case does not fall within the exemption referred to in the first proviso to section 3 of the Indian Stamp Act, and the transfer-deeds executed by Gurdial and Vidya Vati not being considered properly stamped, the transfers cannot be said to have been complete. The view of the learned Single Judge on this point, therefore, was right and must be upheld.

With regard to the remaining two shares of Ram Dial, which were in possession of Mrs. Parry, since the scrips were not handed over along with the transfer-deeds, this transfer cannot be said to have been complete and the decision of the learned Judge on this point also must be upheld.

In the result, I would uphold the decision of the learned Judge in all respects and dismiss both the appeals and make no order as to costs.

MAHAJAN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before G. D. Khosla, C.J., and Gurdev Singh, J.

RAM CHAND PURI,—*Appellant*

versus

THE LAHORE ENAMELLING AND STAMPING COMPANY LTD. (in Liqn.),*Respondent*

Letters Patent Appeal No. 39 of 1958.

Indian Companies Act (VII of 1913)—Sections 167, 168 and 229—Provincial Insolvency Act (V of 1920)—Sections 28(7) and 34—Provable debts—Debt within limitation on the date of the petition but barred by time on the date of the winding up order—Whether provable—Indian Limitation Act (IX of 1908)—Extraneous matters—Whether affect the question of limitation.

1960

July, 18th.

Held, that a debt which is within limitation on the date when the petition for winding up of a company is made is a provable debt even if it has become barred by time on the date the winding up order is made. The implication of section 167 of the Indian Compaines Act, 1913, is that even though a certain creditor was not a party to the petition for winding up, he would be deemed to be a party to the proceedings. He, therefore, enjoys all the benefits and suffers all the liabilities of a party.

Held, that there is nothing novel or undesirable in an extraneous circumstances affecting the law of limitation. Under the insolvency law and also under the Companies Act the order of adjudication or the order of winding up is an extraneous circumstance which affects the question of limitation. Under both laws the final order dates back to the filing of the original petition. This is not a legal fiction but the result of a specific provision of law and must be given full effect to. There is nothing extraordinary or questionable in the fact that limitation is extended by virtue of section 28(7) in the case of insolvency law and section 168 in the case of company law. The creditor may well take the risk to pursue his remedy in a civil Court or wait for the decision of the winding-up proceedings.

Case law reviewed.

Letters Patent Appeal under Clause 10 of the Letters Patent and Section 202 of the Indian Companies Act (VII of 1913) against the order of Hon'ble Mr. Justice Tek Chand, dated 8th January, 1958, passed in C.O. 96 of 1955.

B. R. TULI, ADVOCATE, for the Appellant.

BHAGIRATH DASS, ADVOCATE, for the Respondent.

JUDGMENT

Khosla, C. J.

KHOSLA, C. J.—This appeal under clause 10 of the Letters Patent is directed against an order made by the learned Company Judge on a petition by the Official Liquidator for the settlement of the

list of creditors. We are concerned with only one creditor, namely, Messrs Ram Chand, Puri and Sons. It has been found as proved that a sum of Rs. 2,359-7-9 was due from the Lahore Enamelling and stamping company, Ltd., in liquidation to Messrs Ram Chand Puri and Sons. It was, however, contended before the learned Company Judge that this debt was barred by time. The Company Judge allowed this contention and rejected the claim of the creditor. Messrs Ram Chand Puri and Sons have come up in appeal under clause 10 of the Letters Patent, and the only question for our consideration is whether the claim is barred by time or not.

The petition for winding-up was presented on the 21st of April, 1952, and the Company was ordered to be wound up by an order of this Court on the 23rd of September, 1953. It is admitted on all sides that on the date the winding-up petition was filed, the debt was within limitation and was, therefore, recoverable by means of a civil suit. The debt became barred during the period which expired between the filing of the application and the order of winding-up. The question, therefore, is whether a provable debt is one which is provable on the date on which the winding-up order is made or on the date when the application for winding-up is made. The learned Judge has taken the view that the date of the winding-up petition is not the relevant date. He has come to this conclusion for a number of reasons, which he has stated in his judgment. He says, in the first place, that there is no bar against the presentation of a plaint or the institution of other proceedings against a company in respect of which a petition for liquidation has been made until the winding-up order is made. He goes on to say—

"A creditor will be incurring risk if he were to speculate on the success of the wind-

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ing-up petition and allow the suit to become barred by efflux of time, hoping that the winding-up order would be made."

Therefore, the learned Judge concludes that since a creditor can bring a suit for the recovery of his debt after the winding-up petition is made, the limitation against him cannot stop. He took the view that the provisions of section 168 of the Indian Companies Act cannot be held to control the bar of limitation with respect to suits and other proceedings and, therefore, the claim, which becomes barred by time before the winding-up order is made must be held to be barred by time. Finally, the learned Judge observes—

> "There is no principle of law outside the Limitation Act, under which limitation can be suspended and exceptions, which are not provided by the statute, cannot be assumed either on grounds of hardship or of reasonableness."

The learned Judge has referred to a number of cases, although he felt that there was no reported case exactly in point, namely, a case in which it has been held that a debt, which was recoverable and provable on the date of the filing of a winding-up petition and becomes barred by time before the order of winding-up is made, is not a debt which can be proved under the provisions of the Companies Act.

In considering the question of limitation, a reference may be made to the provisions of section 229 of the Companies Act. The relevant portion of this section after omitting unnecessary phrases reads as follows:—

> "In the winding-up of an insolvent company the same rules shall prevail and be

> observed with regard to the respective rights of secured and unsecured creditors and to debts provable * * * * as are in force for the time being under the law of insolvency with respect to the estates of persons adjusted insolvent; and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up, and make such claims against the company as they respectively are entitled to by virtue of this section."

Where, therefore, there is nothing in the Companies Act, which is repugnant to considerations of limitation, etc., relating to debts recoverable under the insolvency law, the provisions of the Provincial Insolvency Act or the Presidency-Towns Insolvency Act, as the case may happen to be, may with advantage apply to the case which is being considered under the Companies Act. Section 168 of the Companies Act provides—

> "A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up."

This is analogous to the provisions of section 28(7) of the Provincial Insolvency Act which are in the following terms :—

> "An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made."

The provisions of section 171 of the Companies Act are somewhat similar to the provisions of

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section 28(2) of the Provincial Insolvency Act. Section 171 of the Companies Act places an embargo on certain types of proceedings after the winding-up order is made. Similarly, under the Provincial Insolvency Act a similar embargo is placed on legal proceedings when an order of adjudication has been made. One other section of the Companies Act may be referred to before discussing the question of limitation on merits. This is section 167 which reads—

> "An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory."

The implication of this section is that even though a certain creditor was not a party to the petition for winding-up, he would be deemed to be a party to the proceedings. He, therefore, enjoys all the benefits and suffers all the liabilities of a party.

Under the insolvency law those debts are provable which could be proved on the date the order of adjudication was made. This provision has been interpreted to mean that debts, which were within limitation on the date the application for insolvency was made, shall be deemed to be provable because of the operation of section 28(7). It has been held in a number of cases that the provisions of section 28(7) govern the provisions of section 34 of the Provincial Insolvency Act, which makes provision for the proving of debts. Section 34(2) reads in the following terms :—

> "Save as provided by sub-section (1) all debts and liabilities, present or future, certain or contingent to which the debtor is subject when he is adjudged an insolvent, or to which he may become

subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act."

If section 34(2) is to be read entirely independently of section 28(7), then it cannot be said that a debt which was provable on the date the application for insolvency was made but not on the date the order of adjudication was made, is provable under the Act, for section 34(2) makes a specific reference to the date of adjudication and not to the date when the application is filed. But section 28(7) is also to be read together with section 34(2), and that being so, it has been held in a number of cases that debts, which are provable on the date the application for insolvency is filed, can be proved after the order of adjudication is made. The first of these cases is *Nizam* v. *Ram and others* (1), of the Lahore High Court that section 34 is governed by sub-section (7) of section 28. In that case a debt had become barred during the period which elapsed between the filing of the petition for insolvency and the making of the order of adjudication. The Lahore High Court held that the debt was within time and was provable. The Bombay High Court, came to a similar decision in *Byramji Bomanji Talati* v. *Official Assignee, Bombay* (2). The Bombay High Court was, in that case, applying the provisions of the Presidency-Towns Insolvency Act, and the provision in that Act was to the effect that the order of adjudication relates back to the act of insolvency. While considering the question of limitation, the learned Judges observed—

"Under section 17 and section 51, Presidency-Towns Insolvency Act, the insolvency

(1) A.I.R. 1933 Lah. 688.
(2) A.I.R. 1936 Bom. 130.

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commences on the commission of the act of insolvency, and at that date the property of the insolvent vests in the Official Assignee, whose duty it is to administer it, and distribute it amongst the creditors, who prove their debts. As from that date the Indian Limitation Act has no application, and the relationship of debtor and creditor ceases to exist."

The learned Judges derived assistance from an observation of the Lord Chancellor of England in *Ex parte Ross : In the matter of Coles* (1)—

> "Whatever may be the technical objection, the effect of the commission clearly is to vest the property in the assignee for the benefit of the creditors ; they are, therefore, in fact, trustees: and it is an admitted rule, that unless debts are already barred by the statute of limitations when the trust is created, they are not afterwards affected by lapse of time."

The third case arose in Madras. In that case the provisions of the Provincial Insolvency Act were considered by a Division Bench of the Madras High Court [*A. Subramania Iyer* v. *S. Meenakshisundaram Chettiar and another* (2)]. In that case, too, it was held that the date for the purpose of computing limitation is the date when the application for insolvency is filed. Mr. Bhagirath Das, who appeared on behalf of the respondents, drew our attention to certain observations made by Varadachariar, J., in his judgment which, he contended, appeared to show that the opinion of the learned Judge was not entirely in agreement with

(1) (1827) 2 Gt. & J. 330.
(2) A.I.R. 1937 Mad. 577.

his decision. These observations are contained in column 2 at page 577 of the report and are in the following terms :—

> "Having heard the point fully argued we think it right to say that if the matter were *res integra* we should have hesitated to come to the conclusion reached or suggested in the cases above referred to."

The Division Bench, however, after fully considering the matter, came to the conclusion that the decisions cited before them, including the Lahore and the Bombay cases, to which I have already made a reference, were correct and that limitation stopped on the filing of an application for insolvency. In *Jwala Prasad* v. *Jwala Bank, Ltd.*, (1), which came before the Allahabad High Court, the point for consideration was similar to the one before us. The learned Judges observed that the date of the filing of the application for winding-up was the relevant date for computing limitation. The question in that case related to the claim for the recovery of the salary of the Managing Director. That part of the claim in respect of the salary, which was within limitation on the date the application for winding up was filed, was held to be provable. In paragraph 5 of the report the following passage appears :—

> "In order that the claim may be made before the official liquidator it should be within time at the date of the order of winding up. The date of the winding up would be treated as the 1st of August, 1949, when the application for winding up was made. The claim for

(1) A.I.R. 1957 All. 143.

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the past salary from 1st July, 1939 to 30th June, 1943 would be barred by limitation even if the period of limitation be considered as six years under Article 116 of the Lim. Act."

This case seems to me on all fours with the case before us, and the Allahabad High Court held that for the purposes of limitation the date when the application for winding up is made is to be considered the date when the order for winding up is made. This is, in effect, what section 168 of the Companies Act provides.

On the other side Mr. Bhagirath Das relied upon the observations of the Lahore High Court in *Hem Raj and others* v. *Krishan Lal and others* (1). This was a case in which the provisions of section 53 of the Provincial Insolvency Act were being considered by the Lahore High Court. The learned Judges came to the conclusion that the provisions of section 53 were quite definite and admitted of no ambiguity. There could be no question of modifying these provisions by the provisions of section 28(7). The learned Judges also drew attention to the provisions of section 54 which deals with a somewhat similar matter. Similarly, in *Magandas Bhukandas* v. *Bhalchandra Ramrao* (2), the provisions of section 78(2) of the Provincial Insolvency Act were considered. In this section, too, it is specifically laid down that the period which must be excluded from limitation is the period which elapses between the making of the order of adjudication and the annulment of that order. This admits of no modification by the provisions of section 28(7). The provisions of sections 53 and 78(2) of the Provincial Insolvency Act are, in no way, similar to the provisions of section 34.

(1) A.I.R. 1928 Lah. 361.
(2) A.I.R. 1954 Bom. 436.

Under section 34 certain debts are provable on the making of the order of adjudication. Section 28(7) provides that the order of adjudication is to be deemed to have become effective on the date the application for insolvency was filed. Sections 34 and 28(7) can be read together, whereas the wording of sections 53 and 78(2) does not admit of any further modification by any other section. Our attention was drawn to another case reported as *Fatma Bi* v. *Nagoorkhan and another* (1). In this case the order of adjudication was made on the 22nd of October, 1928. The debt, which was under consideration, had become barred on the 20th of October, 1928. This day was a Saturday and a holiday. The following day was a Sunday and on the 22nd the order of adjudication was made as I have already said. The question arose whether the debt was provable or not. The point, whether the debt was provable because the claim was within limitation on the day the application for insolvency was made, was not raised before the Judges and it was held that because the 20th and 21st were holidays and the order of adjudication was passed on the 22nd of October, the claim was within limitation. Since the point which is under consideration before us was not raised in that form, this decision cannot be said to be an authority for the view that even under the insolvency law the date of adjudication is the relevant date for determining limitation. The volume of authority to the contrary is much greater, and as I have already drawn attention to the fact, the learned Judges of the Madras High Court felt that there was overwhelming weight of authority in favour of the view that the date of the filing of the application was the date from which limitation must be computed.

(1) A.I.R. 1932 Mad. 287.

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There is nothing novel or undesirable in an extraneous circumstance affecting the law of limitation. The learned Single Judge in this case felt reluctant to give effect to the provisions of section 168 in the matter of proving debts because he took the view that the law of limitation is a complete law by itself, and once limitation begins to run, no extraneous circumstance should be allowed to affect it. He observed—

> "It seems to be logical, that in the absence of any specific provisions, the determination of period of limitation cannot depend upon an extraneous circumstance, whether the winding up order is going to be passed on a petition, or, on the doubtful fact, whether the petition is going to be pursued or withdrawn."

Under the insolvency law and also under the Companies Act the order of adjudication or the order of winding up is an extraneous circumstance which affects the question of limitation. Under both laws the final order dates back to the filing of the original petition. This is not a legal fiction, but the result of a specific provision of law and must be given full effect to. There is nothing extraordinary or questionable in the fact that limitation is extended by virtue of section 28(7) in the case of insolvency law and section 168 in the case of company law. The creditor may well take the risk to pursue his remedy in a civil Court or wait for the decision of the winding up proceedings. He may well say to himself that if the order of winding up is going to be made, it would be so much waste of time and money on his part to pursue a remedy in a civil Court. The financial state of the company may be such that it may be inadvisable to pursue the ordinary remedy in a

Court of law and he may well decide to await the decision of the Company Court and take his chance on receiving a portion of the dividends which would be paid out to creditors. Simply because there is no specific embargo on the filing of the civil suit after the winding up petition is presented, it does not mean that he is compelled to pursue that remedy. The company law specifically provides that once the winding up order is made, no further proceedings or suits can be filed without the leave of the Court, and because the winding up order dates back to the day when the winding up petition was filed, it can be argued quite logically that a creditor is entitled to await the final issue in the matter instead of hurrying to a Court and risking his money and time in pursuing an elusive remedy. The remedy is, no doubt, elusive because if the order is made, he cannot proceed further with that remedy, and if during the pendency of the winding up petition he obtains a decree, he cannot stand in any better circumstances. His position is no better than it was before, and that being so, there does not seem to me anything anomalous in the limitation being extended in such a way that the creditor can prove his claim if he can show that his debt was not barred on the day the application for winding up was made.

It seems to me that there is a close analogy between the insolvency law and the law under the Companies Act by virtue of the provisions of section 229 of the Companies Act, and since in a large number of cases Courts have held that under the insolvency law a debt, which is provable on the date of the filing of the application for insolvency, is to be deemed a provable debt within the meaning of section 34(2), it must be held that the same rule would apply to cases under the Companies Act, and that being so, I would hold that

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the debt of the appellant is provable, and not barred by limitation.

I would therefore, allow this appeal and setting aside the order of the learned Company Judge hold that the claim of the appellant in respect of Rs. 2,359-7-9 has been proved. The appellant will recover costs in appeal.

Gurdev Singh J.

GURDEV SINGH, J.—I agree with my Lord the Chief Justice.

B.R.T.

CIVIL MISCELLANEOUS

Before Bishan Narain, J.

BASHESHAR DAYAL,—*Petitioner*

versus

CUSTODIAN GENERAL EVACUEE PROPERTY,—*Respondent*

Civil Writ No. 222-D of 1956

Administration of Evacuee Property Act (XXXI of 1950)—Section 40—Confirmation of sale of property sold by a Muslim in February, 1948, who became evacuee in June, 1948—Application for a confirmation of sale made in March, 1948—Confirmation of sale refused on the ground that it was not bona fide although for adequate consideration—Grounds in support of the order being that no previous permission of the Custodian was obtained and the purchaser knew that the seller intended to be evacuee—Whether tenable to determine good faith—Order held untenable under section 40(4)(a)—Whether can be supported under section 40(4)(c).

1960

August, 3rd

Held, that section 40 of the Administration of Evacuee Property Act, 1950, does not lay down that if an intending evacuee or a Muslim in anticipation of his becoming evacuee enters into the transaction, then the transaction requires confirmation. Under the Administration of Evacuee Property Act, 1950, confirmation of the Custodian is required only if the transferor becomes an evacuee after the transfer.