v. Bharat National Bank, Ltd., Delhi (4), distinguished.

Miscellaneous first appeal from the order of J. Coldstream, Esquire, District Judge, Delhi, dated the 30th August 1922, directing the defendants to pay to the Bank the sums misappropriated by them with interest, etc.

(1) (1925) Ch. D. (C. A.) 407, 507. (3) (1925) I. L. R. 47 All. 669, 686.
 (2) (1922) 71 I. C. 899, 902. (4) (1923) I. L. R. 5 Lah. 27.

1926

BHIM SINGH

v.

LIQUIDATOR,
UNION BANK
OF INDIA.

FFORDE J.

TEK CHAND and C. L. MATHUR, for Appellant.

MOTI SAGAR and MOOL CHAND, for Respondents.

JUDGMENT.

FFORDE J.—This is a misfeasance application brought by the Official Liquidator of the Union Bank of India, Limited, Delhi, under section 235 of the Indian Companies Act (VII of 1913) asking that the several respondents be made to recoup the Bank for various losses incurred by reason of their neglect and default in the management of the Bank's affairs.

The facts are very fully and clearly stated in the judgment of the Court below, and for the purposes of this appeal I do not think it necessary to re-state them. The first question, which we have to decide, is whether or not this application is barred by limitation. It is admitted that the various misfeasances complained of took place more than three years before the date of the present application. The latest of them is alleged to have occurred on the 11th of June 1914. Mr. Tek Chand, who appears for one of the directors, contends that Article 36 of the Indian Limitation Act (IX of 1908) governs this case. This Article provides a two years period of limitation for a suit for any malfeasance, misfeasance or non-feasance independent of contract and not specially provided for in that Act, time to run from the date when the malfeasance, misfeasance or non-feasance took place. If this Article is held to apply, the present application is admittedly barred.

Mr. Mool Chand on behalf of the liquidator contends that Article 120 applies, which provides a six years period for suits for which no period of limitation is provided elsewhere in the schedule, and time is expressed to run from the date when the right to sue accrues. In the alternative, it is urged that

Article 90 applies, which relates to suits, other than those mentioned in Articles 88 and 89, by principals against agents for neglect or misconduct, and provides a three years time limit from the date when the neglect or misconduct becomes known to the plaintiff. Mr. Mool Chand argues that section 235 of the Indian Companies Act confers upon a liquidator a new right, not previously possessed by the company or its shareholders, to enforce claims of the nature provided by that section and that this right comes into effect from the date of his appointment. For this proposition he has referred us to "*In the matter of the Union Bank, Allahabad, Limited*, (1), relying upon the following observations of Walsh J. which appear at page 686 of the Report: "It has been said that section 235 creates no new rights but as is pointed out in the latest edition of Buckley on Companies (1924), the statement is only partially accurate. No doubt it provides machinery for enforcing claims which exist independently of the section, but so far as a Liquidator is authorised by this section to apply, in the interests of creditors and depositors who have lost their money, to enforce a claim against the directors under the section, it seems to me that a new right in him is created. If any article is to be applied at all to the date from which the liability first came into existence by reason of the act of misfeasance, or breach of trust, which the person is proved to have committed, it seems to me that the only article which at all fits the case is article 120, which provides a term of six years for every case not otherwise provided by the Act."

In adopting this view the learned Judge has expressly dissented from a decision of a Division Bench

1926

BHIM SINGH
v.LIQUIDATOR,
UNION BANK
OF INDIA.

FFORDE J.

1926

BHIM SINGH
 v.
 LIQUIDATOR,
 UNION BANK
 OF INDIA.
 FORDE J.

of this Court in *The Bank of Multan v. Hukam Chand* (1), a Letters Patent appeal, in which the Court 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. The learned Chief Justice in his judgment says at page 902: "It must be remembered that section 235 does not create any new rights or liabilities but simply provides a summary mode of enforcing rights which might otherwise have been enforced by suit. If any authority is needed on the subject I would refer to the judgment of James, L. J. in *Canadian Land Reclaiming and Colonizing Co., In re, Coventry and Dixon's case* (2), which deals with the corresponding section of the English Companies' Act. It is to be observed that section 235 does not take away the remedy by suit but provides an alternative remedy by which the Liquidator may enforce rights in an expeditious manner without incurring the expenses entailed by a regular suit."

Since these cases were decided the matter, so far as that point is concerned, has been finally set at rest by the decision of the English Court of Appeal in "*In re City Equitable Fire Insurance Company, Limited* (3)" in which Pollock M. R. at page 507 expresses himself as follows:—

"Now the claim is brought in accordance with the procedure which is rendered available by section 215 of the Companies (Consolidation) Act, 1908, and

(1) (1922) 71 I. C. 899, 902. (2) (1880) 14 Ch. D. 660.

(3) (1925) Ch. D. (C. A.) 407, 507.

as an argument was presented to us for which some foundation could be suggested based in substance upon section 215, I desired to say, though this is not the first time that it has been said, that that section deals only with procedure and does not give any new rights. It provides a summary mode of enforcing existing rights; and I think that is abundantly shown by *Coventry and Dixon's case* (1); *In re Brazillian Rubber Plantations and Estates, Ltd.*, (2) and *Cavendish Bentinck v. Fenn* (3). In *Cavendish Bentinck v. Fenn*, (3) Lord Macnaghten gives in a sentence or so the principle of which the other cases are illustrations. He says: 'That section creates no new offence, and it gives no new rights, but only provides a summary and efficient remedy in respect of rights which apart from that section might have been vindicated either at law or in equity.' Then he goes on: 'It has been settled that the misfeasance spoken of in that section is not misfeasance in the abstract, but misfeasance in the nature of a breach of trust resulting in a loss to the Company.' "

This authority, endorsing the view held by this Court in the Multan Bank case, concludes the point so far as this Court is concerned. Mr. Mool Chand, however, has referred to another decision of this Court which at first sight appears to be at variance with the last mentioned case, namely, the case of *Daulat Ram v. Bharat National Bank, Ltd., Delhi* (4). In that case it was held that a suit by the Bank against a local director for recovery of loss through his negligence, was governed by Article 90 of the Limitation Act which prescribes three years as the period of limitation. It must be borne in mind, however, that in that case it was held that the director in question

1926

BHIM SINGH
v.LIQUIDATOR,
UNION BANK
OF INDIA.

FFORDE J.

(1) (1880) 14 Ch. D. 660 (3) (1887) 12 Ap. Case 652, 669.

(2) (1911) 1 Ch. 425. (4) (1923) I. L. R. 5 Lah. 27.

1926

BHIM SINGH

v.

LIQUIDATOR,
UNION BANK
OF INDIA.

FFORDE J.

had been acting as an agent for the Bank in respect of certain matters, and, accordingly, the suit was one by a principal against an agent for compensation for neglect of the latter in his conduct as such agent. It was not a suit for "compensation for any malfeasance, misfeasance or non-feasance independent of contract * *." The proper distinction to be drawn between the *Multan Bank* case and the case of the *Bharat National Bank* is that one was a suit by a principal against an agent, and the other was an application for compensation for misfeasance in the nature of a breach of trust independent of contract. So far as certain observations of mine contained in that judgment may be taken to throw doubt upon the decision in the *Multan Bank* case, I need only say that the question of limitation governing an application under section 235 of the Companies Act was not fully dealt with. In my opinion, this application is governed by article 36 of the Indian Limitation Act, and as none of the misfeasances averred are within two years the matter is barred by limitation. The preliminary objection therefore must prevail, the appeals be accepted with costs throughout and the application dismissed. The cross-objections must also be dismissed.

HARRISON J.

HARRISON J.—I agree that this application is barred by limitation. Not only does it disclose nothing beyond misfeasance, malfeasance and non-feasance, but in his statement at page 166 the Liquidator has definitely defined and limited his position and made it impossible to substantiate the contention that the application can be governed by any article other than 36.

N. F. E.

Appeal accepted.