**In Re: the Union Bank**

**In Re: the Union Bank**

**SooperKanoon Citation** : sooperkanoon.com/455113

**Court** : Allahabad

**Decided On :** Mar-27-1925

**Reported in** : AIR1925All519

**Appellant** : In Re: the Union Bank

**Judgement** :

**Walsh, J.**

1. This is a claim by the Liquidator of the Allahabad Union Bank Ltd., liquidation, against several Directors, and also against a Director who, in the later years of the Bank's existence, became Auditor, for various alleged acts of mis-application of the Company's funds, and of misfeasance under Section 235 of the Indian Companies Aot of 1913. The particulars originally filed show a claim of Rs. 1,41,000 odd representing the cumulative liability of all the Directors in respect of all the charges. That total is divided into three classes, namely a sum for payment of dividends year after year when the Company was making no profit but a loss, and, therefore, out of capital, a further large sum of Rs. 56,000 described as value of grain but being in fact an alleged loss which the Company suffered by reason of the failure of certain of the Directors to obtain adequate security by way of grain from a Company called Annapurna Company, Ltd. and a further item stated at Rs. 42,000 described as a floating account The latter claim was withdrawn in the course of the proceedings on the ground, as we understood it, that it was included in the mis-statements contained in the accounts in the Company's books and if it

really represented a sum of money which had disappeared, it was for the purposes of this section included in and therefore overlapped the dividends which have been alleged to have bean improperly paid. With regard to the second item, namely the loss which the Company incurred through the failure of certain of the Directors to obtain adequate security over the grain, we have come to the conclusion that although some of the Directors cannot be acquitted of the charge of negligence in respect of this matter, and although as will appear hereafter we are of opinion that the circumstances connected with this transaction were such as to put them on enquiry and to arouse their suspicion as to the way in which the business of the Bank was being carried on, on the other hand, the evidence which the Liquidator has been able to lay before us falls short of satisfying us that any amount of grain which the Annapurna Company had control of free from encumbrance, and which it could have, by proper steps taken on the part of the Directors of the Bank, given as a good security to the Bank, can be identified so as to be described as a direct loss resulting to the Company due to any specific act, or omission of which any particular Director or Directors can be said to have been guilty. We are, therefore, in substance, called upon only to deal with the very serious claim amounting to nearly Rs. 50,000 improperly paid by way of dividend which the Liquidator makes under this section against the various Directors jointly and severally who can be shown to be legally responsible for that undoubted loss. The matter has been very fully discussed before us both on the accounts, the report of the Liquidator and the conduct of each of the Directors respectively and on the legal aspect of the matter, assuming that the Directors, as we hold, acted honestly, that is to say, without being guilty of any conscious fraud. Almost all the relevant English cases have been brought out in review before us with a view to showing what is the real legal test. I should have preferred to have taken time to consider my judgment but I am prohibited from so doing by the fast Chat this is the last day upon which it is possible for ma to sit in this Court for are least another six months and it would be obviously undesirable from every point of view to postpone our decision in the matter especially having regard to the fact that the Court is unanimous with regard to all the mutters which we have to decide. It seams to us that in the end the test of legal liability mast depend upon our application of Section 281 of the Companies Ant to the established facts of this case, although in discharging that

duty it is no doubt useful for the Court to be guided by the way in which, higher authorities have regarded this subject in other cases of the same or of similar character If we come to the conclusion, as we do, that the monies of the company were misapplied by being distributed to the shareholders in the shape of dividends or profits, when in fact no profits were being earned and that, therefore, such monies were part of the Company's capital and that such conduct on the part of the Directors was breach of the Company's articles, a misapplication of the Company's funds and a breach of such trust as the law holds Directors of a Company to be under, we then have to consider under Section 281 whether in regard to each of these Directors who took part in such breach of trust, ha has acted not only honestly, but also reasonably so as to show that he ought fairly to be excused for such breach of trust.

2. The story of the case is a painful and pathetic one. The Union Bank was established in 1905 with a nominal capital of Rs. 20,000 which was subsequently increased, and in a modest way appears to have done in its early stages, fairly satisfactory business and slowly to have earned a reputation and the confidence, at any rats, of the Bengali community, which is a very large one in Allahabad. The founder and moving spirit, and, as it is now shown, the master of its destinies was one Kedar Nath Mitra, himself a Bengali, a man no doubt of ability in whom everybody who knew him believed and in whose honesty his colleagues, friends, and persons associated with him in business placed confidence. The task of the Liquidator in this case, and the task of the Court, and the burden of meeting the charge thrown upon the Directors, have not been rendered less onerous by the mysterious disappearance of this man. The company winding up, a Judge of this Court issued a warrant for his arrest. The Criminal Investigation Department have done their best to find him. The properties which he is alleged to possess and to have acquired from his ill gotten gains out of this Company have been attached, but since June, 1924, he has vanished, it may be said from off the face of the earth, and nobody seems to have the faintest idea what has become of him. It is to be put to the credit of the Directors charged in the case, and the main question which arises for decision is whether that fact affords them a complete defence or not that they and the share-holders and the creditors and depositors have been brought Into the disaster which has attended the Bank by misplaced confidence in

this undoubted knave.

3. One or two general observations seem to be relevant. Company business as understood and worked on a very large scale by business men in England is not understood and nobody would suggest that it was understood in India, and particularly in Allahabad to the same extent. It is to some extent and was no doubt to some of the gentlemen concerned in this Company to a considerable extent, unfamiliar ground. It is also relevant to observe that the Union Bank Ltd., is not such an institution as is ordinarily understood by the word 'Bank'. It had no investments in the ordinary sense of the word, no gilt-edge securities, no current accounts or anything substantial in the way of current accounts, and nothing in the way of a large floating cash balance passing between itself and its customers daily, such as an ordinary old-fashioned Bank has with a large number of customers on its books dealing with it on current account. It was, if we may use the expression, a sort of glorified money-lender, or bania holding itself out to the Bengali community as willing to take charge of their savings on fixed deposit with a satisfactory rate of interest and to take care of those saving3 so common to many members of the Indian community which are put on one aide to provide for the important domestic event, which occurs to most of them, of marrying their children, But the substratum of its business, and the source to which it looked for any profit which it could reasonably hope to make at any time, took the form of loans to customers upon securities. Now it does not require a high degree of business training or even of education to appreciate that the essence of such a business and the hops of its success must, depend in the long run, as a matter of daily consideration by those responsible for its conduct, upon the solvency of the debtors to whom the money is lent, and the adequacy of the security which they are prepared to give. A bank of this kind, or a money lender who contented himself with lending money at random without regard to the solvency of the customers and without requiring either adequate or any security at all, would merely be rushing to his own ruin, and it cannot be disputed in considering the conduct of this particular Bank that if it was to make any profit at all, its debtors ought to be responsible persons who ware able to keep up their payments of interest, or who, if they got into arrears, had provided security adequate to enable the Bank to recoup its original loan with a reasonable profit by way of interest thereon. The Memorandum

of Association describes the objects as including every description of banking, trading and mercantile speculation, and to any body acquainted with this class of business in India, it is common knowledge that banking business of this kind is largely done by the deposit of ornaments, and the substantial business of the Company was that of granting loans upon ornaments. That this part of the business was not only the principal feature, bat was also intended to be controlled by the Directors so that the Manager is carrying out the daily transactions of the Bank should not have a free hand, is clearly shown by Articles 74 and 75 which restrict his powers in that respect. One further observation ought to be made, because it has an essential bearing on testing the degree of diligence and due care which these Directors from time to time exercised. The premises, of the Bank were not on a large scale. Originally the Bank and also the Annapurna Company Ltd. of which Kedar Nath was also the moving spirit and which figures to some extent in this case, were both of them situate in a room in the actual house in which he resided, such room constituting the offices of the two companies. There Kedar Nath Mitra, who was to a large extent the Company's Secretary and to some extent his own clerk, was always to be found and transacted the daily business of the Bank. There were kept under the same roof in a safe or locked almirah, some such modest receptacle as was considered safe and convenient, such ornaments as the Bank held by way of security against its debtors. There also the Board Meetings of the Directors were held. So that if, for example, at the time of the discussion of any monthly statement or abstract or at the time of the preparation or discussion of the balance-sheet, the amount of securities by way of ornaments which the Bank held, and which they ought to have held having regard to the loans which they had issued, was to be tested, all that was required was for one of the Directors to ask Kedar Nath Mitra to open the safe or almirah and show them what was there and it would not be difficult for anybody to know whether the accumulated ornaments deposited in this Bank by way of security amounted at any one time to a lac of rupees or anything like that sum or whether they represented in value no more than Rs. 20,000 or Rs. 10,000. That observation is important because the directors are not charged here with breach of duty in failing to obtain or make an accurate valuation of actual securities) which they took after having accepted security by way of ornaments nor is it said that they failed to take

care to prevent such an accident as may happen such as a sudden theft or a dishonest Manager surreptitiously and suddenly removing a large quantity of such securities the charge against them substantially is that they carried on unprofitable business and allowed Kedar Nath Mitra to make loans of large sums to worthless insolvent debtors. If the Directors had troubled to enquire into even their names, they would have known at once that many were unable to pay and that large sums were issued by way of loans without any security whatever. So that at any time during the years in respect of which these Directors are charged with neglect of their duty, a comparison of the paper statements of securities in possession of the Bank with the actual ornaments at that time in existence within the four walls of the Bank's premises, would have shown that the Bank was unsecured and on the road to ruin. The relevant articles to which' our attention has also been drawn are Article 81 dealing with payments of dividends Article 88 dealing with the keeping of accounts and of the monies received and Article 73 dealing with the relation of the Manager of the Directors and the superintendence and control which they undertook to exercise over him.

4. With regard to the history of the Bank and its financial position from time to time and the causes which brought about its failure, the Liquidator's report, was admitted in evidence with the consent of the Advocate for the defendants, and of Mr. B.L. De who appeared in person, as showing accurately the figures to be found in the books subject to the defendants objections to any omission, modification, addition or explanation which they might establish by their evidence and from the report and from the evidence of Mr. Maurice Govia who although not actually responsible for the report, has worked as the representative of the Liquidator in Allahabad and investigated the affairs of the Company on behalf of the Liquidator the principal of the firm himself being unfortunately prevented from giving evidence by indisposition it was clearly established, and; not challenged by the defendants, that, although possibly profits were made in the early years of the Company's existence to what extent he was unable to say all profit ceased in the year 1915, and that from that year the Company was carrying, on at a loss. Inasmuch as it was paying a large dividend through the course of the years with which we have to deal, namely 1915 to 1923, things were slowly but steadily going from bad to worse, and at the date of the liquidation, it had substantially no

securities in its possession against a liability of considerably more than 2 lacs. The Liquidator says that such ornaments as there had been in the possession of the Company as against this liability of 2 lacs, namely about Rs. 21,000 had been surreptitiously and dishonestly re-mortgaged by Kedar Nath for his own. purpose to other persons. This transaction of re-mortgaging was to some extent authorised by a resolution of the Directors. It has formed the subject of another litigation between the Liquidator and the sub-mortgagee, and need not be further considered as it has no real bearing on the question we have to determine. It merely illustrates one of those acts of a dishonest Manager which the most competent Board of Directors exercising due care may be unable to prevent. That is to say, they may authorize by a resolution the raising of a loan on security to a limited amount, and thereby give a dishonest Manager an opportunity of surreptitiously misappropriating securities not covered by the resolution and so rob the Company. The Directors are not charged in regard to this matter, but an inspection of the balance-sheets from year to year shows, when the statements in them are compared with the state of things disclosed when the Company came to grief, a startling contrast and a state of things, the knowledge of which could not have been withheld from any Director who took the least trouble to acquaint himself with the affairs of the Bank. The Company were paying and advertising themselves as paying to depositors 61/4% interest on fixed deposits for 12 months, 51/2% on 9 months deposit, 41/2% on 6 months and no less than 61/4% on the Family Endowment Fund, They were at the same time paying to their share-holders dividends varying in the years with which we have to deal between 9% and 7i% on paid-up capital of about Rs. 64,000. They were advertising on the front page of their balance-sheet a yearly increasing working capital which amounted in the last year to Rs. 2,18,743. That sum represented the total of the paid-up capital to which I have just referred and of the amounts of deposits and Endowment Fund which the public and their customers had entrusted to them. Substantially as against this liability the Bank was said to hold assets in the form of debts considered good, in respect of which the Bank was fully secured in the last year stated at Rs. 2,18,600. The truth about that is that year after year nobody could possibly have considered the majority of these debts to be good at all. In substance, the only person who knew anything about them was Kedar Nath Mitra,

and as will appear in a moment, he knew perfectly well that a very large quantity of them were hopelessly bad. The Directors, as appears from their admission, knew nothing whatever about them at all and certainly never considered them, and as to the securities, they never took the trouble to enquire into or to see the ornaments which were actually in the Bank's premises visible to the eye and which were the only goods which the Bank purported to hold. It is idle to contend that the Directors were not expected to exercise some judgment with regard to the acceptance of loans on security. No complaint, as I have already stated, is made in this charge against them that they are not experts in jewellery and that they have failed to estimate the value of the securities accurately. But from time to time loans were submitted to them for their approval and a statement was made of the security offered, and such matters were of course in the strict conduct of business bound to be submitted to them because of Articles 74 and 75. But a very simple calculation will show that the amounts which each Director yearly stated to be debts fully secured, had no-relation whatever to the amount of actual loans which they had approved during the past 12 months. It is admitted that not one of these Directors ever asked a question of the Manager with regard to the names of the customers, the character of the customers, their position in life, or the securities which they had either individually or cumulatively deposited with the Bank. If any single Director had spent a casual half hour either in perusing the list of the debtors or in calling for the security or in looking at the books of the' Company in which the debtors' names appeared, he must have discovered certain obvious facts. To take one salient illustration, amongst the debts alleged to have been fully secured and entered in the Company's books as an asset was at the time of the liquidation an accumulated liability of principal and interest due to the Union Bank from the Tata Industrial Bank. At the time when these entries were made and the Tata Industrial Bank, was being treated as a debtor of the Union-Bank, the Tata Industrial Bank it is not too much to say, was known by name throughout India as a substantial and as far as the public knew a very flourishing concern in Bombay bearing the name of a distinguished and successful man of business in Bombay. It is not disputed that the notion of the Tata Industrial Bank coming to Allahabad to borrow money from the Union Bank, was ridiculous upon the face of it, and would be bound to arouse the suspicion of any body. The account of the Tata Industrial Bank showed

that they had borrowed from time to time not very large sums, Rs. 1,500 or 2,000 or perhaps even more and that they had agreed to pay for the advantage a high rate of interest. Of course they never paid a pice, because they had never borrowed the money. But the account, if looked at, shows on the face of it that they were in default and although there were cash entries suggesting that they had made payments which took the original date of the loan out of the mischief of the statute of limitation, the principal and high rate of interest was running against them year by year so that the ultimate result bore to the original loan the proportion which is only to be found where an exorbitant money-lender is charging a high rate of compound interest against a poor defaulting debtor in need of immediate cash. Mr. De, who was a Director during a large portion of the currency of this loan, and the Auditor who included it in the debts fully secured, and therefore the assets of the Bank, said about this : 'If I had properly examined the accounts, I would have found that the Tata Bank had not paid a farthing of interest. I think it was my duty to have insisted upon an explanation why the Tata Bank had not paid a pica. It would have aroused the suspicion of any ordinary man. The entry against the Tata Bank now looks to me as a palpable sham. I did not take the slighest trouble to ask the Manager, Kedar Nath Mitra, the history of this debt.' It is inconceivable how any Auditor doing his duty could possibly, finding the Tata Industrial Bank defaulters to such a large amount at such a high rate of interest with a small concern like the Union Bank in Allahabad, have failed to ask the Manager about it. The same observation applies to all the Directors who failed as they did undoubtedly fail, to ascertain from the Manager the names of their customers. Had one of them discovered this fact, he must have known at once that the Bank's business was being fraudulently conducted. The Directors' attention was specifically called to the Tata Industrial Bank in this way, Kedar Nath Mitra suggested to the Board on the 19th of March, 1919, as appears in the evidence, that he should be allowed to invest the money of the Union Bank in the purchase of one hundred Tata Industrial Bank shares. The fact is that this is almost the only attempt the Directors ever made to invest any part of the capital of the Bank in outside security, if not the only. The Directors in 1919, and those who approved the next balance sheet, never took the least trouble to ascertain whether these shares had been purchased, in whose name they ware, and where they

were kept. They were never seen. All we know about them is that according to the statement of the Company with which the Tata Bank has now been amalgamated shares of the Tata Bank were purchased from Radar Nath Mitra at some subsequent date, and the money was paid to Kedar Nath Mitra's agent in Bombay. That investment of the Union Bank authorised by the Directors apparently went straight into the pocket of Kedar Nath Mitra, and no one appeared to take any trouble to ascertain where the shares were, nor was the investment specially referred to in the subsequent balance-sheet. But one would have thought that a transactions out of the ordinary course of the Bank's business of that kind placed upon the Directors the business duty to see that it was carried out and if, as I have already pointed out, the name of the Bank had bean searched for in the books of the Company, the state of this fictitious account would have been discovered. It is true to say and we accept the view that if the Directors had discovered the truth or anything like it, they would have immediately put down their foot and brought it to an end. The same observation, as has been made about the Tata Bank, may be made about the series of family loans which at the date of the liquidation were outstanding against Kedar Nath Mitra's family. These loans included a deceased brother, a penniless brother, who has admitted in this Court that he signed a promissory note for Rs. 5.000 for an alleged loan made to him by Kedar Nath Mitra when no money passed at all and Kadar Nath Mitra's wife. the total amount of irrecoverable loans advanced by the Company through Kedar Nath Mitra to his own family together with accumulated interest amounts to Rs. 56,172. The figure includes his own over draft of Rs. 18,000. Here again it must be observed that this class of debt which the Directors unknowingly permitted to be entered in the balance sheets as debts fully secured, was not a sudden phase. They were all debts long outstanding carried forward year by year with the accumulation of interest which added to the total liability appearing year by year in the Company's books represented a large portion of the apparently substantial business of the Bank. When it is and against the Director that this money, alleged to have been lent to the Tata Bank and alleged to have been lent to the family of Kedar Nath Mitra, simply want into the pocket of the Managing Director and was a dead loss to the Company, can a Director be heard to say : ' We knew nothing of all this, because, we did nothing, we asked questions, who never knew who the debtors of

the Bank were, we never troubled to ascertain what the securities were which the Bank held.' To pay as the Bank purported to pay a high rate of interest to depositors and a large yearly dividend, the Bank must have been earning a substantial gross profit. It could not do the business, and pay the dividends which it was doing without earning substantial profits. Where did the Directors suppose that these large profits wore coming from? The law, according to my view, dearly established by the authorities in the English reports, makes them at any rate fiduciary custodians of the money entrusted to the company by the depositors, and of the ordinary capital subscribed by the share-holders, and the more satisfactory on the face of it, the more glowing in character the success of the Bank appeared to be, the more the Directors, one would have thought, were called upon as ordinary responsible business men to satisfy themselves that these large profits were really being made. In the course of the cross-examination of Mr. Govia a question was put to him suggesting that a Bank might in the case of a good debtor treat as realised, income due by way of interest which had not been paid or, in other words, that according to sound banking business, it is legitimate in the case of a good debtor to; treat as profit earned that which has accrued due although it has not been paid, and Mr. Govia said that he would not be surprised if he found that Banks were in the habit of doing that. But of course a Bank can only justify doing that, and the Directors can only justify a payment out of profits, which means realised profits. If they have satisfied themselves that the debtor, whose particular liability for interest has fallen due but has not been paid is a man whose liability is as good as cash, and if in a succeeding year he again does not pay, it is their duty to write that off as a loss in the following year's profits and loss account until the sum is realised. That is to say that which is a legitimate risk for a business man to take in a sound business concern, can only be justified where the Directors have taken reasonable care to satisfy themselves that the debtor is a solvent person, and that though he is temporarily in arrears, the liability is a good one, and it seems to ms that where it is shown afterwards' that, the debt was a bad one a Director cannot escape from liability by merely saying : 'I shut my eyes. I knew nothing about the debtor. It did not matter to me whether it was good or bad. I knew nothing about it.' In matters of this kind' it seems to me as an ordinary business consideration, that the share-holders must be taken to say to the

Directors : 'We select you as Directors and we entrust all our monies and the management of our interest with you, and we look to you to protect us.' Taking the last year or two as an illustration of the extent to which the capital had disappeared, the working capital, as I have already mentioned, is there shown to be something' more than two lacs. That capital is a security to the depositors who look for payment of the amounts which they have-deposited, to the creditors who look to the Bank for payment of what is due to them, and to the share-holders who look for recumbent of their investments. Taking a general view of the matter, it appears that in this case something more the half a lac, namely Rs. 56,000, disappeared in the loan to the Mitra family, something like Rs. 56,000 or more than half a lac, disappeared in the bad debt which was never secured, of the Annapurna Company; something like Rs. 4,000 a year, representing, according to the evidence of the liquidator, the actual loss that this company was making multiplied by the 9 years with which we are concerned brings the figure to about Rs. 36,000; while the amount which was divided between the share-holders in dividends during the same period amounts to nearly 45,000 rupees. Without being able at this date to affirm positively, one can only say that these calculations appear to explain the disappearance of the capital which year by year the Directors were showing to the share-holders, the depositors, and other creditors, was in the possession of the Bank fully secured. The liquidator in the course of his evidence showed how he arrived at the conclusion that the Company, was carrying on at a loss. He drew our attention to the fact that at the end of 1917 the total arrears of interest ware Rs. 30,819 but the way he put it was this. The interest which was actually paid by the debtors to the Bank in 1917, as shown by the books, was Rs. 4,660 as against expenses of Rs. 8,600 showing that on the actual working of the business there was a loss of Rs. 4,000 per annum, and in spite of that a dividend was declared of Rs. 4,464. Ha further stated that a study of the books shows that in order to justify on the face of the books the payment of these dividends, the interest which they were earning was roughly speaking 1/5th of the outstanding principal, or, in other words, 20 par cant on the outstanding loans, and ha also showed that a careful examination of the books by the Auditor or any Director, who was desirous of checking the monthly statements or the yearly balance-sheet, would have shown, for example, that whereas in the year 1919 Rs.

11,862 was due as interest, only Rs. 5,000 was realised, in 1920 where Rs. 13,034 was due by way of interest, only Rs. 3,964 was realized in 1921, whereas Rs. 13,638 was due by way of interest, only Rs. 5,256 was realised. It seems to me that all this, which appears from a cursory examination of the book3, throws upon the Directors, the defendants to this charge, the onus of showing that they acted reasonably and had real grounds such as would operate upon the minds of business men for believing that these false balance-sheets and false statements that had been published, were really true. They have said over again it is not necessary to repeat at length their depositions that they had no reason to suspect. Mr. Ghose, for example, who was a Director throughout the whole period, and whose attitude fairly represents that of the others, said : 'Had I looked at the books, I would have come to know the state of things. I never saw the Tata shares. I never saw any security. I did not know anything about them, and I did mot know anything about the ornaments which the Bank held. I did my best at the meetings. I had no reason to suspect that anything was wrong.' From time to time it does appear that an effort was made by individuals to keep some check upon the conduct of the Manager. In 1915 a Mr. Bhargava complained, and wrote a note in the minute book of the general meeting of share-holders, drawing the attention of the share-holders to doubtful debts, and saying that dividends should not be paid out of capital, and that the Articles of Association had been ignored. It is not clearly shown that this protest was brought home to any of the persons b9fore us, as none of them, it appears ware Directors at that time But it merely illustrates the sort of standard which a business man would ordinarily set himself as a Director who undertook to the share-holders to look after the business and control the management. Again in 1923 Mr. Asotosh Mukerji in the month of June complained that the Directors of the proceeding meeting in May had given the Manager too wide a power to deal with the investments of the Bank and he was overruled by the other Directors in that particular meeting. It was that resolution which Kadar Nath used as authority for re-mortgaging the ornaments. These are matters which indicates when certain Directors chose to open their eyes to anything at all, what they thought it their duty to do The transaction with regard to the Annapurna Company, which came to the knowledge of many of them and which was a debt which was a constant source of enquiry was one of those circumstances which,

according to ordinary business standards ought to have put the Directors for the time being upon enquiry with a regard to the other transactions of the Bank. In 1915 the liability of the Annapurna Company had amounted to Rs. 42,000 for which there was no security. A share-holders' meeting was called a committee of the Directors was appointed and a resolution was passed distinctly prohibiting any further business with this company without further security, bat as the result of this, little or nothing was done. It looks from the Liquidator's report on page 9 as though in spite of the resolution that no further business should be transacted, further business was transacted. It is true that interest would be accumulating upon this account automatically. There is no evidence before us as to how the amount was accumulating. The Annapurna Company is hopelessly insolvent is in liquidation, and its books of account are said to be in a state of utter disorder, but between 1915 and 1917 the amount (increased by 4,000 and between 1917 and 1919 it increased by Rs. 8,400. A committee was appointed containing several persons besides Directors, and in the result the Bank was supposed to have secured possession and control of the Annapurna grain as a preliminary step to a complete mortgage. Ultimately in 1923, 8 years after the resolution of the shareholders, a mortgage-deed was brought into existence. It probably surprised nobody that by that time there was no grain. Where the grain went to-which so much trouble had been taken to capture and secure and to put under double Jocks, with one key in the pocket of each independent authority interested in it- nobody to this date has been able to explain, and probably nobody ever will. Its disappearance as an asset of the Annapurna Company and as a security to the Bank, is as mysterious as that of Kedar Nath himself. But can any reasonable person say that the absence of security for this loan, as far back as 1915, and the complete failure on the part of Kedar Nath and of the Board to secure the Bank with regard to this large liability was not sufficient to create suspicion and doubt in the mind of any reasonable parson with regard to the satisfactory nature of the business

5. A further observation must be made with regard to the statement in the balance-sheet relating to the Reserve Fund. The Auditor, Mr. De, who signed this balance-sheet was recalled, and all he could say was that it was a misnomer. It is idle for Directors to say that they are not responsible to the share-holders or to the creditors, or under this section for failure to carry on their duty, because they did

not understand the business or because they knew nothing about it. To accept such a dictum would involve holding that the less the Directors, knew, the less their liability for misfeasance committed in the conduct of the business, and here although the ordinary meaning of a reserve fund is perfectly well-known and must have been perfectly well known to all as an accumulation from annual profits put by as security against some contingency for which it may be required this reserve fund with accumulations entered in the balance-sheet with all the appearance of a flourishing and well secured Bank, had no meaning whatever. If it is put into the balance-sheet as the liquidator, Mr. Govia, explained to the Court, as a liability being treated for that purpose in the same way as profits actually earned in the year's working there ought to be an asset upon the other side corresponding to it generally in the shape of some gilt-edged security, or other sound investment. As a matter of fact this reserve fund was not only a misnomer, as Mr. De called it, it was a sham and a fraudulent statement, and was in fact money which had been issued by way of loan to the debtors of the Company.

6. Under these circumstances I come without hesitation, or perhaps I ought to say, I should come without hesitation independently of any authority cited to us, to these definite conclusions. This company made no profit whatever from and including 1915; every rupee distributed by way of dividend was part of its capital; all the dividends for the year 1915 onwards were paid out of capital. I am satisfied of that as a fact that although the Directors honestly did what they did trusting in Kedar Nath, the duty imposed upon them by the Articles was such-giving due weight to everything which they have said-as to place the onus upon them of showing that they acted reasonably. I, therefore, hold that they are prima facie liable under Section 235, and that they hare failed to discharge the onus which the law imposes upon them by Section 281. Out of respect, however, to the learned arguments addressed to us on behalf of the defendants, and recognizing that the principle underlying the administration of these sections must be governed by the authorities upon the question in England, which of course I am prepared in every way to follow as far as I can where they apply to the particular case before the Court, I propose to deal shortly with the cases upon the subject. The first point taken on behalf of the defendants-and it applies to every defendant in a greater or less degree, except Shanker Prasad, whose claims to be a Director, and whose

understanding of the matters which he professed to carry out was less than that of anybody connected with this casa is whether this claim is, and to what extent, barred by Sub-section 3 of Section 235. It has bean held in India by the High Court of Lahore-the case is not reported in the authorized reports-Bank of Multan v. Hukam Chand A.I.R. 1923 Lah. 58, that under this provision, Article 36 applies to a claim by a Liquidator under Section 235. With great respect to the learned Judges who decided that case, I am unable to adopt that opinion for the reason that Article 36 deals with compensation for malfeasance and misfeasance independent of contract, and I am of opinion that this claim is not independent of contract. I am unable also to sea how Article 115 or 116 can be made to apply to a claim under this section. To ray mind these deal with claims for compensation made in respect of a specific breach of a specific contract made by one or more individuals with the person making the claim. In the case of Article 115 a reference to successive breaches or continuing breaches rather emphasises that view, and I find a difficulty in applying this Article to a claim by a Liquidator. It has bean said that Section 235 creates no new rights, but as is pointed out in the latest edition of Buckley on Companies (1924), the statement is only partially accurate. No doubt it provides machinery for enforcing claims which exist independently of the section, but so far as a Liquidator is authorized by this section to apply, in the interest of creditors and depositors who have lost their money, to enforce a claim against the Directors under the section, it seems to me that a new right in him is created. If any Article is to be applied at all to the date from which the liability first came into existence by reason of the act of misfeasance, or breach of trust, which the person is proved to have committed, it seems to me that the only Article which at all fits the case is Article 120, which provides a term of six years for every case not otherwise provided by the Act. If one were driven to do so, the fact that it would result in destroying the value of the section, would be no reason for refusing to apply a particular Article, but in asking myself the somewhat difficult question what the Legislature had in view when it enacted Sub-section 3 to Section 235, I cannot shut my eyes to the fact that if they intended that the liability of a Director for breach of trust and misapplication of funds should be barred, either from the point of view of tort after two years, or from the point of view of breach of contract after 3 years, they might just as well not have enacted Section 235 at all. I do not hesitate

to say that after an experience of 9 years in this Court of winding up business, such a provision would render in India Section 235 almost a nullity. This much is clear, that the Legislature distinctly retained from segregating the various claims which can be made under Section 235, and applying to them the appropriate Article in the-Schedule. It may be said that they threw that extremely delicate and difficult task upon the Judges instead of discharging it themselves, but giving the best-effect I can to the apparent intention disclosed by the language used, I am of opinion that it is only a statutory bar to the right of the Liquidator to make his application against a defaulting Director, and that whatever article of the statute of limitation is applicable, the time begins to run from the date when the liquidation took place, when the Liquidator first had the right vested is him. The result is that no Article of limitation can possibly be a bar to this application, and I hold that Sub-section 3 is no bar. In re National Funds Assurance Co. (1878) 10 Ch. Div. 118, it was held that the powers of liquidator of a limited company are more extensive than those of the company prior to the winding up order. With regard to the meaning of Section 235 and the mischief which it aims at, and the question whether bona fides is an answer to a charge of having misapplied monies of the Company by payment of dividends out of capital, I refer to what the Master of the Rolla said at page 128:

That being so, the only question which remains is, have the directors, in the words of the Act of Parliament, misapplied any monies of the company? I think they have misapplied them by dividing the capital among a portion of their shareholders. That appears to me to be a plain case of misapplication within the very terms of the section.' The next authority which is material is the well-known case, In re Oxford Benefit Building and Investment Society (1886) 35 Ch. Div. 502, a case which so far as the Directors were responsible for having paid dividends out of capital in consequence of having invested the Company's funds on bad securities, is very like this case, and in principle almost on all fours with it. I refer to what Mr. Justice Kay said on page 511.

Now the basis of this estimate in every case was an assumption that every one of the securities on which the company were advancing money was ample to provide for principal, interest and costs in respect of the advance. And for this they had

nothing but the assurance of the surveyor and secretary Mr. Galpin. He it was also who, estimated, according to the 5 per cent, table, the present value of the instalments which each mortgagor had to pay, The auditors neither checked the valuation of the securities nor the actuarial estimate of the mortgagors' repayments, and yet the directors, who were forbidden by their Articles to pay any dividends, except out of realized profits, paid every dividend out of whatever monies they happened to have in hand, which has been called in the argument the floating capital, and never attempted in any report or balance sheet to distinguish realized profits from the estimated profits which they thus purported to divide, or to ascertain out of what fund the dividends were actually paid.

It has been argued that this was done bona fide, and that where directors in good faith have made an error in the computation on which their balance sheets are founded, the Court will not lightly visit them with the consequences of a, bona fide mistake, I confess I hardly know what is meant by bona fides in such an argument. I inquired whether there was any evidence that the Directors bad considered the meaning of the Articles or had taken any advice upon them. There is no suggestion that they ever did so.

There is nothing obscure or difficult in the construction) and it seems to me incredible that any man of business could suppose that this course of proceeding was a division of realized profits.

7. That case was followed by Mr. Justice Stirling in the case of Leeds Estate, Building and Investment Co. v. Shepherd (1887) 56 Ch. 787. With regard to the liability of an auditor he held:

that it was the duty of the auditor in auditing the accounts of the company not to confine himself to verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the Articles of Association, and was properly drawn up so as to contain a true and correct representation of the state of Company's affairs.

8. With regard to the Directors who in. that case were ignorant of the true state of the Company's affairs, but had neglected to enquire into or do anything by way of

checking the conduct of the officials, Mr. Justice Stirling said this:

The conclusion at which I have arrived, upon a consideration of the whole evidence, is that the Directors never exercised any judgment at all with reference to these accounts, but accepted without inquiry or verification whatever Crab tree and Locking told them. In this respect they failed, as I think, to perform the duty cast upon them by the Articles of Association. That duty was to cause estimates of account to be prepared, and upon those estimates to recommend a dividend. In the performance of that duty they were no doubt entitled to avail themselves of the advice and assistance of their Secretary and Manager, and to obtain by that advice and assistance such materials as were proper for the purpose of enabling them to decide upon the question they had to consider; and having so done, they were bound to exercise their judgment as mercantile men on the materials which they had obtained. This, in my opinion, they never did; but in truth they delegated to Crab-tree the exercise of that judgment and discretion which it was their duty to take upon themselves. Upon the whole, although the Directors were, I believe, ignorant of the true state of the Company's affairs, and although I find no trace of their having acted with a view of obtaining any improper benefit for themselves, I feel compelled to hold that they have fallen short of that standard of care which, having regard to the Oxford case A.I.R. 1923 Lah. 58 they ought to have applied to the affairs of the Company in the following respects : (1) They never required the statement and balance-sheets to be made out in the manner prescribed by the Articles : (2) They failed properly to instruct the Auditor, or, at all events, to require him to report on the accounts and balance-sheets in the mode prescribed by the Articles; and (3) they were content throughout to act on the statements of Crab-tree without inquiry or verification of any kind other than the imperfect audit of the accounts by Looking. Those accounts and balance sheets did not truly represent the state of the Company's affairs; and that being so, I think that according to what is laid down in Rance's case (1878) 10 Ch. Div. 118 the onus is laid upon them to show that the dividends they paid were paid out of profits. This upon the evidence before me they fail to do.

9. Finally it seems to me that the principle laid down In re Sharpe, In re Bennett, Masonic and General Life Assurance Co. v. Sharpe (1882) 1 Ch. Dev. 154

governs this case. We were, on behalf of the defendants, strongly pressed by the decisions in the cases of Kingston Cotton Mill Co. (No. 2) (1896) 1 Ch. Dev. 331, and Dovey v. John Cory (1901) A.C. 477. I do not propose to discuss the Kingston Cotton Mill Co. (1896) 1 Ch. Div. 331 at length. I think it may be said to represent the high water-mark of the immunity from legal liability of the ornamental and 'do-nothing' Company Director. It seems to me that there is a broad distinction between the circumstances oft hat case and the circumstances of this case. It may well be that a director or a body of directors having apparently an honest Manager cannot be, under Section 281, called upon to keep a constant watch and check upon a fluctuating stock like yarn which is going in and out of the mill and which is being used daily in the handling of the company's business. To impose such a duty upon directors, as the Courts have said, would lead honest men to refuse to undertake such a responsibility. But that is a very different thing from a Bank Director taking no steps whatever to see that the Manager does not lend the funds and the depositors' and shareholders' capital to worthless debtors and to persons who offer no security. It seems to me that the case of the Kingston Cotton Mills Co. (No. 2) (1896) 1 Ch. Div. 331 gives no assistance in deciding whether the Directors are liable in this case. The same I think must be said about the case of Dovey v. Cory (1901) A.C. 477, Mr. John Cory was in a very special position. Lord Davey said, and everybody must recognise that the case was a difficult one. Mr. Cory certainly was guilty of doing very little but in that case in addition to the Manager, there was a Chairman of the Board who was actively interesting himself in the conduct of the Company's business, and was no doubt trusted by the Directors, and allowed, so to speak, to do their work in seeing that the Manager did his, and it so happened that this Chairman was not only dishonest, like the Manager, but was a brother of Mr. John Cory, and the Lord Chancellor emphasised the fact in his judgment that he desired to be understood as dealing only with the facts of that particular case. It does not seem to me that the conduct of Mr. John Cory, which was in that case excused, has any relation to the conduct of these Directors. Finally Mr. Peary Lal Banerji pressed upon us as being binding upon us with the force of a statute the dictum contained on pages 109 and 110 of the opinion of their Lordships of the Privy Council in the case of Prefontine v. Granier (1907) A.C. 101, where it is said by Sir Arthur Wilson, apparently in

general terms, that attempts had been repeatedly made to render directors personally liable on the ground that they had trusted various officers of the company and had failed to detect and had been misled by misrepresentation and concealment by such officers when there was no reason for doubting their fidelity, and that such attempts had not been successful, and it was further said in the course of that passage that it was sufficient to refer to the case of Dovey v. Cory (1901) A.C. 477. Paying all the respect which is due to any dictum in an opinion of their Lordships of the Privy Council, I can only say that if it is to be taken as a historical statement of fact, it cannot be accepted as accurate. In fact in that particular case, no negligence was found against the Directors. An appeal was brought against the decision of the Court below, but so little headway did it make on the facts that the respondent's Counsel was not called upon, and the judgment does not profess to discuss the oases. I have already pointed out that the study of the case Dovey v. Cory (1901) A.C. 477 does not quite bear out the statement male with regard to it in Sir Arthur 'Wilson's opinion, and I hold myself not to be hound by that dictum if it is to be taken as laying down the law that where-ever director honestly trusts a fraudulent Manager, he is free from all liability. Finally I prefer to base myself upon what was said by Lord Lindley in In re National Bank of Wales, Limited (1899) 2 Ch. Div. 629. It is the same as the case of Dovey v. Cory (1901) A.C. 477, and the judgment from which I quote, is the judgment of the Court of appeal read by Lord Lindley, Master of the Rolls, overruling Mr. Justice Wright, who held John Cory to be liable. He says:

The question arose, was it his duty to distrust the accuracy and confidence of what he was told by the General Manager and the Managing Director.

10. It is to be observed that John Cory was relying on two parsons each of whom was supposed to be independent of the other, one being in a position of authority.

'It is a question', says Lord Lindley 'on which opinions may differ.

11. After further discussion Lord 'Lindley continues as follows:

Cases such as these are always cases of degree. In Leeds Estate, Building and Investment Co. v. Shepherd (1887) 36 Ch. Div. 787 to which I have already

referred) the directors trusted their manager and were held liable. They did not take the trouble to see that what he did was even apparently what he ought to have done. They delegated their function to him.

12. The case of In re Denham (1888) 25 Ch. Div. 752 is more like the present case, and there the director was held not liable. It appears that the ruling of the House of Lords in the case of Dovey v. Gory (1901) A.C. 477 does not question the principle laid down in the judgment of Lord Lindley from which I have just made these extracts, and does not question the other authorities which were well-known at the time, from which I have cited passages in this judgment. I find myself unable to come to the conclusion that that case altered the law in any respect or made any modification of the principles on which this section had been administered in England.

13. I come without hesitation to the conclusion following the principles laid down in England, and with due regard to the sections in the Indian Companies Act that the Directors have failed to show that they had any reasonable belief, and that they are liable, each of them, for the payment which they approved either by resolution, or by signing the balance-sheet, and the report by which it was recommended for dividends paid out of capital from 1915 to 1923. This of course disposes of the case against Mr. De, so far as his liability as a Director is concerned, but it still leaves the question of his liability as Auditor to be disposed of. In my opinion Mr. De was guilty of signing a false statement of a balance-sheet as Auditor. Unless auditors are to be held strictly to their legal liability, however honest they may be, the object of the Legislature in requiring a certificate from them is absolutely defeated. I acquit Mr. De of any conscious dishonesty. I am not satisfied that he deliberately left the Board in order to become an Auditor. I believe he is both in the ordinary way, and so far as the conduct of this business was concerned, a perfectly honest man. But, on the other hand, I hold that he was utterly reckless and indifferent in his conduct as an Auditor. He had been in the employment of the Government in the Accountant General's Office and was a certified Government Auditor. He was trusted to discharge his duty having regard to the experience which he had derived from his previous service, and in my opinion, he allowed Kedar Nath to throw dust in his eyes and to deceive him in the most obvious

manner. Mr. De says that if he had examined the books and asked for an explanation about the Tata Industrial Bank's liability, he would have discovered in two minutes that the affairs of the Bank were in a very critical state and that the depositors and creditors were being defrauded. He never asked a question and he signed a statement in the balance-sheet saying that he had received all the needed information's and explanations. These words are put in for the reason that an Auditor is not a mere arithmetical machine to check the figures in the book. Ha should have satisfied himself not only that the accounts were correct but that the books represented the true state of affairs of the Bank. This Mr. De admits he did not do. He also admits that he never took the slightest trouble to ascertain the facts. Here again I do not think it necessary to quote from the authorities. I think the statement which Mr. De himself signed, which I have just read, sets out the standard which the law confers upon him without reference to any authority. But, in conclusion, I will refer to what I believe to be the correct statement of the Auditor's duty, and one which has never been challenged, contained in the judgment of Lord Lindley in In re London and General Bank (No. 2) (1895) 2 Ch. Div. 682.

14. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial posision of the company at the time of the audit, and his duty is confined to that. But then comes the question: How is he to ascertain that position? The answer is : By examining the books of the Company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the Company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than an idle farce. Assuming the books to be so kept as to show the true position of a Company, the auditor has to frame a balance-sheet showing that position according to the books and to certify that the balance-sheet presented is correct in that sense, But his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the Company.

15. As Auditor, therefore, Mr. De must be declared to be liable for the last two years' dividends, namely 1922 and 1923. In this respect Mr. De is jointly and severally liable in each year with the Directors whom we hold responsible for that year.

**Mukerji, J.**

16. After the very exhaustive judgment which has been just delivered by my learned brother, I would hardly consider it necessary for me to say anything by way of addition. But having regard to the importance of this case to the community, which has been hard hit by the failure of the bank, I think I may as well state, very briefly, the reasons which have induced me to agree with the judgment of my brother.

17. The liquidator has called upon the Auditor and the late Directors of the Union Bank to make good a large sum of Rs. 1,41,000 and odd on the ground that, between themselves, they have allowed so much money of the Company to be misspent. The application is one under Section 235 of the Indian Companies Act, 1913.

18. Two questions have been raised by way of defence on behalf of the Directors. It has been urged that the application was time-barred and, secondly, it has been urged that the Directors acted in good faith and honestly and, therefore, they are not liable.

19. The two defences raised are really the two main points to be considered in the case.

20. On the question of limitation I think Article 120 of the Limitation Act is the only Article that can be applied to the case. The claim is by liquidator who had no existence at the dates on which the amounts claimed are alleged to have been mis-spent. If the liquidator is given permission by the law to claim these monies, certainly it would be unfair and unjust to say that the claim became time barred before ha came into existence. This is one of the reasons why I am unable to agree with the argument of the learned Counsel for the Directors that Article 36 of

the Limitation Act should be applied. Another reason which seems to be strongly against this contention is the fact that Article 36 relates to cases of tort which are not provided for by the previous Articles relating to particular cases of suits of that character. Article 36 clearly mentions that it would apply in cases of misfeasance, etc., arising out of matters independent of contract. The liability of the Directors is certainly not a matter independent of contract. They are bound by the Articles of Association; and by Article 50 of the Articles of Association relating to this Company, the business of the Company is to be managed by the Directors. It can hardly be said that the Directors were men in the street and it was a sheer act of trespass that they committed in ordering payment of the-dividend. A case of the Lahore High Court was cited to us by the learned Counsel appearing for the Directors, viz., Bank of Multan v. Hukum Chand A.I.R. 1923 Lah. 58. It appears that three learned Judges of the Punjab High Court were of opinion that Article 36 did apply to an application by the liquidator for recovery of money. One of the reasons given by the learned Chief Justice in favour of the application of the Article was that if that Article did not apply, old and stale claims might be recovered. But a clear answer to this objection is provided in Section 235 itself. It gives the liquidator power to question the conduct not only of the Directors but of the promoters of the Company. It is clear that all transactions smelling of breach of confidence may be called into question by the liquidator. The only check to be applied is that afforded by Section 281 of the Companies Act. If an act has been done honestly and reasonably, nobody need be liable. Further, if Article 36 applied, a fraudulent Director has only to keep the shareholders and others in ignorance of their mischievous acts for two years, and he would be immune. It is clear, therefore, that we cannot be guided by sheer considerations of policy in choosing what Article to apply.

21. It was argued by Mr. Banerji, the learned Counsel for the Directors, that if Article 35 did not apply, Article 115 would. He argued that if it was a matter of contract then Article 115 ought to apply. But if Article 115 applied, in this particular case Article 116 would apply as the Articles of Association have been registered under the law. Registration with the Registrar of Companies is as much a registration within the Article 116 as registration under Acts 16 of 1908. This was held in Ripon Press and Sugar Mill Co. Ltd. v. Nama Venkatarama Chetty (1918)

42 Mad. 33. However, I agree with my learned brother that Article 115 or Article 116 has no application. They are meant to apply to particular and specific contracts that are broken. As indicated above, Article 120 would seem to be the only Article applicable and the 'right to sue' would accrue only after the appointment of the liquidator, if not after he discovers the mis-application of the money.

22. On the question of liability of the Directors in general, I have to examine the contention of the learned Counsel for the Directors, viz : if the Directors act honestly they are immune. I should think that the Directors, for being exempted must also show that they have acted, 'reasonably.' It is not necessary for me to explain the reason of the rule but if one should seek it, it can be easily found. The directors of a company are really trustees on behalf of a large body of share-holders and people who deal with the company and the least that can be expected of them is that they should act honestly and reasonably. In so acting, they may become guilty of negligence. The law is prepared to excuse their negligence provided the acts are honest and reasonable. If they are dishonest, of course, there is no escape. But if they are not prepared to act reasonably, the men should not take upon themselves the onerous duty of discharging the functions of a Director.

23. The authorities on the point, apart from the law as enacted in Sections 235 and 281 of the Companies Act, have been considered by my learned brother and I do not propose to go over the same ground. I will content myself with the examination of facts and figures which go to establish that the Directors have not acted reasonably in the matter of their charge.

24. All the Directors ware examined in open Court on a previous occasion and they have all admitted those statements to be correct and they were given further opportunity to add to their statements if they were so inclined. Those statements are evidence in this case. A mere reading of the statements will show that each and every one of the Directors has contented himself with stating that ha acted blindfold, that he trusted the manager Kadar Nath implicitly and did just what he asked him to do. This implies that the servant of the Directors became their master

and the masters submitted their judgment to the servant. Under No. 73 of the Articles of Association, the manager was to be, in all matters relating to the Company, subject to the superintendence, orders and control of the Directors. The Directors were even given power to dismiss the manager. If after all this power and if after the clear provision that it was for the Directors to manage the business of the Company, the Directors submitted their judgment to the disposal of the manager, it can hardly be said that these gentlemen acted reasonably. His Lordship here discussed facts and proceeded:

The facts noted above will clearly show that none of the gentlemen who figure as the Directors took any genuine interest whatsoever in the affairs of the Company. They may have acted under the direction of Kedar Nath and with blind faith in him, but it can never be said that they exercised any discretion whatsover, much less to say that they acted reasonably.

25. I agree, therefore, in holding that the several Directors are responsible for having paid out, out of the capital, dividend during the several years in suit.

26. Coming to the case of Mr. De, the Auditor, I agree with my learned brother that although no dishonesty can be imputed to him in the sense that he misappropriated any money of the Company, he really shut his eyes and passed any accounts, as correct and good, that were brought forward before him by the manager Kedar Nath. I will give a few illustrations to show how that gentleman acted. His own evidence is nothing but a string of confessions. At almost every step ha admitted that many things that he did he ought not to have done and many things that he did observe ought to have aroused suspicion and he should have called upon the manager for genuine explanation. In the cash book dated the 16th of December, 1922, the loan account of Mahendra Nath Mitter, a brother of the manager Kedar Nath, is shown. According to this account, Mahendra paid Rs. 3,900 principal amount and Rs. 4,290 as interest. In the account of the same date, and really on the right hand side of the same page, the whole amount is shown as having been lent out to Mahendra Nath Mitter. This was clearly a manipulation of figures and nothing else. Mahendra Nath Mitter had long delayed payment and never paid anything, yet it was shown in his account that he had paid up his old

debts and if anything was due by him it was on account of a fresh loan advanced to him. No explanation, however clever, can really explain away this state of affairs. Yet Mr. De says that he examined the account books and found them in order.

27. I have already mentioned that year after year a very large sum of money was shown as interest earned by the Company. Mr. De as the Director of the Company from 1915 to 1921 might have known and subsequently as the Auditor must have beats aware that the sum shown as earned had not really been realised by the company and that the balance-sheet was so designed as to show that the Company had an income large enough to justify the distribution of dividend.

28. Coming to the reserve fund, Mr. De had to admit that there was really no reserve fund. He said that the money supposed to have been set apart as the reserve fund was as much invested in granting loans as any other portion of the capital. The statement, therefore, in the balance-sheet, that there was a reserve if und was absolutely false. Yet Mr. De had no hesitation in putting his signature and his certificate down to that statement and declaring that the statement was correct.

29. Mr. De admits that he never examined the security supposed to have been in the custody of the bank although he had no hesitation in certifying that loans exceeding Rs. 2,00,000 were fully secured. Before he certified to the fact, he ought to have satisfied himself that there was something on which he could base his certificate although it may not have been his duty to count the security and to assess the market value of several articles. If a bank possesses mortgage-deeds as security, I suppose, it would be the duty of the auditor to examine the deeds Similarly it would be the duty of the auditor to satisfy himself that there really was in the possession of the bank the security, so as to justify him in saying that the loans advanced were fully secured.

30. We find that by resolution dated the 4th of June, 1916, Mr. De, as one of the Directors authorised the manager to raise a loan of Rs. 15,000 by pledging the ornaments in the custody of the bank. To be accurate, he ought to have examined whether the security which was in the possession of the bank was still in its possession or had been pawned away in order to rajas money. This was. an

important fact which the share-holders and the public had a right to know and this fact wall concealed. As a matter of fact, as already stated, the liquidator found no ornaments or only just a few and of no value, in the possession of the bank when it failed.

31. In my opinion, Mr. De has not acted in accordance with his duty as an auditor and must share the responsibility of the acts with the Directors.

32. The liability of each Director and of Mr. De has been described in detail in my brother's judgment, and I fully agree with his views. The dividends paid out of capital must be made good by the Directors who induced the payment on false balance sheets and the responsibility must be shared by the Auditor in years 1922 and 1923.

33. The manager, Kedar Nath, not having been served with notice of these proceedings could not be proceeded against, and for the time being at least, he escapes a just liability.

34. Thus the claim of the liquidator in respect of the dividends paid out of the capital is fully established.

35. The liquidator claimed a sum of Rs. 56,000 on account of the value of grain said to have been lost to the Company owing to the negligence of the Directors. This charge fails for the simple reason that there is no evidence to show what was the actual weight or value of the grain which it was supposed, Annapurna Co. possessed and offered to give as security. This branch of the case has been dealt with at length in the judgment of my learned brother and I do not feel called upon to discuss it. Suffice it to say that I am in full agreement with him.

36. The third and the last claim related to certain floating account. This part of the claim has been withdrawn and very properly. It was brought under a certain misapprehension of facts.

37. The result is that I fully agree in the order proposed by my learned brother.

38. The order of the Court is that Mr. Ganendra Nath Ghose and Mr. B.L. De are jointly and severally liable and must pay to the Liquidator the sum of Rs. 4,991 in respect of the year 1915, the sum of Rs. 4,247 in respect of the year 1916, the sum of Rs. 4,310 in respect of the year 1917, the sum of Rs. 4.379 in respect of the year 1918. Mr. B.L. Do, Mr. J.N. Ghose and Mr. M.M. Banerji are hereby declared to be liable and must pay to the Liquidator the sum of Rs. 4,707 for the year 1919. Mr. B.L. De, Mr. J.N. Ghose, Mr. M. M. Banerji and Mr. Ashutosh Mukerji are jointly and severally liable and must pay to the Liquidator the sum of Rs. 4 824 for the year 1920, the sum of Rs. 5,002 for the year 1921, the sum of Rs. 5,121 for the year 1922, and the sum of Rs. 5,323 for the year 1923, which will also include Mr. Shanker Prasad.

39. The Liquidator must have his costs of these proceedings from all the defendants except Shanker Prasad, jointly and severally, the amount to be certified by us.

40. The total amount we certify is Rs. 2,500 which is as follows : To the learned Counsel from Calcutta Rs. 250 for reading the case, and Rs. 1,200 at the rate of Rs. 150 a day for 8 days, making a total of Rs. 1,450; Rs. 150 to Mr. Sanyal, Rs. 600 to Mr. Desanges for 6 days; and Rs. 300 special allowance to the Liquidator for preparing the case. The defendants-must pay their own costs.