present Code is quite clear and extends the mischief of the section to any property produced before the Court or in its custody. Differing therefore with the decision in *Jagannathan* v. *Varadaraja Mudaliar*(1), I am of opinion that there is power in Courts acting under the preventive sections to make an order with regard to a property which has been produced before it. * * * * *

In re PYDI RAMANNA.

NAPIER, J.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Krishnan.

CHAVADI RAMASWAMI PILLAI (PETITIONER), APPELLANT,

v.

E. VENKATESWARA AIYAR, AND THE OFFICIAL RECEIVER, TINNEVELLY (RESPONDENTS), RESPONDENTS.*

1918 July 23.

Provincial Insolvency Act (III of 1907), ss. 45 and 46—Appeal, time for—Limitation Act, applicability of—Period of limitation, commencement of—General principles—General Clauses Act (X of 1897), ss. 9 and 10, applicability of—Ninetieth day, dies non*—Exclusion of.*

In computing the time for preferring an appeal to the High Court under section 46 of the Provincial Insolvency Act (III of 1907) though the general provisions of the Indian Limitation Act do not apply, the period of ninety days specified in section 45 of the Act should be reckoned from the date of the order appealed against; and thereupon the general principles contained in section 9 of the General Clauses Act (X of 1897) should be applied and the day on which the order appealed against is passed should be excluded.

Further, under section 10 of the General Clauses Act, the ninetieth day, if it be a *dies non*, must be excluded.

APPEAL against the order of A. EDGINGTON, the District Judge of Tinnevelly, in Original Petition No. 627 of 1916.

The material facts appear from the judgment.

T. M. Ramaswami Ayyar for the appellant.

K. S. Sankara Ayyar for the respondent.

The JUDGMENT of the Court was delivered by

SPENCER, J.—It is argued that these appeals are barred by limitation on the ground that as the general provisions of the Limitation Act have been held not to apply to appeals under section 46 of the Provincial Insolvency Act, the date upon which the order appealed against was made, and the Sunday upon

SPENCER, J.

(1) Cri. R.C. No. 570 of 1915.

* Appeal against Order No. 197 of 1917.

RAMAS WAMI PILLAI v. VENKATESWARA AIYAR.

SPENCER, J.

which the ninety days allowed by section 46 expired, cannot be excluded. Section 45, clause (4), merely declares that ninety days shall be the period of limitation for appeals to the High Court without specifying the method of computing that period. Section 9 of the General Clauses Act (X of 1897) does not directly apply to this section, in which the words 'from' and 'to' do not occur. Nevertheless we think it was intended that the computation should be done as it is usually done in appeals under other Acts, seeing that no other method is prescribed, that is, that ninety days should be reckoned from the date of the order appealed against. We must therefore apply the general principle contained in section 9 under which the day on which the act appealed against is done is to be excluded.

Further under section 10 of the General Clauses Act, the 22nd April which was a *dies non* must be excluded, and it is unnecessary to resort to section 4 of the Limitation Act for this purpose.

It was also argued that the application to the District Court itself was barred by limitation under the twenty-one days rule in section 22 of the Provincial Insolvency Act. But we observe that the application to the District Court was not an appeal against any order passed by the Official Receiver but was one to the Court to take action under section 26, clause (2).

On the merits we are of opinion that there was sufficient cause for the petitioner's vakil failing to attend on the date of hearing, if the facts stated in his affidavit which have not been controverted, are true. The petitioner could not be expected to proceed with his application, which involved certain complicated matters of law and fact, unaided and he might have been reasonably given some time to engage a fresh vakil. We think that when the facts became known on the petitioner's application to the District Court to restore his petition to file, the District Judge should have allowed his application on such terms as to costs, etc., as he thought proper.

We set aside the Judge's orders of January 22nd dismissing the appellant's petition and direct the Judge to take it again on his file and dispose of it according to law.

The appellant will bear his own costs and the respondents' costs in the District Court up to date. Costs in this Court will abide and follow the result.

K.R.