

1943

*Present: de Kretser and Jayetileke JJ.*LIQUIDATOR TURRET MOTORS, Appellants, and
CHARLES *et al.*, Respondents.

307—D: C. Colombo, 13,252

Companies Ordinance, No. 51 of 1938, ss. 121 and 132 (1)—Action of auditors—Duties of auditors—Preparation of balance sheet—Failure by Directors to prepare balance sheet—Claim by auditors for fees.

Under section 121 of the Companies Ordinance it is the duty of the Directors of a Company to prepare a balance sheet.

In the absence of a balance sheet the only duty cast on the auditors is to report to the members on the accounts examined by them.

Where the auditors have failed to do so, they are not entitled to any remuneration.

A PPEAL from a judgment of the District Judge of Colombo.

N. Nadarajah, K.C. (with him *N. Kumarasingham* and *H. W. Thambiah*), for defendants, appellants.

G. Thomas, for plaintiffs, respondents.

Cur. adv. vult.

July 2, 1943 JAYETILEKE J.—

This is a claim by the plaintiffs who carry on business in partnership as auditors and accountants, against the defendant company represented by their liquidator, one Sambamurti, for the recovery of a sum of Rs. 550 as fees for auditing their accounts for the year ended March 31, 1940.

At a general meeting of the defendants held on December 31, 1939, Sambamurti was appointed auditor but he declined to accept office owing to some disagreement about his fees. Thereupon the directors, in May, 1940, in the exercise of the powers vested in them by section 130 (5) of the Companies Ordinance, No. 51 of 1938, filled the vacancy by appointing the plaintiff but did not fix the remuneration payable to them.

It must be noted that Sambamurti was paid Rs. 400 for auditing the accounts in the previous year and that he declined to accept office because the directors proposed to reduce the fee for the year in question.

The duties of an auditor are laid down in section 132 (1) of the Ordinance. His primary function is to make a report to the members on the accounts examined by him, and on every balance sheet laid before the company in general meeting during his tenure of office. He is required to state in his report whether or not he obtained all the information and explanation he wanted and whether, in his opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view of the company's affairs according to the best of his information and the explanations given to him, and as shown by the books of the company.

Under section 121 of the Ordinance it is the duty of the directors to cause to be made out in every calendar year and to be laid before the

company in general meeting a balance sheet. To that balance sheet a report has to be attached by them with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the reserve fund.

The defendants' directors made default in carrying out the duty imposed upon them by this section and arranged with the plaintiffs to have a balance sheet prepared by them. This, in my opinion, cannot be regarded as a desirable arrangement in view of the duties imposed upon the plaintiffs by section 132 (1).

The plaintiffs say that they commenced their audit in May, 1940, and that they spent a certain amount of time on it as shown in the Time Sheet, P 2.

On September 18, 1940, the plaintiffs wrote P 3 to the directors asking for Rs. 300 against their fees. On September 20, 1940, the directors replied by P 4: "We shall thank you to expedite the auditing of our accounts as urgently as possible as it is long delayed. We shall certainly look into the payment of your fees in due course."

On November 25, 1940, the plaintiffs wrote P 5 to the Secretary of the defendants asking him for copies of all Insurance claims and the amounts received from the various Insurance companies in respect of these claims. On November 30, 1940, they wrote to the Secretary inviting attention to P 5 and requesting him to furnish them with a certified list of spare parts and cars. The Secretary failed to comply with the plaintiffs' request.

In December, 1940, the defendants went into liquidation. The plaintiffs thereupon submitted to the liquidator their claim for Rs. 550 for services rendered by them.

On January 22, 1941, the liquidator wrote P 10 requesting the plaintiffs to send him the balance sheet with their report. They replied by P 11 that they could not "perfect the balance sheet" as the information asked for in P 5 and P 8 was not given to them and pressed for a settlement of their claim.

The liquidator refused to pay and the plaintiffs instituted this action for the recovery of the said amount. The liquidator filed answer alleging that the plaintiffs failed and neglected to perform their obligations and that the defendants did not have the benefit of any work done by them.

The learned District Judge held that the plaintiffs' failure to furnish a report was due to the neglect of the directors of the defendants and awarded the plaintiffs a sum of Rs. 400 as remuneration.

It seems to me that the judgment cannot be supported either on the facts or on the law. The information and the documents which the plaintiffs called for by P 5 and P 8 were for the purpose of preparing the balance sheet which was no part of their duty. In the absence of a balance sheet the only duty which lay on the plaintiffs was to make a report to the members on the accounts examined by them. That they have failed to do.

It would, I think, be enough to say in the present case that the plaintiffs have failed to discharge the duty imposed upon them by section 132 (1) of the Ordinance and their claim for remuneration must therefore fail. The claim cannot be based on a *quantum meruit* as the defendants did not get the benefit of any work done by the plaintiffs.

I would set aside the decree appealed from and dismiss the plaintiffs' action with costs here and in the Court below.

DE KRETZER J.—I agree.

Appeal allowed.

