

**(1934) 04 AHC CK 0010**  
**In the Allahabad High Court**

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|---------------------------------------------|------------|
| Indian States Bank Ltd. Official Liquidator | APPELLANT  |
| Vs                                          |            |
| Kunwar Sardar Singh and Others              | RESPONDENT |

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**Date of Decision :** 20-04-1934

**Acts Referred:**

Companies Act, 1956 — Section 101, 235

**Citation :** AIR 1934 All 855 : (1934) 4 CompCas 380

**Hon'ble Judges :** Young, J

**Bench :** Division Bench

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**Judgement**

Young, J.—This is an application by the official liquidator of the Indian States Bank, in liquidation, under Sections 235 and 102(2) of the Indian Companies Act, The official liquidator seeks to make the promoters, the directors, the managing agents, the auditors, and various officials of the branches of the bank liable under the above sections for the total losses and liabilities of the company. In view of the fact that this Bench must be broken up in a few days, we have decided that it is impossible to hear the case as regards the officials of the branches. This judgment, therefore, is confined to the consideration of the liability of the promoters, directors, managing agents and auditors of the company. The defendants whom it is sought to make liable are (1) Rai Bahadur Kunwar Sardar Singh, M.L.C., (2) Capt. Rai Bahadur Lal Bhagwant Singh, (3) Bhaiya Hari Saran Das, (4) B.S. Vidyarthi, (5) Avadh Behari Tandon, (6) Kunwar Gopi Nath Singh, (7) Anand Swarup Bhatnagar, (8) Seth Ahmad Bhai Poonja, (9) Seth Trifahuwan Das, (10) Nawab Mohammad Jamshed Ali Khan, (11) Rai Bahadur Govind Prasad, (12) Khan Saheb Nawab Maksud Ali Khan M.L.C., (13) Vidyarthi Tandon & Co., through B.S. Vidyarthi and (14); Messrs A.F. Ferguson & Co, Chartered Accountants. Another director Rao Bahadur Kunwar Bikram. Singh, M.L.C., is dead.

2. The case of Dr. Satyapal may be more conveniently disposed of when the case against the officers of the branches comes to be decided. It is contended by the official liquidator that these defendants are jointly and severally liable for the

total losses of the company including the losses incurred by the branches. This case is a notable "example of the case with which the people of the United Provinces are deprived of their money by a fraudulent use of the Indian Companies Act." Of these defendants, the auditors of the company, Seth Ahmad Bhai Poonja, and Nawab Mohammad Jamshed Ali Khan have compromised the claim against them with the sanction of this Court. We have to settle the liability, if any, therefore, of the remainder of these defendants.

3. Three men B.S. Vidyarthi, A.B. Tandon, and Gopi Nath Singh, in the year 1929 conceived the idea of starting a bank. None of these three were men of substance or position. Vidyarthi was employed in a minor post in Gwalior State. Tandon was also employed in the same State and knew Vidyarthi. He was subsequently employed in a minor position in an insurance company known as the Venus Insurance Company. Gopi Nath Singh was a friend of Tandon and was also employed in the Venus Insurance Company. The scheme seems to have been that Gopi Nath Singh, would find the men and money for the bank, Tandon was to provide the organization, and Vidyarthi the brains. In the month of July 1929 these three printed a private prospectus. It was headed by two names as patrons : His Highness the "Maharana of Mandhan and His Highness the Maharana of Theo, with the Haracs of various distinguished persons as directors. The authorised capital of the bank was said to be one crore of rupees. One of the directors was Lieut. Prince Dabindro Chandra Bhanj Deo Bahadur of Mayur Bhanj State. We have no evidence that this gentleman ever heard of the bank. Further there is no evidence that the patrons ever consented to this use of their names. The same may be said of several of the other directors whose names appear on this Prospectus.

4. For the purpose of promoting the company Vidyarthi, Tandon, and Gopi Nath Singh formed themselves into a partnership, which subsequently became a limited liability company. In the month of October 1929, in response to an advertisement, one A.S. Bhatnagar, (defendant 7), applied to Vidyarthi Tandon & Co., for employment, and eventually; it was agreed between them and Bhatnagar that Bhatnagar should be taken into the partnership. Bhatnagar advanced the sum of Rs. 2,500 in cash by way of security and agreed to take 50 preference shares in the banking company when it was formed. This money was the first actual cash received by the promoters and it was expended by them, although it was in the nature of Security, in payment of salaries. More money was obtained as security from employees who responded to advertisements in the press. This money was also spent in preliminary expenses and in payment of the salaries of the employees themselves.

5. In the month of March 1930 the company was incorporated. The Memorandum of Association, which, was filed with the Registrar of Joint Stock Companies, contained the names of seven signatories, each of whom was stated to have taken 50 preference shares of Rs. 100 in the company. It is noteworthy that this document which may be taken to mark the commencement of the company,

itself was fraudulent, in that not one of the signatories had the intention of paying for a single share.

6. Through the efforts of Gopi Nath Singh several gentlemen of position had meanwhile consented to become directors of the bank, among them being Rao Bahadur Kunwar Bikram Singh, M.L.C., Capt. Rao Bahadur Lal Bhagwant Singh and Rao Bahadur Kunwar Sardar Singh M.L.C., without the names of prominent titled individuals which would inspire confidence it would have been hopeless for these promoters to proceed. In the month of May 1930 the prospectus was printed. The prospectus stated that the capital of the company was one crore of rupees. At the head of this prospectus there is the picture of a richly caparisoned elephant on which is seated the goddess Laxmi who represents wealth in Hindu theology. The directors included Rao Bahadur Sardar Singh, M.L.C., Chairman, District Board, Moradabad Rao Bahadur Dr. Bikram Singh, M.L.C., Special Magistrate member of the U. P. Board of Agriculture etc., Capt. Nawab Mohd. Jamshed Ali Khan," M.B.E., M.L.C. Chairman District Board, Meerut of Baghpat, Capt. Rao Bahadur Lal Bhagwant Singh Honorary Assistant Collector and Special Magistrate, Rustampur Gautana, Dist. Aligarh, Seth Tribhuwan Das, merchant and Zamindar of Agra, and Seth Ahmad Bhai Poonja who was stated to be the Mukhi Shia Imami Ismaili Jarnat of the followers of H.H. Sir Aga Khan, G.C.V.O. The auditors were Messrs. A.F. Ferguson & Co., the well-known Chartered Accountants. The prospectus itself was a flamboyant and wholly misleading document. Extracts from the speeches of the Governor of the United Provinces the Ex. Governor of Bombay, and Sir Basil Blackett were included pointing out the necessity of increasing the facilities for industrial enterprises in India, banking facilities of course being specially stressed. The prospectus stated:

The foremost and primary objects amongst others of equally benevolent nature are to stimulate and stabilise the agricultural and industrial development wherever it is needed throughout India in general and the Native States in particular; and to cultivate the habit of thrift and mutual co-operation amongst the masses by a rigid adoption of the policy of give and take.

7. The promoters and directors of this undertaking however seem to have confined themselves to the policy of taking. They gave nothing. It was further stated that the directors other than Vidyarthi and Gopi Nath Singh were shareholders in the bank and that no shares had been issued otherwise than in cash. This latter statement was false and fraudulent in that with the exception of Poonja not a single director had paid one anna for his shares. It was stated also that the minimum subscription upon which the directors might proceed to allotment had been fixed at shares to the nominal value of Rs. 50,000 which had been oversubscribed by the promoters and their friends, and the first allotment had since been made, This too, as the evidence shows, was wholly false with the exception that an allotment, with which we shall hereafter deal, had certainly been made. There is an irregularity also about this prospectus it was not filed until after the first allotment.

8. The first directors meeting was held on the 5th June 1930. The directors attending this meeting were Rao Bahadur Kumwar Sardar Singh, Seth Tribhuwan Das, B.S. Vidyarthi and Seth Ahmad Bhai Poonja. The board proceeded to allot shares, which was the principal business of the meeting. Shares to the value of Rs. 55,000 were allotted including those subscribed for by the signatories to the Memorandum of Association. As far as the allotment to the signatories and the directors were concerned the allotment was wholly illegal. Section 101 of the Indian Companies, Act enacts:

No allotment shall be made, unless the amount (if any) fixed by the memorandum of articles and named in the prospectus as the Minimum subscription upon which the directors may proceed to allotment has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to and received in cash by the company.

9. As we have pointed out above, the application money had not been paid by any of the signatories or the directors, except by Ahmad Bhai Poonja, who had that time subscribed for Rs. 10,000 worth of shares and had paid Rs. 5,000 in respect of them and was elected a director at this meeting. Even Poonja subsequently was repaid his money by the Managing Agents, Vidyarthi Tandon & Co., out of the money of the Company. At this meeting also the prospectus was read and approved. It is clear that every one of the signatories to the memorandum of association who was also a director knew that the statements in the prospectus as to the receipt of cash for shares and the minimum subscription having been over-subscribed were false. It may here be noted that in order to deceive the auditors, and possibly the Registrar of Joint Stock Companies, who might make enquiry, and generally, to conceal the fact that the principal directors, on whose names the public would depend had not paid for their shares, fictitious entries were made in the books of the company. Current accounts were opened for all the signatories to the memorandum of association and debited as overdrafts with Rs. 1,250, the amount due on application for the shares. The share accounts of these signatories were at the same time credited with this amount.

10. It is provided by Section 103, Indian Companies Act, that no company shall commence business until every director of the company has paid the money due on application and allotment. The next business to be transacted by the promoters and directors was to obtain from the Registrar, Joint Stock Companies, a certificate entitling the company to commence business. For this purpose the law requires that a declaration shall be made by an officer of the company to the effect that the provisions of Section 101 and 102 of the Companies Act, as to allotment and payment of application and allotment money, have been complied with. The managing agents had no difficulty in producing such a declaration. They endeavoured to get Bhatnagar to sign, the declaration, but he refused. It was eventually signed by Gopi Nath Singh. The declaration stated that the

amount fixed by the memorandum, and names in the prospectus as the minimum subscription upon which the company may proceed to allotment was Rs. 50,000; that shares had been allotted to the amount of Rs. 85,000; that every director of the company had paid to the company on each of the shares taken or contracted to be taken by him, and for which he was liable to pay in cash a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription. It concluded with declaration that the foregoing statements were true to the knowledge and belief of Gopi Nath Singh. As appears from the above, and from the evidence and the books of the company, this declaration was false and fraudulent. The Registrar issued a certificate for the commencement of business on the 6th of August 1930. From the evidence it is clear that business had been commenced for some considerable time before this certificate was obtained and even before the incorporation of the company.

11. The opening ceremony of the bank had been performed on the 29th July 1930 in Agra. The managing agents and directors thought it important to get some prominent public man, to perform the ceremony. An effort was made to obtain the Nawab of Chhattari, he refused, and eventually the late Home Member, Nawab Muzamil Ullah Khan, was persuaded to officiate. At this ceremony the Commissioner of Agra was also present. It appears to us that persons of standing ought to take more care before allowing themselves to be used in this fashion.

12. In the month of September 1930 trouble commenced Bhatnagar, who by this time was secretary of the company, quarreled with Vidyarthi. He was also suspicious of the managing agents and the financial position of the bank. He wished to recover the money that he had invested. As a result of letters to Vidyarthi his money was returned to him out of the moneys of the company. When he had severed his connection with the bank Bhatnagar wrote a letter to the Registrar, Joint Stock Companies, Lucknow, in the following terms:

I.A.S. Bhatnagar, Secretary of the above bank, before writing this beg leave to place before you the following facts for immediate inquiry and necessary action in the interests of the general public. Before you issued the certificate of commencement of business to the bank on August 6th 1930 a statement had been filed with you by the bank to the effect that all the directors have paid in their application and allotment money in cash. I never knew this till recently and it was sent under the signature of a director. The fact is that most of the directors have not paid anything in cash. What has actually been done is that their share accounts have been credited and their or someone else's accounts debited that is to say that there have been transfer entries only and nothing in cash. This fact can easily be, corroborated by an immediate examination of the books of the bank which will reveal many other gross irregularities whereby the public is deceived.... If a regular inquiry is instituted, I hope to be able to give other information as well. Trusting that you will order an immediate inquiry into

the matter.

13. This letter was put before the Registrar accompanied by a note from his office, suggesting that this matter ought to be placed in the hands of the C.I.D. The order passed by the Registrar was that this letter should be sent to the managing agents of the company for explanation. Vidyarthi had no difficulty in satisfying the Registrar. He said that Bhatnagar, the Secretary, had been dismissed, and that this was the usual action of a dismissed servant.

14. The Registrar was satisfied. We think that this lack of action by the official responsible for protecting the public was deplorable. The Registrar had a detailed complaint by the Secretary of the company. The most casual examination of the books of the company or of the directors would have revealed at this early stage the true state of affairs, and the public would have been saved a large sum of money. At this date it is to be noted that the only branch which had been opened was that at Agra and little business had been done there. Subsequently no fewer than 16 branches were opened in this province and in the Punjab, some of which commenced business within a few days of the receipt of this letter by the Registrar.

15. It became necessary at the end of the year to file the statutory accounts. The auditors were called in and on the 26th January 1931 they wrote a letter to Vidyarthi Tandon & Co., the managing agents raising very, properly, serious objections to the accounts. Among other items commented upon by the auditors were : (a) the commission drawn by the managing agents. Vidyarthi Tandon & Co., who had taken commission on all the working funds of the company. The auditors pointed out that the fixed capital expenditure should be deducted before the calculation for commission was made; (b) they said that they could not understand the managing agents commission account. They failed to see why, the managing agents' commission account had been debited to the extent of Rs. 6,000 to members of the managing agency firm. They pointed out that the debit on the managing agents' commission account had been, cleared by, several entries which they queried. They said that there was no authority for this procedure and suggested that the matter be placed before the directors of the company and that any minute passed by the directors should be sent to them. They queried the amount included in the account under the heading of "development expenses". They asked for a correct allocation of this amount with the sanction of the directors. With regard to an amount of over Rs. 8,000, owing by the managing agents themselves they asked for the sanction of the directors for this overdraft. They drew attention to the fact that the three members of the managing agents' firm had been overdrawing their private accounts and asked why this had been done in the absence of any directors. In conclusion the auditors refused to proceed further with the audit until they had a full explanation in regard to the above matters. This might have puzzled any one except Messrs. Vidyarthi Tandon & Co. They were not easily defeated. They had by this time obtained the services of various gentlemen on the board of directors

who were willing to do whatever was asked of them. A meeting of the directors was called and held on 29th January 1931. Rao Bahadur Gavind Prasad and Seth Ahmad Bhai Poonja were the only directors present other than Vidvarthi and Gopi Nath Singh themselves. Resolutions were then passed dealing with all the objections of the auditors. The minutes of this directors' meeting record that:

in view of the incessant labours of the managing agents since the inception of the bank till the period of closing the accounts

the directors sanctioned commission on the basis on which the managing agents' firm had calculated it. They said the other irregularities were perfectly in order. They sanctioned every expenditure which had been placed under "development expenses". They passed a resolution that they were fully satisfied that the overdraft of the managing agents was fully secured and that they were greatly indebted to Messrs Vidyarthi Tandon & Co., for having taken the money. The overdrafts for the purposes of the directors themselves were thoroughly approved and generally, they confirmed and declared to be regular every single item the regularity of which had been questioned by the auditors. The auditors on receipt of a copy of these astonishing minutes proceeded to give a clear certificate for the accounts without further objection. The examination of the books of the company must have been very perfunctory. We do not suppose that ever in the history of banking have such accounts been published and submitted to the shareholders for their approval. If the accounts were correct, which they were not they showed that for a bank with authorised capital of a crore of rupees only some Rupees 74,000 had been subscribed and of this amount at this date there was only a balance of Rs. 12,000. As a matter of fact,, as the accounts were false and, as shown above, the directors had not paid anything at all in respect of their shares, the actual position of the finances of this bank was that every penny of the money subscribed had been spent and there was a debit balance of about Rs. 8,000 taken from deposits by the public in the branches.

16. The next business before the managing agents was to prepare and circulate to the shareholders the statutory report. The signatories to this report included Rao Bahadur Kumwar Sardar Singh, M.L.C., Khan Saheb Mohammad Maksud Ali Khan, M.L.C., and Rao Bahadur Govind Prasad, who also signed the accounts. The report stated inter alia.

that the present chaotic state of the country, the all round depression in trade and the proverbial shyness of capital in India, had never been so piquantly evident ever before as at the present time.

17. In spite of this the report said that

progress was more than satisfactory and evidently very promising; that the managing agents had not allowed their enthusiasm to slacken; that if it had not been for the expert and wise handling of the managing agents the bank would not have gained the position that it enjoyed; that all this had been done by the tremendous sacrifice of the managing agents and that the commission they had

earned was small for all their efforts; that the shareholders generally should be congratulated for possessing such valuable and sincere workers as the managing agents were.

18. The report concluded with the opinion that the new constitution which India might hope to obtain might well result in this bank playing an important role in the future constitution of the Government of the country. In an article published in the press about this time it was further pointed out that the existence and activities of this bank would undoubtedly bring Swarai nearer.

19. Before we proceed we must note that there appears in the directors' minute book the record of a meeting which was supposed to have been held on the 29th December 1930. The directors stated to be present at this meeting were Vidyarthi, Poonja, and Gopi Nath Singh. Various shares were allotted at this meeting in order to give certain people voting powers at the statutory meeting of the shareholders. Transfers of shares were made to Rao Bahadur Govind Prasad and Khan Bahadur Maksud Aliv M.L.C. These transfers were necessary in order to qualify these gentlemen as directors so that their names might appear on the statutory report and accounts. They paid nothing for these shares. At this alleged meeting they were also elected directors. The accounts which were to be placed before the directors were passed. The history of this alleged meeting is not without interest. We are satisfied upon the evidence that this meeting never took place on the 29th December 1930 and that the minutes are forged. The facts are that for purposes of accounts it was discovered late in January 1931 that it was necessary to have two other directors to sign the accounts, as of the present available directors who were members of the managing agents' firm. It was found that the directors had not passed the accounts for audit. This was required to be done to satisfy the auditors, and it was necessary at the statutory meeting to have shareholders qualified to vote in support of the accounts and the report of the directors. The proceedings of this alleged meeting which purported to deal with all these matters have been therefore inserted in the minute book about the 21st January 1930. It is unnecessary to go into the evidence which makes this clear but there is no doubt at all that this meeting never did in fact take place.

20. The history of the origin of Rao Bahadur Gobind Prasad's connection with this company's is illuminating. He had had been the private secretary of an Indian Prince. Since his retirement he had been employed by the Venus Insurance Company as a "Policy signing director" at Rs. 100 a month. In the Venus Company he had met Tandon. In the month of December 1930, the Rao Bahadur was hard up. He urgently needed a small loan of Rs. 185. He heard that his old friend Tandon was now a financier of note controlling a bank. He immediately went to Agra thinking there would be little difficulty in persuading Tandon to relieve his necessity on easy terms. He saw Tandon at the Bank. Tandon said he would put the case before the Governing Director Vidyarthi. Tandon did so and Govind Prasad was called in to see Vidyarthi. The

accommodation was immediately arranged. Vidyarthi then told Govind Prasad that Tandon had a proposition to make to him. Govind Prasad accompanied Tandon to another room and must there have been astounded to hear that it was proposed to make him a director of the bank. After some discussion it was agreed that Govind Prasad was to be given shares without payment and that he would be made a director. It must be comparatively rare in the history of banking for a man to enter a bank in order to obtain a small accommodation without security - usually a hopeless adventure - and to emerge a full blown director of the bank.

21. Having surmounted the obstacle of the accounts and the report the next step was to obtain more cash. The managing agents and the directors had a brilliant idea that cash might be obtained from the public by a scheme similar to that adopted by Government for obtaining money from small investors. The scheme was that Rs. 100 bond should be issued at Rs. 85, payable in three years. The advertisements, upon which some Rs. 7,000 were spent, were false and fraudulent. It was stated in the advertisements that 1,000 bonds of Rs. 100 each were already allotted. This was wholly untrue. Not one single bond had been allotted. The directors' names appearing upon these advertisements were those of Rao Bahadur Kunwar Sardar Singh Khan Saheb Maksud Ali, Ahmad Bhai Poonja Dr. Satyapal, Seth Rameshwar Prasad Bagla, M.L.A., Banker and Millowner Cawnpore, Rao Bahadur Govind Prasad, Gopi Natfa Singh and Vidyarthi. The use of the name of Mr. Rameshwar Prasad Bagla was unauthorised. This attempt to obtain further money from the public was fortunately not very successful, only about Rs. 4,000 being subscribed. As this effort failed, it was necessary to obtain money from some other source. Some branches there were already, but many more new branches were now opened. It was hoped that, in spite of the fact that the company had no capital to pay overhead expenses, the deposits which might be made in the various branches would enable the company to carry on. It must have been obvious to every one concerned that there could be no hope, in view of the extravagant overhead expenses, of ever repaying these deposits in full to the public. Business was also undertaken in collecting money on hundis and cheques. Money obtained both by deposits or on collection of hundis or cheques was spent by the company without any possible prospect of repayment. It is unnecessary for the purpose of this part of the case to go into the history of the various branches. It is also unnecessary to deal further with the chequered history of this bank. It was obvious that disaster could not be long deferred. By the month of September 1931, little more than a year after the bank had obtained the certificate for the commencement of business, the doors of the bank were closed. A resolution for winding up the company voluntarily was passed on the 21st December 1931, and an order for compulsory winding up followed on the 14th November 1931 and an official liquidator was appointed by the Court.

22. In actual cash the company had received from shareholders and the public by way of deposits and collections on hundis and cheques about Rs. 1,84,000.

Every anna of this money has disappeared. In addition there are" creditors to the amount of Rs. 18,000. In the appendix annexed hereto we have set out in detail the amount of money collected by the company in share subscriptions and in respect of the bond issue and from depositors and customers.

23. Evidence to establish all the facts set out above has been adduced by the official liquidator. None of the defendants who have filed written statements challenged the accounts or the schedules prepared by the official liquidator showing how the money of the bank has been dissipated. Most of the defendants admit the fraudulent nature of the floatation and the conduct of the business of the bank, but endeavour to put the responsibility on others. There is no doubt that the originators of this fraud were Vidyarthi, Tandon and Gopi Nath Singh. These three have not appeared to contest the application and the case against them has been taken ex parts. The evidence clearly establishes the fraudulent nature of the floatation and the business which the company carried on. The liability of these three promoters of the company is clear. We have been informed that criminal proceedings are pending against them.

24. We now have to consider in the light of this statement of facts the liability of the officers of the company against whom the liquidator has claimed compensation u/s 235 and Section 102, Indian Companies Act.

25. The issues settled are as follows:

1. Whether the claim or any portion of it is barred by limitation? If so, against which of the directors and in respect of what items or sums? 2. Whether the company was fraudulently floated, if so, who were the persons responsible for it? What is their respective, joint or several liability? 3. Whether any charges u/s 235 of the Indian Companies Act have been made out and if so, who are responsible and to what extent? 4. Whether any of the promoters and directors are liable u/s 102 of the Indian Companies Act? If so, what is their liability? 5. Whether Article 180 of the Articles of Association is invalid, if not, what is its effect as regards each one of the defendants? We shall give our answers to these issues taking them all together. We have to consider the case of each defendant with regard to Article 180 of the Articles of Association of this, company. This Article provides that no director or officer of the company can be liable for the defaults of other directors or the loss or expense to the company through the inefficiency or deficiency of any title to property or inefficiency or deficiency of any security to, in or upon which any money of the company shall be invested, or for loss occasioned by any tortuous act of any person with whom any money...shall be deposited or for loss occasioned by any error of judgment, omission, default or oversight on the part of a director or for any other loss, damage or misfortune whatever which shall happen in relation to the execution of the duties of his office or in relation thereto, unless the same happens through his own dishonesty.

26. Although this Article seriously limits the liability of a director or officer of a

company in relation to the public there is nothing in the Indian Companies Act, to prevent such a clause being inserted in the Articles of Association. Under the Indian Act therefore the public does not receive adequate protection. It is for the Government to consider whether the provision of the English Act of 1929, which makes such an article void should not be included in the Indian Act. The Government might also consider whether the English Act of 1929 ought not to be adopted as a whole for India. The present Indian Act is out of date. We have carefully considered the evidence led by the official liquidator and the evidence of the defendants themselves. We consider that Rao Bahadur Lal Bhagwant Singh B. Hari Saran Das, Anand Sarup Bhatnagai", Seth Tirbhuwan Das, and Khan Saheb Nawab Ali Khan are protected by Article 180, as it has not been proved that as directors they were guilty of any dishonest act. We consider that they were themselves deceived. We dismiss the claim of the official liquidator u/s 235 of the Indian Companies Act against them. As far as these defendants are concerned, there will be no order as to costs. This judgment of course does not affect the liability of these defendants as contributories.

27. The case against Rao Bahadur Kunwar Sardar Singh M.L.C., is very different. He was a friend of Gopi Nath Singh and, according to his evidence in this Court, he was prepared to do anything however dishonest to help his friend. Gopi Nath Singh failed to induce him to invest any money on the company. His spare cash was profitably invested in house property. He did not wish to take any risk in buying shares. He was persuaded however to lend his name. He made no enquiry as to the financial standing of the promoters. He agreed that shares should be allotted to him without payment. He also persuaded Rao Bahadur Bikram Singh M.L.C., a friend and relative of his and Capital Bhagwant Singh, to assist Gopi Nath Singh by allowing their names to be used as directors of the company. According to his own evidence he knew that a director had to pay for his shares and that the public believe that the directors of a bank pay for the shares they hold. He agreed to keep his position secret because his friend Gopi Nath Singh told him that if he disclosed the fact that he had not paid for his shares no one else would pay for shares. This we take from this defendant's own deposition in Court and also from his statement in his private examination by the official liquidator which statement he admitted in this Court. He said:

It is possible that if the public had come to know of this arrangement the shares would not have been sold and persona could not have been seemed an directors. This was one of the reasons for keeping this arrangement secret.

28. Kunwar Sardar Singh also arranged that Bikram Singh and Lal Bhagwant Singh should become directors on the same terms, that is, that they should not pay for their shares. This was denied by Kunwar Sardar Singh but Lal Bhagwant Singh in his statement in Court gave evidence to this effect and so did Bikram Singh in his private examination. Bikram Singh is dead and we have taken his statement upon the record. We are satisfied that where Sardar Singh's evidence differs from that of Lal Bhagwant Singh and that of Bikram Singh, it is false,

Sardar Singh therefore knew that he himself, Lal Bhagwant Singh, and Bikram Singh had not paid for their shares. This matter becomes of great importance when we come to consider the director's meeting of the 5th June 1930. It was at this meeting that the directors proceeded to allotment.

29. The allotment as pointed out above was illegal u/s 101 of the Indian Companies Act. No application money had been received in respect of the shares allotted to directors except in the case of Ahmad Bhai Poonja. This matter does not end here. This defendant was a party to the issue of the prospectus in which it was stated that the directors had paid for their shares and that no shares were issued other than for cash. It was also stated that the minimum subscription of Rs. 50,000 had been over-subscribed by the directors and their friends. He knew all these statements were false. He did not dispute the falsity of these statements in his evidence or in his written statement. One of the directors Mr. Tribhawan Das gave evidence in this Court that Vidyarthi had stated at the meeting of the 5th June that all the directors had paid the money then due on their shares and that no director present disputed or challenged the accuracy of this statement. This defendant was present at the meeting and was aware that Vidyarthi's statement was false. Therefore except for his acquiescence and complicity it would have been impossible for the managing agents to obtain the certificate for commencement of business from the Registrar of joint Stock Companies. He must therefore be held responsible for this initial misfeasance. If this defendant had acted honestly at the meeting of the 5th June there would never have been any allotment of shares at all, the company could never have been started and the public would never have been defrauded. In his evidence in this Court this defendant admitted that it was dishonest to deceive his friends by not disclosing to them that he had not paid for his shares, and also that he had deceived the public in the same way. He was asked this question:

Q. Then it comes to this that for your friend Gopi Nath Singh you were willing to be dishonest?

A. It is true that in order to oblige Gopi Nath Singh I deceived the public.

30. Although the meeting of the 5th June 1930 was the only directors meeting this defendant attended, throughout he took a great interest in the company and its activities. He considered the advisability of starting a branch of the bank at Moradabad and discussed the project with the managing agents. He was in touch with the managing agents until shortly before the bank went into liquidation. He induced Nawab Jamshed Ali Khan of Bagpat to become a director. On receipt of a complaint by one Bhagwan Das, sent to him by the Nawab, which stated that the bank was not sound he assured the Nawab that there was nothing in the complaint. He knew of Bhatnagar's complaint to the Registrar of Joint Stock Companies. He knew that it was accurate as regards the allotment of shares, and yet he took no action. He was a party to and signatory of the false and misleading statutory report. He signed the balance sheet which he must have known to be false with regard, at any rate, to the money received for shares. His

name appeared in the advertisements in connection with the issue of cash bonds. He received copies of the papers in which the advertisements appeared and he must be held to have known that some of the statements in the advertisements were false. He was instrumental in obtaining the Nawab Muzamil Ullah Khan to open the bank at Agra. It may be that he was not fully in the confidence of Vidyarthi, Tandon and Gopi Nath, but we regret that we must hold him to have conspired with them to float this company by fraudulent means. From 1929, when the private prospectus at first appeared until the company went into liquidation this defendant was associated with the activities of the company. He knew of some, at any rate, of the frauds that had been practised and was a willing party thereto. His explanation in Court of his conduct as a director of the company was thoroughly disingenuous. He said he knew nothing about business matters and was guided throughout by Gopi Nath Singh. He is however an M.L.C., and a wealthy zamindar owning large landed and house property which he manages himself.

31. The net revenue of his estate is Rs. 2 lacs and he pays Rs. 40,000 as Government Revenue. His evidence shows that he is a man of shrewd business sense so far as his own affairs are concerned. Further his statement on oath shows that he was well aware of the dishonesty of his conduct. We must further add that his demeanour in the witness box was most unsatisfactory. It was marked throughout by hesitation and prevarication. Before the official liquidator, in his written statement, and in this Court in examination in chief he said that it was arranged between himself and the managing agents that his shares should be paid for out of the directors fees that he would receive in the future and his allowances in respect of travelling expenses. Towards the end of his cross-examination however he told an entirely different story namely that the managing agents agreed to pay for his shares. This statement made for the first time in the witness box after his examination in chief had concluded is clearly false. It shows that he is far from being the simpleton he pretends to be. In his examination-in-chief he stated that when he signed the prospectus he did not know what a prospectus was. His admissions in cross-examination however show clearly that he was well aware of the nature of the document. He was forced on other points in cross-examination into admissions which showed that his earlier statements were false. He stated that his knowledge of English was very limited. His obvious ability however to understand questions put by counsel in English and to read documents in English showed that his knowledge of the language was more extensive than he wished the Court to believe. We are of opinion, having considered all the evidence in this case, and his appearance in the witness box, that his explanations in defence of his actions as a director are utterly false and that he was party to a calculated and deliberate fraud in the floatation of the company and in the conduct of its business.

32. We now proceed to consider the question of the liability of Vidyarthi, Tandon, Gopi Nath Rao Bahadur Kunwar Sardar Singh. u/s 102(2) Indian Companies Act, it is enacted that:

If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of Section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.

33. Further, as we have pointed out, u/s 103(1)(b) it was illegal for the company to commence business until every director of the company had paid the application and allotment money for his share. There can be no doubt therefore that acts of misfeasance have been proved against these four defendants. Section 235 enacts as follows:

Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, 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 at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of misapplication, retainer, misfeasance, or breach of trust as the Court thinks just.

34. The question we have to consider therefore is to what extent these four delinquent directors and officers ought to compensate the company? The more serious acts of misfeasance committed by Vidyarthi Tandon, Gopi Nath, and Rao Bahadur Sardar Singh are : (a) The allotment of shares by the directors without having received the minimum subscription or the money due on application for shares. (b) Obtaining by fraud the certificate for commencement of business (c) Commencing business although the directors had not paid the application and allotment money due on their shares. These actions were a gross breach of the statutory duty of these defendants under Sections 101 and 103 of the Indian Companies Act. For a wilful contravention of the provisions of Section 101 these directors are also liable to pay compensation to the company u/s 102(2).

35. Every day the company carried on business there was a continuing breach of this duty. The result of this in law must, in our opinion, be that the directors had no right to expend one anna of the money of the company or to incur liabilities. Liabilities having been incurred these must under the law be discharged before the share-holders, who form the company, can be compensated for the illegal expenditure of the money subscribed by them for their shares. u/s 235 therefore it appears to us difficult for these defendants to escape the liability to discharge every creditor of the company as well as to return to the share-holders the money paid for their shares. Such payments would be, in our view, a control button to the assets of the company which by way of compensation the Court

thinks just within the meaning of Section 235.

36. Under Sections 101 and 102(2) the liability, of those of these defendants who were directors appears to be the same. They must compensate the company and the share-holders for

any loss damages or costs which the company, or the allottees may have sustained or incurred thereby.

37. The loss and damages directly flowing from the breach of duty u/s 101 include the loss and damage occasioned by the carrying on of the business which never could have been commenced but for the improper allotment. The loss and damage would therefore appear to be the total losses of the company which include amounts due to creditors and shareholders.

38. With regard to Vidyarthi, Tandon and Gopi Nath, they were clearly in the fraud from the very commencement. Theirs were the brains which conceived it; theirs the brains which carried it out with the assistance of Sardar Singh. From the very commencement these three defendants determined to commit fraud. They continued the fraudulent conduct of the bank right up to the day when the bank closed its doors. It seems to us therefore that the only order we can pass is that they must pay by way of compensation the total amount of losses which the bank has sustained. For these losses they will be jointly and severally liable. Further there will be a decree against them for the costs of the liquidation and of this application in the same terms.

39. So far as Rao Bahadur Sirdar Singh is concerned we cannot in view of the facts proved hold that he is liable to any lesser degree. It is true that he left the conduct of the business of the company to the Managing Agents. Had it not been for his co-operation however, the company could never have started business. He was in the fraud from the start. He knew not only that the company was born in fraud but that it continued to exist in fraud. He knew that money was being taken from the public, who deposited money in and had current accounts and did business with the bank, primarily for the purpose of paying the staff and meeting the liabilities which had been fraudulently undertaken. He assisted and co-operated with the Managing Agents throughout. He took no steps to stop their nefarious activities or to warn the shareholders and the public. In the circumstances we hold that he is equally liable with Vidyarthi Tandon and Gopi Nath Singh for all the losses of the bank (apart from the branch losses) and with them we hold him jointly and severally liable therefore and for the costs of the liquidation and of this application. The Official Liquidator has asked us not to include in this liability the losses of the bank arising out of the activities of the branches as the application in relation to these has not been heard. Counsel for this defendant does not deny the facts set out in the petition. He confined himself to the question of the consequences which ought to follow. He further admits that his client must be liable, the only question being one of amount. Article 180 of the Articles of Association clearly cannot protect this defendant or

Vidyarthi, Tandon and Gopi Nath. They are clearly guilty of gross dishonesty and fraud. It has been urged by counsel of Rao Bahadur Sardar Singh that his client was protected by Article 36 of the Indian Limitation Act. The decision of the Full Bench in *Shiam Lal Jewan v. Official Liquidators of U.P. Oil Mills Co. Ltd.* 1933 All. 789 however is that Section 36 does not apply to a case of this nature. In any event as fraud has been proved the question of limitation does not arise.

40. The only case left for consideration is that of Rao Bahadur Govind Prasad. He was not responsible for the fraudulent floatation of the company. He became a director in January 1931. He agreed to take shares and not to pay for them. He was a party to the insertion in the Directors' minute book of the forged minutes of the alleged Directors' meeting of the 29th December 1930. He presided at the Directors' meeting when the auditors' objections were dealt with. He signed the false statutory report and accounts. He sanctioned the issue of cash bonds. He knew the fraudulent nature of the company and was a party to every act of the managing agents from January 1930. Generally he did whatever Vidyarthi Tandon and Co. wished him to do and was a puppet in their hands. He is liable for the losses of the bank after he took office. Taking into consideration the undoubted fact that he was wax in the hands of much greater scoundrels, and possibly ignorant of much of their fraud, we think he ought to pay as compensation the sum of Rs. 20,000. To this extent he will be liable jointly and severally with the other defendants found guilty of misfeasance. In conclusion we wish to express our admiration of the work of the Official Liquidator, his assistant and their office staff. The skill and energy displayed by Mr. Bhagwati Shankar and Mr. Jawahar Lal in examining and analysing the books of the company, which did not disclose the true position, is beyond praise. Through their efforts the officers of this fraudulent company have been brought to book, and their victims we hope will recover the losses they have sustained.

41. We accordingly hold that A.B. Tandon, B.S. Vidyarthi, Gopi Nath Singh have been guilty of misappropriation, misfeasance, breach of trust and that Kunwar Sardar Singh has been guilty along with them of misfeasance, and breach of trust. By reason thereof the Company has suffered the loss of its entire paid up capital and such moneys as were received by the Company from its customers in the ordinary course of banking business and were due from the Company at the date of its liquidation. In assessing the amount of compensation we have taken into consideration the sums which the Official Liquidator has realised from the assets of the Company which came into his hand. We have as against Kunwar Sardar Singh not taken into consideration all sums which have actually been lost by the Company in working the branches under Local Directors, whose cases are still pending. On careful consideration we direct that Kunwar Sardar Singh, with Gopi Nath Singh, A.B. Tandon and B.S. Vidyarthi, jointly and severally within one month from the date of this order do pay to the Official Liquidator of the Company the sum of Rupees 1,61,434-4-4 with interest thereon, at 6 per cent, per annum from today till realisation. We further direct that in addition to aforesaid sum of Rupees 1,61,434.4-4 the said B.S. Vidyarthi, A.B. Tandon and

Gopi Nath Singh jointly and severally do pay to the Official Liquidator a further sum of Rs. 22,618-7-9, with interest thereon at 6 per cent, as aforesaid, being the balance of such losses sustained by the Company in working the branches which were immediately under the charge of Local Boards of Directors. Misfeasance proceedings against these Local Directors and Officers have been instituted and are pending. If in such proceedings any sums are allowed and recovered by the Official Liquidator from the Local Directors or any of them then the official Liquidator should give credit for such sums to B.S. Vidyarthi, A.B. Tandon and Gopi Nath Singh, and the sum of Rupees 22,618-7-9 decreed by us under this head will be reduced in proportion. This decree against B.S. Vidyarthi, A.B. Tandon and Gopi Nath Singh will in no way affect any existing liability of the Local Directors in any way.

42. The auditors were also joined in this petition. They filed a written statement. At the commencement of the hearing on behalf of the auditors an offer was made without acceptance of any liability to contribute a sum of Rs. 10,000 to the assets of the Company. Under the circumstances we think it was a reasonable offer and we granted sanction to the Official Liquidator to accept the same. This money has been paid. Nawab Mohammad Jamshed Ali Khan was a nominated Director. He was accordingly not liable to take any shares. He was not a signatory to the Memorandum of Association, Articles of Association or the Statutory Report, nor did he take part in any Board Meeting. He also contested the Official Liquidator's application both on merits and law. He also without admitting any liability offered to contribute Rs. 2,000 to the assets of the Company. This was in our opinion under the circumstances a proper offer and we granted sanction to the Official Liquidator to accept it. This sum has also been paid.

43. Ahmad Bhai Poonja was another defendant. He did not take any part in initiating the Company. He did not sign the Memorandum of Association or Articles of Association. He applied for shares and actually paid for them. He says, and there may be truth in his assertion, that he was not aware that none of the Directors had paid application and allotment moneys due from them. In September 1930 he discovered the real state of affairs, and he remained on the Board. He has also filed a written statement. He also without any liability for a settlement offered to pay Rs. 20,000 by instalments. Though his conduct was certainly very blameworthy taking everything into consideration we thought it was prudent for the Official Liquidator to accept this offer and we granted him sanction to do so.

44. We further direct that the Official Liquidator will give credit to Kunwar Sardar Singh and others who have been held liable to pay the sum of Rs. 1,61,434-4-4 for the sums of Rs. 12,000, already paid by the auditors and Nawab Mohammad Jamshed Ali Khan. The Official Liquidator will further give credit to Kunwar Sardar Singh and others of such sums as may be realised from time to time from Ahmad Bhai Poonja under the compromise sanctioned by us. We make it quite dear that

it has not been contended before us by any party and in our opinion rightly so that the liability of Kunwar Sardar Singh and other Directors against whom these misfeasance petitions have proceeded to trial is in any way affected by the compromise sanctioned by us under the powers vested in us.

45. We further hold that B.S. Vidyarthi, A.B. Tandon, Gopi Nath Singh and Kunwar Sardar Singh are jointly and severally liable to pay the entire liquidation expenses, including the costs of these proceedings, and we order accordingly. Rs. 12,387-10-1 were incurred as such expenses upto the date of this application. The expenses certified by the Court upto this day will also be added to the above figure and the Official Liquidator will submit an account for inclusion in the decree, the office and other expenses incurred by him up to date. As regards future expenses the Official Liquidator may apply for amendment of decree or a separate order from time to time as and when the expenses are incurred.