

(1963) 05 MAD CK 0014
In the Madras High Court

V. Ganesan

APPELLANT

Vs

Brahmayya and Co., Official Liquidators and Another

RESPONDENT

Date of Decision : 01-05-1963

Acts Referred:

Companies Act, 1913 — Section 235

Citation : (1964) 1 MLJ 405

Hon'ble Judges : K.S. Venkataraman, J

Bench : Division Bench

Judgement

K.S. Venkataraman, J.—These appeals and the cross-objections arise out of an application (Application No. 2826 of 1950) filed u/s 235 of the Companies Act, 1913, by the Official Liquidators of the Hanuman Bank, Ltd., Tanjore. No-less than 30 persons were impleaded as respondents to the petition, and the Official Liquidators sought to make them liable for various sums on account of misfeasance. Respondents 1 to 10 in the petition were the Directors. Respondents 11 to 29 were, according to them, officers of the Bank. The 30th Respondent was the Auditor. In all the appeals, unless otherwise stated, the parties will be referred to with reference-to their position as respondents in the application before the Company Judge.

2. The Bank was started on 29th November, 1933 and it grew from small beginnings. to almost gigantic proportions. There were reckless advances without proper security, which eventually led to a crash of the Bank, in July, 1947. It was ordered to be wound up on 5th November, 1947.

3. The application for misfeasance was put in 1950. The acts of misfeasance were grouped under three broad heads. The first was the misappropriation and the consequent falsification of accounts by the Managing Director K.V. Krishnamurthi Iyer, (2nd respondent) and the other officers of the Bank. The second was reckless advances without security which resulted in a huge loss to the Bank. The third was payment of dividend out of capital. The learned Judge (Subrahmanyam. J.), who enquired into the application, had held that the

charges were substantially established and he made most of the respondents liable for the various sums indicated. in his judgment. O.S.A. No. 62 of 1960 has been filed by the 11th respondent V. Ganesan, questioning the liability fastened on him. O.S.A. No. 17 of 1961 has. similarly been filed by S. Vanchesan and R. Appaswamy Iyer, the 12th and 13th respondents. O.S.A. No. 35 of 1961 is a similar appeal by V. Swaminathan, the 29th respondent.

4. The Official Liquidators have filed O.S.A. No. 8 of 1961 against respondents 5, 7, 8 and 9. It may be mentioned at this stage that the learned Judge exonerated the 9th respondent from liability completely and made respondents 7 and 8 liable only partially and not to the full extent desired by the Official Liquidators in their application. The learned Judge took the dividing line as 7th March, 1947. On that day, the detailed report of the Auditor for the year 1946 was considered by the directors, and since that report revealed gross irregularities, the learned Judge felt that, at least thereafter, the directors should be made directly responsible for the irregular-advances made after that date and also for the declarations of dividend, when really there were no profits at all to justify a declaration of dividend. But, he thought that, prior to 7th March, 1947, the materials were not sufficient to put the directors on notice of the irregularities and the irregular advances and, therefore, on the principles settled in the decided cases, those directors could not be made liable for the irregularities before 7th March, 1947. It was on that view he exonerated the 9th respondent, A.N. Srinivasa Iyer, who had resigned on 28th December, 1946. Respondents 5, 7 and 8, however, continued as directors, and, as regards them, the learned Judge fastened a joint and several liability of Rs. 32,000 under two heads : Firstly, a sum of Rs. 22,000 for dividends paid out of capital, and, secondly a sum of Rs. 10,000 being a sixth of the sum of Rs. 60,000 which was roughly the total of the irrecoverable advances made after 7th March, 1947. In respect of the remaining, five-sixths, the learned Judge granted relief u/s 281 of the Act., By O.S.A. No. 8 of 1961 the Official Liquidators seek to make respondents 5, 7,8 and 9 liable even for the period prior to 7th March, 1947, and to fasten a greater liability than that determined by the learned Judge on respondents 5, 7 and 8 for the period after 7th March, 1947. As a matter of detail, it may be mentioned that the 7th respondent: S. Swaminatha Sastrigal, died after this was filed. But it will be seen later that it does not materially affect matters. The cross-objections in O.S.A. No. 8 of 1961. have been filed by the 8th respondent, K.V. Ganapathisubramania Iyer.

5. It will be convenient to take up O.S.A. Nos. 62 of 1960 and 17 and 35 of 1961, particularly since we can get a picture of the way in which the embezzlements took place and advances were made recklessly. We may state at once that the learned Judge has, if we may say so with respect, written a very lucid judgment, clearly and elaborately setting out the details, and further, since these matters are really not challenged before us, the arguments before us being mere questions of law, it will be sufficient if we refer to the instances concerning the parties before us. Thus, the first item, in respect of which liability has been fastened by the learned Judge on respondents 11, 12 and 13, is item 5 of the B-I

schedule. This is discussed at pages 17 to 19 of the judgment. (There are two sets of pages in it, one in the Judgment itself, paged 1 to 195, and another in the bigger pleadings volume given to us, in which the judgment is a part. According to the second pagination, the pages will be 89 to 283. But we will give reference only to the pagination of the judgment itself, that is, from pages 1 to 195.) One K. P. Abdul Khader of Pattukottai had sold paddy to the Grain Purchasing Officer, Tanjore, and had received an order form from the Grain Purchasing Officer for payment of Rs. 13,796. The order was delivered by Abdul Khader at the Pattukottai branch of the Bank. The Pattukottai branch paid the money to Abdul Khader and sent the bill for collection to the Head Office at Tanjore. The sum of Rs. 13,796 was realised from the Grain Purchasing Officer on 6th September, 1944. In the books of the Head Office, money should have been credited to the Pattukottai branch. But the voucher for the realisation of the money credited the money to the suspense account of Abdul Khader. In the registers of the Bank, it was registered in the suspense outstanding register. Thereafter, open acts of fraud took place. On 30th December, 1944, a sum of Rs. 10,000 out of the sum of Rs. 13,796 was transferred to the Managing Director's current account in CD. No. 7. On 31st December, 1944, a sum of Rs. 3,000 was transferred to the Managing Director's Savings Bank Account. When these entries were made, the figures " 1 " and " 3 " at the beginning of the figure " 13796 " were deleted in the suspense outstanding register, with a note in the margin that Rs. 13,000 was transferred to the CD., that is, current deposit account. After the transfer of Rs. 13,000 to the Managing Director's Current account and savings bank account, Rs. 796 remained to the credit of the suspense account. That sum was, on 31st December, 1944, transferred to the savings bank account of Nagarajan, the 16th respondent, son of the managing director. Thus, the entire sum of Rs. 13,796 which belonged to the Bank, got transferred to the coffers of the managing director and his son. Proceeding further, the learned Judge says:

The managing director says that he knew nothing about these transfers to his and his son's account and that the transfers appear to have been made maliciously. There was nobody at the Head Office interested either in making a present of the bank's funds to the managing director without his knowledge or in bringing him into trouble. Nagarajan says that he knew about the transfer in his favour. The 11th respondent was the Secretary of the Bank at that time. He was acting as the agent of the Headquarters branch. The entries in the accounts could not have been made without his knowledge and authority. He in fact, initialled the voucher of transfer of Rs. 796 to Nagarajan's account. The 12th respondent was the Assistant Secretary of the Bank. The voucher for the credit of the money received from the Grain Purchasing Officer was signed by him. He wrote the subsequent vouchers for transfer from the suspense account. The entries of transfer in the second respondent's account were written by the 13th respondent, Accountant in the bank. He is the 13th respondent's father-in-law. He it is that struck off the figures " 1 " and " 3 " in the figure "13796 " after the transfer of Rs. 13,000 to the current account and the savings bank account of

the managing director. The managing director has to be directed to restore the entire sum to the Bank. Respondents 11, 12 and 13 should also be made liable jointly to restore to the Bank at least a part of the money, because it is by means of their actions that the fraudulent conversion was effected.

6. In our opinion, the finding of the learned Judge about the participation of respondents 11, 12 and 13 in this embezzlement of Rs. 13,796 is justified. We shall presently consider the arguments of the learned Counsel for respondents 11, 12 and 13 that, on the facts proved, respondents 11, 12 and 13 cannot in law be held liable. To complete the picture, we may, however, state that in respect of this item, the liability fastened on respondents 11, 12 and 13 was the sum of Rs. 3,450 roughly representing a fourth of the amount embezzled ; vide pages 178 and 179 of the judgment.

7. The next item relevant for us is item 6 of the B-1 schedule, and in respect of that, the 11th respondent has been made liable for a sum of Rs. 6,250. The discussion finds place at pages 19 to 23 of the Judgment. The conclusion of the learned Judge is that a sum of Rs. 25,000 was misappropriated from the funds of the Bank by the Managing Director, the 2nd respondent, and some false entries were made in the accounts to cover up the misappropriation. In respect of a part, namely, Rs. 5,000 the names of two parties, E. K. Subrahmanya Iyer, and Anant, were utilised. They were brothers and they were trading under the names of " Premier Traders" and " Anantakumar Stores". Thus, a Demand Draft drawn by Premier Traders on the Madurai-Ramnad Co-operative Stores in favour of the Hanuman Bank was discounted at the Head Office of the Bank on 23rd September, 1942 as B.C. 1765, and a sum of Rs. 332-7-0 was shown as having been paid to Premier Traders. The learned Judge observes:

If the bill and the transactions were genuine, the draft should have been sent immediately to the Madurai Ramnad Co-operative Stores for realisation, and if the money was not received in a week or two, action should have been taken for realising the money from Premier Traders. It is clear from the way this bill and subsequent bills were dealt with that there was no genuine discounting of a bill and that the entries showing that a bill was discounted were a camouflage for the misapplication of funds. On 31st December, 1944, the bill was yet pending realisation.

8. It is unnecessary to refer to the other 5 items in which the names of E. K. Subrahmanya Iyer and Anant were utilised, to cover up the embezzlement of Rs. 5,000. Regarding the balance of Rs. 20,000 this was how the embezzlement took place. On 15th November, 1944, the 2nd respondent (Managing Director) received Rs. 50,000 from the Madras Branch of the Bank, remitted Rs. 40,000 into the Indian Bank to the credit of the Hanuman Bank and retained Rs. 10,000 himself. That was debited to his personal account at the Head Office of the Hanuman Bank. Similarly, he withdrew sums of Rs. 8,000 and Rs. 2,000. These sums amounting to Rs. 25,000 (Rs. 5,000 plus Rs. 10,000 plus Rs. 8,000 plus Rs. 2,000) are entered in the accounts of the Bank as having been realised on

31st December, 1944. But there are clear indications that no money was actually received by the Bank. Actually, what was made to appear in the books of the Bank was that a Letter of Credit issued by the Chartered Bank and the National Bank was discounted as B.C. 1746 on 31st December, 1944, and Rs. 25,000 is stated to have been paid out. There is no such Bank as "Chartered Bank and National Bank". The accounts do not state to whom the money was paid. The Letter of Credit is not a document which could be presented by the Hanuman Bank to anybody for payment. On these facts, the learned Judge finds that respondents 2 and 11 are liable to restore the money to the Bank. The liability of respondent 11 is evidently fastened on the ground that he was the Secretary and the Agent of the branch at the Head Office at the time and that these transactions could not have taken place without his knowledge. Actually, in respect of the sum of Rs. 25,000 the learned Judge fastened the liability only of a fourth thereof, namely, Rs. 6,250 on the 11th respondent, vide page 179 of the judgment.

9. The next item concerning the parties before us is item 13 of B-I schedule, which is discussed at pages 28 and 29 of the judgment. The Managing Director purchased some estates in Coorg in his personal capacity and on behalf of a concern floated by him called "Coorg Coffee Plantations", and in order to make the payment, he utilised the funds of the Bank. Actually, he authorised the vendors to draw moneys from the Madras branch of the Bank and he pretended to discharge the money due to the Bank on account of such drawal of money by the vendors by sending two drafts on 27th December, 1945, from the Head Office at Tanjore to the Madras Branch. One draft was for Rs. 17,750 and the other was for Rs. 12,700. Entries were made at the branch at the Head Office as though the Managing Director had paid the sum of Rs. 30,450 into the branch at the Head Office for the issue of those drafts. But there is clear evidence, which has been accepted by the learned Judge, that, in fact, no money was paid by the 2nd respondent. S. Vanchesan, the 12th respondent, who was the Assistant Secretary of the branch at the Head Office, in fact, made a note in the office copy of the letter sent to the Madras Branch that the sums shown as having been paid by the Managing Director had not, in fact, been paid. It is for this reason, namely, that the 12th respondent facilitated the embezzlement, that the learned Judge made him also liable for a part of the sum of Rs. 30,450. He actually fixed his liability at Rs. 5,000, vide page 179 of the judgment. At this stage we may refer to the fact that just like this sum of Rs. 30,450 other amounts had been embezzled by the Managing Director, and in order to cover up the total of such embezzlements to the tune of Rs. 58,317 a clumsy attempt was made in the accounts of the branch at the Head Office as though 10 loans were granted on 27th December, 1945, and evidently it was realised that the fraud could be easily detected and therefore the pages relevant to those loans were pasted up and false entries were made as though an amount of Rs. 55,000 was transferred from the branch at the Head Office to the branch at Manambuchavadi within four furlongs and the sum of Rs. 55,000 was shown to have been disbursed as loans

in the Manambuchavadi branch. Of course, those disbursements were false, and only the names of the employees and relatives of the Managing Director were utilised as having taken loans in order to cover up the embezzlements of the Managing Director and possibly of the other officers. Later, false credit entries were made as though these loans were repaid and the process was repeated year after year. These acts of fraud are discussed in the earlier portions of the judgment of the learned Judge (pages 4 to 9).

10. The next items with which we are concerned are items 9, 10 and 14 of B-I schedule. These are discussed at pages 26 to 28 of the judgment. What happened was this : In December, 1945, entries were made in the books of the Head Office as if three persons discounted orders for payment issued in their favour by the Grain Purchasing Officer, Tanjore. Actually, the Grain Purchasing Officer, Tanjore, had not issued any orders for payment, and these bills were admittedly not sent to the Grain Purchasing Officer for realisation and this device was adopted merely to cover up the misappropriation by the Managing Director with the assistance of respondents 11 and 12, the 11th respondent being the Secretary and the Agent of the Branch at the Headquarters and the 12th respondent being the Assistant Secretary. The total loss to the Bank was Rs. 39,442-9-6 in the first instance. In respect of this, the learned Judge has directed respondents 11 and 12 to pay jointly and severally the sum of Rs. 5,000, vide page 179.

11. The next items which concern us are items 15 and 16 of the B-I schedule, which are discussed at pages 29 to 32 of the judgment of the learned Judge. On 7th January, 1946, entries were made in the books of the Head Office that two hundies, one drawn by Veerappa Pillai and another drawn by Narayanaswami Pillai, constituents of the Bank, each for Rs. 25,000 were discounted and a sum of Rs. 25,000 was paid to Veerappa Pillai and another sum of Rs. 25,000 was paid to Narayanaswami Pillai. The learned Judge has, after a discussion of the materials, come to the conclusion that no money was, in fact, paid either to Veerappa Pillai or Narayanaswami Pillai, but that they were persons whose relationship with the Managing Director was one of utmost confidence and, therefore, such hundies were utilised by the Managing Director, merely to cover up the misappropriation by himself and that in this task he was assisted by respondents 11, 12 and 16. Thus, no amount was charged for commission for discounting the hundies. The hundies were not sent to anybody for collection. In the vouchers for payment, there is no signature of any person as having received the money. Again, these sums are shown to have been repaid into the Bank on 30th December, 1946. But, since the repayment was fictitious, that excess cash according to the accounts had to be accounted for. This was done by making it appear that there was a transfer of cash to that extent from the Head Office to the branch at Madurai and there was a further fictitious disbursement at Madurai. It was made to appear that a sum of Rs. 65,000 was transferred in cash from the Head Office to Madurai. The cash transfer voucher was signed by respondents 11 and 12 as representing the Head Office and by the 16th respondent as

representing the Madurai branch (the 16th respondent was the son of the Managing Director). The money actually transferred was only Rs. 15,000. To reconcile the actual cash position at Madurai, the device adopted was discounting of two cheques signed by Veerappa Pillai for a sum of Rs. 50,000. Veerappa Pillai had left signed cheques with the Managing Director for being filled up according to Veerappa's instructions. But in violation of those instructions, those cheques were filled up to cover up this misappropriation of Rs. 50,000. Those cheques were sent from the Head Office to the Madurai branch. The part played by respondents 11 and 12 in this transaction was this. The cash transfer voucher for Rs. 65,000 mentioning the denominations of the notes which were alleged to have been sent from the Head Office to Madurai was signed by respondents 11 and 12. The signed cheques of Veerappa Pillai were filled in by the 12th respondent. In respect of this, the learned Judge, besides making the 2nd respondent liable, has directed respondents 11, 12 and 16 to pay a fourth, namely, Rs. 12,500 the liability being joint and several, vide pages 179 and 180 of the judgment.

12. The next item, for which respondents 11, 12 and 18 have been charged, relates to misappropriation of a sum of Rs. 3,54,649-2-7. This is the subject-matter of paragraph 15 (iii) of the petition and discussion in pages 34 to 38 of the judgment. Three different kinds of methods were adopted to effect this misappropriation. Firstly, in carrying over from one year to another the indebtedness of certain constituents, a larger figure was adopted and the difference was misappropriated and false credits were made during the year to wipe out the alleged increased indebtedness. There are four examples of this kind of process. The first relates to N.V.S. Venkatarama Iyer, brother of the 2nd respondent. His current account at the branch office at Tanjore showed a debit balance of Rs. 5,587-2-1 in 1944. In carrying it over into the ledger for 1945, the figure adopted was Rs. 35,587-2-1. Rs. 30,000 was thus actually removed from the Bank's coffers. Fictitious credit entries were made during the year 1945 so as to wipe out the indebtedness altogether. The credit slips were prepared by the 12th respondent and initialled by the 11th respondent. The learned Judge says:

The 11th respondent says that he signed the Credit slips in the belief that the 2nd respondent received the money from his brother. The 11th and 12th respondents are bound to have known that Venkatarama Iyer was not indebted in the sum of Rs. 35,000 and could not have paid any money.

13. The second instance relates to one T.V.K. Swami. His indebtedness in 1945 was Rs. 541-1-3. It was carried over for 1946, as Rs. 35,541-1-3. Fictitious credit entries were made during the year 1946, and the entire indebtedness was wiped out. The credit slips were prepared by the 12th respondent and signed by the 11th respondent.

14. The third instance relates to K. V. Rajagopalan, another brother of the 2nd respondent. His indebtedness which was Rs. 3,847-6-6 in 1945 swelled into Rs. 33,847-6-6 when it was carried forward in 1946. Rs. 30,000 was thus abstracted

from the Bank's chest. Fictitious credit entries were made during the year 1946. The credit slips were prepared by the 12th respondent (Assistant Secretary) and signed by the 11th respondent (Secretary and Agent).

15. The fourth instance relates to one S. Subramania Iyer, whose indebtedness in 1945 was Rs. 58-11-11 and became Rs. 30,058-11-11 in 1946. Fictitious credit entries were made during the year 1946 which wiped out the entire debt during the year.

16. The second method was to revive accounts, which had really been closed, in order to make it appear that money was still due to the Bank from the concerned constituents on those accounts. Thus, in December, 1944, an entry was made as if one A. V. Ramalingam Pillai owed the Bank Rs. 38,238-14-4 though the account had long before been closed. This sum of Rs. 38,238-14-4 was misappropriated. To cover up the false debit, fictitious credit entries were made in December, 1946, and the account was closed. The next instance relates to account No. 162 which stood in the name of one Abdul Majid and was closed in 1942, but was revived in 1944 in the name of Appaswami Pillai with a debit balance of Rs. 25,410-4-3. Fictitious credit entries were made in December, 1946 and the account was closed.

17. The third type was this. Fictitious loan accounts were opened in the names of Karuppiiah Pillai, Balasubramania Pillai and Narayana Pillai of the amounts of Rs. 50,000, Rs. 60,000 and Rs. 60,000 respectively and fictitious credit entries were made in December, 1946. The sum thus misappropriated under those heads was Rs. 1,70,000.

18. The sum thus misappropriated by these three methods of misappropriation is Rs. 3,54,649-2-7, in respect of which the learned Judge felt that respondents 2, 11, 12 and 13 were liable to restore that amount. Besides the specific part played by respondents 11 and 12, the learned Judge points out that these debit and credit entries could not have been made without the knowledge and assistance of the 13th respondent, who was the Accountant at the Headquarters. He felt that respondents 2, 11, 12 and 13 were liable to restore a substantial portion of the amount. Actually, he fixed the liability of the 2nd respondent at Rs. 1,00,000 (see page 178 of the judgment) and the liability of respondents 11, 12 and 13 at Rs. 10,000 each separately (see page 180 of the judgment).

19. We now pass on to the liability fastened on respondents 11 and 29 by reason of advances made to parties without sufficient security which have become irrecoverable. They are listed out in the C-I schedule to the petition. They have been discussed by the learned Judge from pages 51 to 121 of his judgment.

(After setting out the details, His Lordship proceeded.)

20. We shall now consider the arguments advanced by the learned Counsel appearing on the appeals filed by respondents 11, 12 and 13 (O.S.A. Nos. 62 of 1960 and 17 of 1961). The learned Counsel were naturally not in a position to

dispute the findings of fact of the learned trial Judge, based as they are on unimpeachable documentary and circumstantial evidence. But they contend that, in law, these parties are not responsible, even on the basis of the facts found. The argument is put on two broad grounds. Firstly, that none of these parties, respondents 11, 12 and 13 can be called an "officer" of the Bank for the purpose of Section 235 of the Indian Companies Act, 1913. The second argument is that at any rate in some of the transactions loss has already occurred to the Bank by misappropriation on the part of the Managing Director and that even though respondents 11,12 and 13 might be responsible for the subsequent falsification of the accounts to cover up the misappropriations, no loss was caused to the Bank as a result of the subsequent falsification, and respondents 11, 12 and 13 cannot be retrospectively made liable for the antecedent loss. The argument, of course, proceeds on the footing that the liability u/s 235 can be fastened only if loss is proved to have occurred to the Bank. In our opinion, these contentions are entirely untenable and we shall now proceed to state our reasons.

21. Section 235 of the Act reads thus:

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 made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, 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 the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

22. The definition of " Officer " is contained in the definition section, Section 2(11). thus:

In this Act, unless there is anything repugnant in the subject or context, " officer " includes any director, managing agent, manager or secretary but, save in Sections 225, 236 and 237 does not include an auditor.

23. In *Dilworth v. The Commissioner of Stamps* L.R. (1899) A.C. 99, Their Lordships of the Privy Council observed:

The word " include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute ; and when it is used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they

shall include. But the word " include " is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose-of adding to the natural significance of the words or expressions defined. It may be equivalent to " mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to those words or expressions.

24. See also Halsbury's Laws of England, Volume 36, Simonds Edition, paragraph 574. The contention of the learned Counsel for respondents 11, 12 and 13 is that the definition of " Officer " in Section 2(11) of the Act comes under the latter category of the above passage ; in other words that it is an exhaustive definition and that on that view, respondents 11,12 and 13, or at any rate respondents 12 and 13, could not be " officers". They have also referred us to several Law Lexicons, where different meanings of the word " Officer" have been given and also to some decisions. But, these decisions and Law Lexicons make it clear that in the last resort the question whether the particular person will be an " Officer " for the purpose of the particular statutory provision under consideration by Court must be answered with reference to the provisions of the particular statute and the object which the particular provision is designed to achieve. Thus, in " Words and Phrases " Permanent Edition. published by West Publishing Co., in Volume 29, at page 289, it is observed:

The words " Office " or " Officer " are terms of vague and variable import, the meaning of which necessarily varies with the connection in which they are used, and, to determine it correctly in a particular instance, regard must be had to the intention of the statute and the subject-matter in reference to which the terms are used.

25. Similarly, in Volume LXVII of Corpus Juris Secundum, at page 97, under the head " Officer " it is observed:

Although many definitions of " Officer" have been attempted, the meaning thereof varies with the connection in which the term is used, and the Courts have questioned the possibility of framing: a definition which will be general in its application and meet the requirements of all cases which may be presented.

26. Now, if we approach the question with reference to the purpose of Section 235, there can be no doubt that each of the respondents 11, 12 and 13 will be an " Officer "" of the company for the purpose of the section. The purpose of the section is to provide a summary remedy for the recovery of money which has been misappropriated or misapplied by any of the persons mentioned in Section 235 or to recover just compensation from them for misfeasance or breach of trust in relation to the company. If we bear in mind this purpose of the section and the particular positions occupied by respondents 11,12 and 13 and their duties in respect of the transactions in question, there can be no doubt whatever that each of them will be an " officer " of the company coming within the

mischievous of the section. Thus, the 11th respondent was the Secretary of the Head Office and besides was the agent of the branch at the Head Office. The 12th respondent was the Assistant Secretary of the branch at the Head Office. The 13th respondent was the Accountant. Each of them had defined duties to perform in relation to the Bank and in respect of those duties, they were bound to act honestly in the interests of the Bank; but it will be evident that their actions were just the reverse. Taking for example item 5 of the B-I schedule, it will be seen that it was their actions that facilitated misappropriation of the sum of Rs. 13,796 by the 2nd respondent and his son. The 11th respondent being the Agent of the branch at the Headquarters, must necessarily have known all the fraudulent entries, and, in fact, he initialled the voucher of transfer of Rs. 796 to the account of Nagarajan. Similarly, the 12th respondent wrote the subsequent entries for transfer of the amount from the suspense account to the account of the Managing Director and his son. The 13th respondent made the necessary entries and corrections. In doing these particular acts, they contravened their duties to the Bank. It is unnecessary to refer in detail to all the other instances which, speak for themselves. Having regard to the particular positions which respondents 11,12 and 13 occupied, their particular acts, and the purpose of Section 235, there can be no doubt that each of them will be an "Officer" for the purpose of the section.

27. Before leaving this part of the argument it is sufficient to say that even as a mere matter of grammar the definition of "officer" contained in Section 2(11) cannot be taken as exhaustive or inclusive. Thus, if it was meant to be an all inclusive definition, it would have been unnecessary to repeat in Section 235 the words "director" and "manager" besides the word "any Officer" and it would have been sufficient simply to say "any officer of the company" without expressly mentioning the words "director" and "manager" because it could be urged that the definition of "Officer" itself would include the word "director" and "manager". We have no doubt that the definition is not exhaustive.

28. The decisions cited by the learned Counsel namely Sri Ram Autar Agarwal Vs. District Co-operative Sugarcane Supply Society Ltd., Bareilly, . Ramchandiram Mirchandani Vs. India United Mills Ltd. and Others, and B. Veeraswamy and Others Vs. State of Andhra Pradesh and Others, are not of much assistance for the particular question before us. It is noteworthy that in Suryanarayana v. Vijaya Commercial Bank ILR (1958) A.P. 651 : (1958) 2 An. W.R. 331 : AIR 1958 A.P. 756 the learned Judges took the view that the definition in Section 2(11) is an inclusive definition and does not exhaust all persons that come within the ambit of it. They further observed that

to hold that an Assistant Secretary or an Agent of a Bank is not an Officer is to deprive the expression of its full content. The word "Officer" is of wide connotation and includes Assistant Secretaries or Agents of all the branches.

29. Similarly, in Halsbury's Laws of England, Volume 6, paragraph 638, it is stated thus:

Any persons who are regularly employed as part of their business or occupation in conducting the affairs of the company may be " Officers " of the company.

30. We may also permit ourselves the observation that if the learned Counsel for respondents 11, 12 and 13 are correct in their contention, it would follow that a Cashier who misappropriates the money of the Bank would not be an " Officer" amenable to the summary process of Section 235, whereas a director who has failed to exercise the necessary check to prevent such misappropriation might be caught within the mischief of the section.

31. We now turn to the other branch of the contention that loss was not caused to the Bank as a result of the acts of respondents 11,12 and 13 and that consequently they would not be guilty of misfeasance. Now, in view of the speeches of the noble Lords in *Bentinck v. Thomas Fenn* L.R. 12 A.C. 652 it may be taken that misfeasance contemplated in Section 235 is one which must result in loss (see for instance pages 662 and 669). But that test has been satisfied in this case.

32. Thus, so far as item 5 of the B-I schedule is concerned, respondents 11, 12 and 13 were actual parties to the means by which the loss of Rs. 13,796 directly occurred.

33. So far as item 6 of B-I schedule is concerned, a sum of Rs. 5,000 was misappropriated by utilising the names of E.K. Subrahmanya Iyer and Anant and therefore loss directly occurred. Because the 11th respondent was the Agent at the time, the transactions must have taken place with his knowledge and connivance. As for the balance of Rs. 20,000 the misfeasance of the 11th respondent consisted in making it appear that the sum of Rs. 20,000 was repaid by the Managing Director on 31st December, 1944. But for that, the money might have been realised from the Managing Director, whose solvency at that time to the extent of Rs. 20,000 has not been challenged before us. This false entry of repayment on 31st December, 1944 in turn facilitated further acts of misappropriation by the Managing Director, so that, eventually in July, 1947, it became impossible to realise this sum of Rs. 20,000 with interest or the subsequent amounts. But for the 11th respondent facilitating the false entry of 31st December, 1944, the second respondent would have paid the money back and the money would have been available for lending out to other solvent persons and would also have earned interest. From these points of view, therefore, it will follow that the act of the 11th respondent by making it appear that there was a repayment on 31st December, 1944, caused loss to the Bank.

34. On this aspect of the matter Sri Swaminathan, the learned Counsel for the Official Liquidators, has, by way of analogy to some extent, referred to the decision in *In re London and General Bank* (1895) 2 Ch. D. 166. The question which arose there was whether an Auditor was an " Officer " of the company within the meaning of Section 10 of 53 and 54 Vict. C. 63 corresponding to Section 235 of our Companies Act, 1913. The question was answered in the

affirmative, and in that connection it was observed that if an Auditor signs a balance sheet which proceeds on the false basis that profits are available for the declaration of dividend, the action of the Auditor would amount to misfeasance, because it would result in misapplication of the funds of the company for the payment of dividend when it should not really have been paid. The point made by Sri Swaminathan is that even though the action of the Auditor in signing the report was only going to result in loss later, his action was held to amount to misfeasance, and that, similarly, in this case, the action of the 11th respondent in making a false entry of a realisation from the managing director of Rs. 25,000 on 30th December, 1944, has resulted in loss to the bank at least later and would therefore be misfeasance. We think this analogy is applicable to some extent. But in our opinion, the loss to the bank as a result of the action of the 11th respondent, can be rested on more direct grounds as we have pointed out already.

35. Sri Swaminathan also quoted the decision of Maugham, J. in *In re Etic, Limited* L.R. (1928) 1 Ch. D. 861. Maugham, J., quotes from the decision of James, L.J., in a previous case, *Coventry and Dixon's* case 14 Ch. D. 660.

I am of opinion also that the word " misfeasance" in that section means misfeasance in the nature of a breach of trust, that is to say, it refers to something which the officer of such company has done wrongly by misapplying or retaining in his own hands moneys of the company, or by which the company's property has been wasted or the company's credit improperly pledged.

36. Now the portion of the above passage applicable to us can be thus abstracted : "Misfeasance " means misfeasance in the nature of a breach of trust, that is to say, it refers to something by which the company's property has been wasted. In this case also, for the reason we have indicated, a sum of Rs. 25,000 belonging to the company has been wasted, and is in fact, a loss to the company.

37. In the same decision, at page 874 Maugham, J., recognises that when a director has been guilty of fraud, he must be regarded as liable or accountable for money or property of the company. The action of the 11th respondent, in being a party to the false entry of repayment on 31st December, 1944, is nothing but a case of fraud. At this stage, it would not also be inappropriate to refer to the decision of the Court of Appeal in *Re B. John son & Co. Ltd.* (1955) 2 All E.R.775 cited by the Counsel for respondents 11, 12 and 13 for the exposition of the principles relating to misfeasance. For the purpose of this case, it is unnecessary to mention the facts of that case. It is sufficient to quote the following passage, at page 781. Sir R. Evershed M.R. says:

There is no such distinct wrongful act known to the law as misfeasance. The acts which are covered by the section are acts which are wrongful according to the established rules of law or equity, done by the person charged in his capacity as

" promoter, director", etc. But it is clearly established that it is not every kind of wrongful act so done that is comprehended by the section. At one end of the scale it may, I think, be taken as prima facie clear that a wrongful act involving misapplication of property in the hands of the person charged would be covered by these terms. At the other end of the scale, a claim based exclusively on common law negligence, an ordinary claim for damages or negligence simply, would not be covered by the section. Nor is such a claim brought within the section by the mere expedient of adding epithets to the negligence charged calling it " gross " or " deliberate ". Nor, by that expedient, without more, can what in truth is mere negligence be converted into something else namely, breach of trust. In between the two extremes that I have mentioned there is obviously a large range of conduct which may or may not be within the section. I shall follow others in not attempting any precise definition of what does or does not fall within it.

Stopping here, the case of the 11th respondent would fall in between the two extremes envisaged by the learned Master of the Rolls, and in our opinion, it would be an act of misfeasance.

38. The learned Master of the Rolls puts the point in another way at page 782. After quoting from previous decisions, the learned Master of the Rolls observes:

These passages may, I think, be taken as authority, or as included among the authorities, establishing that a simple case of negligence at common law would not be within the section. But in my judgment Lindley, L.J., and Lopes, L.J., did not intend to lay it down by inference that any breach of duty, including a breach of trust, which did not involve a misapplication of assets, was outside the section. What they were saying was the converse that, where a breach of duty had been committed which did in fact result in a misapplication of the company's property, then such transactions would be within the ambit of the section.

39. In other words what the learned Master of the Rolls expressed was that merely because there was no actual misapplication of the assets by the act, (the act of the 11th respondent in being party to the false entry of repayment on 31st December, 1944) it would not necessarily follow that it would not be an act of misfeasance.

40. Sri Swaminathan also referred to the decision of the Supreme Court in *Dalmia v. Delhi Administration* 32 Comp. Cases 699 to the effect that falsification of accounts to cover up a false misappropriation would be fraudulent conduct. But in this case it is necessary to go further as we have done to show that the act of the 11th respondent was not merely fraudulent but also resulted in loss to the company.

* * * * * (After considering Other items of B, schedule his Lordship concluded).

41. Thus, the contentions of respondents 11, 12 and 13 fail and their appeals are accordingly dismissed.

42. Turning to O.S.A. No. 35 of 1961 filed by the 29th respondent, his liability has been clearly established, in respect of the unauthorised advances made by him as Agent of the Kumbakonam branch. For the reasons already stated, we hold that he is an " Officer " of the bank for the purpose of Section 235. His learned Counsel Sri Aravamuda Iyengar urged that these advances were made at the instance of the managing director. Learned Counsel himself conceded that there was no evidence in support of it. Even if it were true that the advances were made under instructions of the managing director, that could not exonerate the 29th respondent completely. It could only be a factor which might be taken into consideration by granting relief u/s 281 of the Act. We are satisfied even on that footing that the liability which has actually been fastened on him is quite just and reasonable and we see no reason to reduce the amount of Rs. 8,000 for which he has been made liable. His appeal is accordingly dismissed.

43. We now turn to O.S.A. No. 8 of 1961, the appeal filed by the Official Liquidators. We shall first deal with the liability which the Official Liquidators seek to fasten on, respondents 5, 7, 8 and 9 in respect of the period prior to 7th March, 1947. Sri S. Swaminathan, learned Counsel for the Official Liquidators, had naturally to concede, in view of the principle laid down by the House of Lords in the leading case of *Dovey v. Cory* L.R. (1901) A.C. 477 and the cases following it, that these directors were entitled to presume in the absence of features arousing their suspicion, that the affairs of the Bank were being properly conducted by the managing director and by the managing committee during such period when it was in existence. Consequently the attempt of the learned Counsel has been to make out that there were positive features within the knowledge of these directors to put them on notice of the irregularities which had been committed and that they were at least sufficient in law to hold that they should have made enquiries. The most important feature relied on by the learned Counsel is that the detailed notes of the Auditor for several years between 1938 and 1945 were available and those notes gave a sufficiently damaging account of the way in which the affairs of the bank were conducted. Copies of these alleged notes find place at pages 75 to 238 of Volume 18 of the papers (reference is to the volume submitted to the trial judge). Now, if it is true that these notes were available to the directors, or there was something to excite their suspicion that such notes were available, it must be held that the directors had sufficient notice of the irregularities which were being committed during the several years between 1938 and 7th March, 1947. But we are thoroughly satisfied that the directors were not aware of these alleged notes and could not have had any suspicion of the existence of such notes. In fact, we wonder whether these notes really came into existence on the dates they purport to bear and whether they were not really prepared by the Auditor much later to save himself. But even if we presume that these notes were prepared by the Auditor on the dates they bear, we are satisfied that they were not brought to the notice of the directors at all and the directors would not have known of their existence, and, at the most it must have been a secret affair between the Auditor and the managing director.

Obviously the managing director would have had every motive to conceal it from the knowledge of the other directors. We shall now indicate our reasons for the conclusion we have reached.

44. In the first place, these notes were not relied on at all in the application of the official liquidators. Only the detailed notes for the year 1946 were relied on in paragraphs 19 and 35 of the petition. Secondly they were not relied on before the learned Judge either. In fact there are indications in his judgment to show that they were not relied on before him. Thus on page 20 of the judgment the learned Judge observed that the pendency of the drafts drawn by Premier Traders for over two years could not have escaped the attention of the auditor at the time of his audit in the beginning of 1943 and 1944 if he was duly discharging his duty pertaining to his office. Thirdly it is admitted that the originals of these notes which are claimed to have been sent, to the bank by the Auditor, are not available and even the official Liquidators rely only on copies furnished to them by the Auditor (see for instance page 107 of volume 14 where the Official Liquidators rely on the copy of the audit notes for 1944 sent by the Auditor, volume 14 contains the report of the Official Liquidators on the affairs of the company with reference to these alleged audit notes). Fourthly, there are intrinsic indications that these Audit notes could not have been brought to the notice of the directors. Leaving aside the details and putting it broadly, the fact, remains that year after year, the Auditor subscribed to a statement in the balance sheet that the balance sheet was in accordance with the books and exhibited a true and correct view of the state of affairs of the company according to the best of his knowledge and information and the explanations given to him and as shown by the books of the bank. He further states that proper accounts were kept by the bank. Such a certificate would be entirely inconsistent with the audit notes and it was on the faith of the Auditor's certificate that the balance sheets, which, in fact seem to have been prepared by the Auditor, were approved by the directors. There was therefore really nothing to put them on notice of these alleged audit notes.

* * * * * [The Judgment then referred to the details rejected the audit notes and continued :]

45. The next circumstance on which Sri Swaminathan relied to fasten liability on the directors prior to 7th March, 1947, is the loss of Rs. 5,000 which was transferred from Mayavaram Branch to the Sirgali branch. There is certainly something very mysterious about this. The letter dated 5th October, 1942, of the managing director to the 8th respondent Ganapathi Subramania Iyer (copy is at page 17 of volume 3 of the papers supplied to us by Sri M.S. Venkatarama Iyer, learned Counsel for Ganapathi Subramania Iyer, states:

The amount was made good by the party concerned. I shall let you know the details in person.

But in the proceedings dated 13th October, 1942, of the Board of Directors,

which find place at pages 193 to 197 of volume 4, the following occurs in Resolution XII,

A report of the incident which took place in the Shiyali bank while conveying cash from the Mayavaram branch was submitted by the Managing Director who has made enquiries in detail about it but found himself unable to state how and why the 50 currency notes of Rs. 100 each were lost and, after careful enquiries and consideration of all the circumstances of the case, arranged for the recoupment of the money lost by the Shiyali Agent. In fact the action taken by him so far is quite sufficient and his further report will be awaited. As for the care which should be taken in the transfer of funds, necessary resolutions have been passed and they will take the necessary safe-guards so far as human endeavours and possibilities go.

If, as stated in the resolution the amount was really lost, it is not clear why the Agent of Shiyali branch should have made it good. Actually as a matter of detail, it was stated to us that only a promissory note was executed by that Agent. But in fairness to the directors it must be stated that after this incident, a resolution was passed on 13th October, 1942, itself (Resolution VII) that thereafter transfer of funds from one place to another could be effected only by the managing director and the manager and it would be confined only to some of the branches indicated there.

46. The next circumstance relied on by Sri Swaminathan is that the Agent of Mannargudi branch committed suicide on 8th January, 1943 and that that should have excited the suspicion of the other directors, as indeed it seems to have excited the suspicion of Sri Sadasiva Mudaliar, one of the directors. There was correspondence "between Sri Sadasiva Mudaliar and the managing director, which finds place at pages 327 to 363 of volume 1 of the typed set of documents supplied to us in appeal. That portion of the correspondence which took place prior to 18th May, 1943 was considered at a meeting of the Board of Directors held on 18th May, 1943 (page 205 of volume 4) and the following resolution was passed:

Read correspondence between the President Director and the Director S. Sadasiva Mudaliar of Shiyali. The Board does not deem it necessary to take any further action on it and will have the same recorded.

In that correspondence, Sri Sadasiva Mudaliar made some suggestion for the improvement of the affairs of the bank. But there again there was nothing to put the other directors on notice of the gross irregularities which had really taken place.

47. Sri Swaminathan urges that the alleged transfer of funds took place in contravention of Resolution VII of 13th October, 1942, and that it was the duty of the other directors to verify whether their resolutions were being followed or Violated. Similarly, the learned Counsel says that on 21st October, 1945, the Board of Directors passed a resolution (page 245 of volume 4) appointing an

Internal Auditor and an Inspector. But the proceedings of the subsequent meetings show that they did not ensure the implementation of the above resolution. We have carefully considered all these submissions. In our view, having regard to the principles laid down in the leading case of *Dovey v. Cory L.R. (1901) A.C. 477* and the other decisions, these are not sufficient so far as respondents 7, 8 and 9 were concerned. Indeed, so far as the 8th respondent was concerned, he had large deposits which finally stood at Rs. 87,000 and that itself shows that he for one believed that the bank was being run on sound lines. He also inspected the branch at Mayuram, though the inspection might not have been quite thorough. Altogether we feel that so far as respondents 7, 8 and 9 are concerned, no case has been made out to fasten liability for the period prior to 7th March, 1947.

48. The matter, however, stands on a different footing so far as the 5th respondent Sri T.S. Varadachariar is concerned. For, it has been clearly established that he was allowed to discount post-dated cheques and was given overdraft facilities contrary to the rules and circulars of the bank. At page 83 of volume 15-A (supplied to the learned Judge is a statement of the relevant transactions. It will be seen therefrom that on 23rd September, 1943, he was allowed to discount a cheque bearing the date 1st October, 1943, and he drew the cash of Rs. 1,000. The transaction was actually closed by payment of cash on 30th October, 1943. Similarly, on 8th January, 1944, he was allowed to discount a cheque for Rs. 3,000. The cheque was drawn on the Imperial Bank and on that day the balance available to his credit was only Rs. 185-4-0. The sum of Rs. 3,000 was repaid by this director not by payment of his own cash, but in the following manner. On 26th February, 1944, he issued a post-dated cheque dated 28th March, 1944, for Rs. 2,000 and that was discounted and was utilised as part payment of the liability of Rs. 3,000. The balance of Rs. 1,000 was adjusted by debiting the overdraft in his current account. The process was continued and it is unnecessary to give further details. It may, however, be pertinent to point out that in the overdraft account, the debit balance of Rs. 516-11-4 at the end of 1944 was converted into a credit balance of Rs. 478-4-8 by allowing him the facility of discounting a post-dated cheque. Now, apart from the fact that under the ordinary rules of banking business, a post-dated cheque should not be discounted, particularly when it is from a director, we find specific rules of the bank in that behalf. Thus Rule 13 of the rules of business relating to current accounts, which were issued on 13th May, 1943, states (see page 14 of volume 18) that the following classes of cheques will not be honoured (a) a cheque drawn against unrealised credit, that is, until the amounts have been realised, (b) post-dated cheque until arrival of the date mentioned therein. Rule 14 contemplates the granting of overdraft facilities only against authorised securities. Reference may also be made to the earlier rules at pages 53 to 77 of volume 4 and the circulars at pages 1 to 7 of volume 17 besides other circulars. As early as 8th November, 1938, a resolution had been passed (vide page 141 of volume 4) that a director shall not take any loan from the bank as a general rule.

In any case it is clear that the indebtedness of the director at the end of the year should be disclosed in the balance-sheet. This is a statutory requirement which finds place in Form "F" prescribed u/s 132 of the Indian Companies Act, 1913. The form states that the debts due by directors or other officers of the company or any of them either severally or jointly with any other persons should be separately stated. Now, in the case of Dr. T.S. Varadachariar the report of the Official Liquidators at page 35 of volume 14 shows that as on 31st December, 1945, he was indebted to the bank to the extent of Rs. 5,702. but the published balance-sheet (see page 110 of the same volume) did not disclose that debt. It discloses only the debt of Rs. 9,908-5-0 due from another director Viswanatha Iyer. The correctness of this statement of the Official Liquidators was not questioned before us. Thus, so far as Dr. T.S. Varadachari is concerned, it is clear that he knew that he was allowed to contravene the rules of the bank by discounting post-dated cheques and was being allowed overdraft facility without express resolution by the Board of Directors, and, further, that the balance-sheet of 31st December, 1945, did not disclose his indebtedness. These were sufficient to put him on enquiry whether the Managing Director or the other officers of the bank would have contravened the rules and regulations of the bank with regard to other constituents. From this point of view, therefore, we think that it is but just and right that he should be asked to pay some compensation in respect of losses which occurred to the bank as a result of the defalcations and irregular advances which took place prior to 7th March, 1947. We shall presently come to the question of the extent of compensation.

49. Before leaving this part of the case, we must refer to the submission of the learned Counsel Sri S. Swaminathan that even the 8th respondent had received loans from the bank during the years 1943 and 1944 in the sums of Rs. 3,606 and Rs. 12,433 respectively (we quote from the statement given to us) and that these were not exhibited in the balance-sheet as on 31st December, 1943 and 31st December, 1944. But these amounts were repaid by the 8th respondent during the years in question and there was nothing outstanding from him as on 31st December, 1943 and 31st December, 1944. In our view, the provisions in Form " F" which we have already quoted, would not require disclosure of debts which were contracted during the year but which were discharged within the year itself, and would require disclosure only of debts still outstanding at the en of the year. This was also the view taken by Govinda Menon, J., in In Re: G. Natesan and Others, . Further, in the case of the 8th respondent, he had his own deposits which were more than ample to cover these particular drawings, and if we have at all made reference to this submission of Sri Swaminathan, it is only for the sake of completeness.

50. Turning now to the period after 7th March, 1947, it may be noted at the outset that respondents 5 and 7 have not preferred any cross-objections, so that in their case, they cannot question the liability which has been fastened on them to the extent of Rs. 32,000 (Rs. 22,000 for payment of dividend out of capital and Rs. 10,000 in respect of irregular advances made after 7th March, 1947). The

8th respondent. Sri Ganapathi Subramania Iyer has, of course, preferred cross-objections. But, at the time of arguments, his learned Counsel Sri M.S. Venkatarama Iyer stated that he could not really say anything useful against the findings of the learned Judge and his only anxiety was to limit the liability of his client to a sum of Rs. 25,000 apart from costs. Sri M. S. Venkatarama Iyer stated that the 8th respondent would be prepared to have Rs. 25,000 adjusted out of the deposit of Rs. 87,000 and odd standing in the name of the 8th respondent and his son in respect of the liability for the period after 7th March, 1947, without reference to any of the other directors, in other words without a right of contribution in his turn from any of the other directors. The considerations which he suggested in support of the request were these. He was a rich man owning over 200 velis of land and some few lakhs of rupees and he honestly believed, even after 7th March, 1947, that the affairs of the bank were not so bad as they eventually turned out to be and that was proved by the fact that he left outstanding as much as Rs. 87,000 as deposits in the name of himself and his son. He referred also to the resolution, dated 7th March, 1947 of the Board of Directors (page 264 of volume 4) where the directors referred to

the genuine interest taken by Ganapathi Subramania Iyer to set matters right and desired that he should make a thorough inspection of all the branches satisfying himself of all doubts and give a report embodying the results of such inspection.

He actually bestirred himself in the matter though, as pointed by the learned Judge, no action subsequent to 7th March, 1947, could really have prevented the bank from crashing. Sri M.S. Venkatarama Iyer further prayed that the liability of the 8th respondent might be separately fixed instead of its being made a joint and several liability with that of respondents 5 and 7, and that for this purpose we might make a suitable apportionment of the liability between these respondents 5, 7 and 8 for the period after 7th March, 1947. In that connection Sri M.S. Venkatarama Iyer submitted that the 7th respondent Sri Swaminatha Sastrigal had Rs. 10,000 and odd in deposit and that during the proceedings Sri Swaminatha Sastrigal and later his legal representatives expressed their willingness to have the entire deposit adjusted towards their liability if they were not made further liable. On this point, Sri Swaminathan, learned Counsel for the Official Liquidators, stated that the amount of deposit in the name of Sri Swaminatha Sastrigal was Rs. 10,758 and that the legal representatives had agreed to adjust this entire amount towards the liability of Swaminatha Sastrigal. Sri M. S. Venkatarama Iyer also submitted, for what it was worth, the fact that for all these 16 years from 1947 the sum of Rs. 87,000 and odd to the credit of the 8th respondent and his son had not earned any interest and had been lying in the bank.

51. Sri S. Swaminathan submitted that during the pendency of the proceedings before the learned Judge, an offer was made on behalf of the 8th respondent by his son Sri G. Krishnamurthi that the liability of the 8th respondent might be

settled in respect of the application by adjusting the entire amount of Rs. 87,000 and odd to the credit of the 8th respondent and his son without saddling the 8th respondent with any further liability. We asked affidavits to be filed on this point, and on a perusal of the affidavits, we are unable to say that any firm offer was made and we feel that in any case having regard to the fact that no proposal was actually placed before the learned Judge, it would not be proper to pin the 8th respondent to any such offer at this stage.

52. Before making up our mind, we also asked a statement of assets and liabilities to be filed by Dr. T.S. Varadachari. He has accordingly filed a statement in which he states that he has 12 acres of wet and dry lands in Nannilam Taluk worth Rs. 25,000 and three old tiled houses in the village worth Rs. 3,000 and has moveables to the value of Rs. 8,000 besides a sum of Rs. 3,000 kept in deposit in the Hanuman Bank. He has simple debts to the tune of Rs. 8,000 and his annual income as a doctor is Rs. 9,000 according to the Income Tax assessment orders.

53. As we have already stated, there has been no attempt before us to challenge the fact that in respect of the period after 7th March, 1947, the directors 5, 7 and 8 would be liable for payment of Rs. 22,000 as dividend out of capital and in respect of the sum of Rs. 60,000 advanced without adequate security, and the attempt has been only to limit their liability to an equitable extent. Since the point has not been contested, it is sufficient to state that there can be no doubt that the meeting of 7th March, 1947, the Auditor's notes for the year 1946 which gave a sufficiently damaging account of the affairs of the company were available to the directors, and at least thereafter if they had exercised sufficient care in the matter, they should have come to know that dividend should not have been declared and they should have further stopped the irregular advances made after 7th March, 1947.

54. It only remains to fix the quantum of compensation for the period after 7th March, 1947. In doing this, we have also taken note of the fact that we have found Dr. T. S. Varadachari, the 5th respondent liable in respect of the period prior to 7th March, 1947. We have also taken into account all the considerations relevant on the point and our final conclusion is this ; in respect of the period prior to 7th March, 1947, we fix the compensation payable by Dr. T.S. Varadachari; the 5th respondent at a sum of Rs. 10,000. For the period after 7th March, 1947, we fix his liability at a sum of Rs. 5,000 out of which Rs. 2,000 will be in respect of irregular advances and Rs. 3,000 for the unjustified declaration of dividend. In addition to this, the 5th respondent will pay Rs. 750 as costs for the Official Liquidators.

55. So far as the 7th respondent is concerned, we fix his total liability at Rs. 10,758. The amount standing to his credit can be adjusted. This will be apportioned formally by fixing Rs. 4,000 towards declaration of dividend and Rs. 6,758 towards irrecoverable advances. He will not be liable for costs but bear his own costs. So far as the 8th respondent Ganapathi Subramania Iyer is

concerned, we fix his liability at a sum of Rs. 25,000 of which Rs. 15,000 will be for unjustified declaration of dividend and Rs. 10,000 towards irrecoverable advances. In addition, he will pay Rs. 1,000 for costs to the Official Liquidators and bear his own costs. Out of the sum of Rs. 1,750 recoverable as costs from the 5th and 8th respondents, the Official Liquidators will pay Rs. 1,250 as fees to the senior Counsel and Rs. 500 to the junior Counsel. The rest of the costs can be taken by the Official Liquidators from the estate. Except as directed herein, the parties will bear their own costs. We may formally point out that the result is that the Official Liquidators have succeeded in part in O.S.A. No. 8 of 1961 to the extent to which the liability of respondents 5, 7 and 8 has been increased to a sum of Rs. 2,000 plus Rs. 6,758 plus Rs. 10,000 that is, Rs. 18,758 from Rs. 10,000 fixed by the learned Judge in respect of the irrecoverable advances made after 7th March, 1947 and to the extent of Rs. 10,000 in respect of the liability for the period prior to 7th March, 1947 which has been fastened on the 5th respondent Dr. T.S. Varadachari. The cross-objections in O.S.A. No. 8 of 1961 are dismissed without costs.

56. The 8th respondent Sri K.V. Ganapathi Subramania Iyer will be entitled to have the liability of Rs. 25,000 plus Rs. 1,000 adjusted out of the deposits in his name and his son's name straightway.