APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

A. N. B. RAMALINGA AYYAR FIRM,
PETITIONERS (APPELLANTS),

1929, November, 18.

v.

N. M. RAYALU AYYAR FIRM,
RESPONDENTS (RESPONDENTS).*

Provincial Insolvency Act (V of 1920), sec. 78, proviso—Construction of—Proof of debt—Decree passed against insolvent and Official Receiver as parties—Subsequent annulment of adjudication—Application for execution of decree—Deduction of time—Formal proof of decree before Receiver, if necessary.

Where a person obtained a decree against an insolvent subsequent to his adjudication, and the Official Receiver was a party to the decree, the debt must be held to have been proved within the terms of section 78 of the Provincial Insolvency Act, 1920, and the proviso to the section did not apply; consequently, the decree-holder is entitled to the deduction of the time mentioned in the section in regard to an application for the execution of his decree, filed by him after the annulment of the adjudication.

APPEAL against the order of the Court of the First Additional Subordinate Judge of Madura in E.A. No. 484 of 1929 in E.P. No. 149 of 1929 in O.S. No. 23 of 1929.

The material facts appear from the judgment.

D. Ramaswami Ayyangar for *C. S. Venkatachariar* for appellants.—The decree-holder is not entitled to a deduction of time under section 78 of Provincial Insolvency Act, 1920. The proviso applies to this case. The decree-debt was provable but not proved. The proviso includes not merely debts which were rejected by the Official Receiver, but also debts for which no proof was tendered before him. In this case, the decree-holder

* Appeal Against Order No. 390 of 1929.

RAMALINGA AYYAR v. RAYALU AYYAR.

did not attempt to prove the decree debt before the Official Receiver. Hence, he cannot have the benefit of section 78 for excluding the time for purposes of limitation. "Proof" is used in sections 33, 63, 64, 80, 78, etc. See also sections 45, 46 and 49 of the Act. See also 2, Halsbury, page 197; English Bankruptcy Act, 1914, Schedule II, rule 1; and Presidency Towns Insolvency Act, Schedule II, rule 2. The object of the proviso to section 78 is to compel creditors to prove under the Act.

K. Rajah Ayyar (with *K. Venguswami Ayyar*) for respondent.—In this case, the creditor had sued prior to the insolvency in 1920, and, in the pending suit, the Official Receiver was made a party to the suit and a decree was passed against both the insolvent and the Official Receiver. No further proof of this decree-debt before the Official Receiver is necessary. The decree-holder is consequently entitled to the exclusion of time.

JUDGMENT.

The question raised by the appeal relates to the construction of the proviso to section 78 of the Provincial Insolvency Act (V of 1920). That section enacts that where an order of adjudication has been annulled, in computing limitation in respect of an execution application, the period from the date of the order of adjudication to the date of the order of annulment, shall be excluded. This rule is subject to the proviso that it does not apply to a debt provable but not proved.

The decree that the respondent seeks to execute was obtained subsequent to the appellants' adjudication. It was obtained not only against the appellant, but also against the Official Receiver, who was impleaded as a party. It is the latter that under the rules has to admit or reject proof of debts. In this case, he was himself added as a defendant and the decree was passed in his presence. Although the Act provides a formal mode of proving a debt, which has not been here adopted, we are prepared to hold, having regard to the facts adverted to, that the debt has been proved and that the

proviso in question does not apply. We do not in this case wish to lay down any general rule as regards the meaning of the word "proved" occurring in the other sections of the Act. The appeal fails and is dismissed, but we make no order as to costs, as the respondent has taken the point now raised for the first time in appeal.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

PERAM CHENNAMMA (PLAINTIFF—PETITIONER), APPELLANT.*

1929, October, 8.

Civil Procedure Code (Act V of 1908), O. XLIV, r. 1—Leave to appeal in forma pauperis*—Question to be considered by Court before granting leave to appeal—*Prima facie *good case, if exists—Court not to strive to arrive at a definite and final conclusion, if decree is erroneous or unjust.*

Order XLIV, rule 1, of the Civil Procedure Code does not contemplate that, before granting leave to appeal in *forma pauperis*, the Court should arrive at a definite and final conclusion that the decree complained against is contrary to law or otherwise erroneous or unjust; it is enough if the applicant shows that he has *prima facie* a good case, and if he does so, leave to appeal should be granted.

APPEAL under clause 15 of the Letters Patent against the order of PAKENHAM WALSH, J., in C.M.P. No. 3262 of 1929 on the file of the High Court (application for leave to appeal in *forma pauperis* against the decree of the Court of the Subordinate Judge of Guntūr in O.S. No. 72 of 1927).

The material facts appear from the judgment.

Ch. Raghava Rao for appellant.

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* Letters Patent Appeal No. 92 of 1929.