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by correcting the description. Similarly, in the case of a defendant. Such an amendment would not have the effect of introducing a third party on the record, and no question of limitation would, in our opinion, arise.

We accordingly allow the appeal; set aside the decree of the court below, and remand the case to that court with directions to re-admit it under its original number in the register and dispose of it according to law. Costs here and hitherto will abide the event.

*Appeal allowed.*

## APPELLATE CIVIL.

1911  
May 31.

*Before Mr. Justice Sir George Knox and Mr. Justice Figgott.*

JUGAL KISHORE (PETITIONER) v. GUR NARAIN AND OTHERS (OPPOSITE PARTIES).\*

*Act No. III of 1907 (Provincial Insolvency Act), section 46 (4)—Act No. IX of 1908 (Indian Limitation Act), sections 12 and 29—Appeal—Limitation—Time requisite for obtaining copies.*

The Provincial Insolvency Act was intended to be, and is, so far as matters governed by it are concerned, a complete code in itself and contains its own limitation law. In computing, therefore, the period of limitation prescribed for presenting an appeal under the said Act the time requisite for obtaining a copy of the order complained of cannot be excluded. *Behari Lall Mookerjee v. Mungolunath Mookerjee* (1) and *Nugentro Nath Mullick v. Mathura Mohun Pawhi* (2) referred to. *Boni Prasad Kuari v. Dulchhi Rai* (3) distinguished.

THE facts of this case were as follows:—

On the 13th of August 1909, the District Judge of Mainpuri made an order for the appointment of a receiver in certain insolvency proceedings under the Provincial Insolvency Act, 1907. An appeal against this order was filed in the High Court on 1st December, 1909, beyond 90 days from the date of the order; but the appeal would have been within time if the time requisite for obtaining a copy of the order were deducted in computing the period of 90 days.

\* First Appeal No. 135 of 1909 from an order of L. Marshall, District Judge of Mainpuri, dated the 13th of August 1909.

(1) (1879) I. L. R., 5 Cal., 110. (2) (1891) I. L. R., 18 Cal., 366.  
(3) (1901) I. L. R., 28 All., 270.

At the hearing of the appeal, a preliminary objection was taken by

Babu *Girdhari Lal Agarwala*, for the respondents :—

The appeal is time-barred. The limitation prescribed for an appeal to the High Court in insolvency proceedings is, under section 46, clause (4), of the Provincial Insolvency Act, a period of 90 days. This is a period of limitation specially prescribed by a special law, and therefore, under section 29, clause (b), of the Limitation Act, nothing in that Act can alter or affect this period. The appellant cannot, therefore, get the benefit of section 12, clause (2), of the Limitation Act.

Babu *Binoy Kumar Mukerji*, for the appellant, in reply to preliminary objection :—

The appellant is entitled to a deduction of the time requisite for obtaining a copy of the order, and the appeal is within time. The general provisions of the law of limitation contained in the Limitation Act apply, even where a special law provides a special period of limitation for certain suits or appeals; *Behari Loll Mookerjee v. Mungolanath Mookerjee* (1). There the provisions of section 12 of the Limitation Act were held applicable to a case under the Bengal Tenancy Act, VIII of 1869, notwithstanding the provisions of section 6 of the Limitation Act of 1877, which were virtually the same as those of section 29 of the present Act. In the following cases other sections of the Limitation Act, as section 14 and section 5 were held applicable to cases for which period of limitations were prescribed by special or local Acts; *Guracharya v. The President of the Belgaum Town* (2), *Khetter Mohun v. Dinabashy* (3), *Reference under section 39 of (Madras) Act V of 1882* (4), *Beni Prasad Kuari v Dukkhi Rai* (5). The principle of these rulings, which is set forth at page 279 of the report in I. L. R., 23 All., applies to the present case; section 12 and sections 14 and 5 stand on the same footing, so far as the scope of section 29] is concerned. The case of *Girija Nath v. Patani Bibee* (6) was as to the applicability of section 7 of the Limitation Act. It did not overrule

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(1) (1879) I. L. R., 5 Calc., 410.

(2) (1884) I. L. R., 3 Bom., 529.

(3) (1883) I. L. R., 10 Calc., 265.

(4) (1887) I. L. R., 10 Mad., 210.

(5) (1901) I. L. R., 23 All., 270.

(6) (1889) I. L. R., 17 Calc., 263.

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or dissent from in any way the case in I. L. R., 5 Calcutta. In the case of *Nagendro Nath Mullick v. Mathura Mohun Purhi* (1) it was decided that section 14 of the Limitation Act did not apply to suits under Act X of 1859, for the reason that that Act was a Code complete in itself and unaffected by the general laws of limitation or procedure. Where an enactment is a complete codification and embodies in itself its own laws of limitation, procedure, stamp, &c., there the provisions of the Limitation Act will have no application. Act X of 1859 is such a complete Code; it provides for periods of limitation by sections 30 to 33, 152, 154 and 158; for stamps by sections 156, 161; and provides elaborately for the procedure to be followed in cases under the Act. But the Provincial Insolvency Act is not such a Code. The only provisions for limitation in it are those contained in section 46, clause 4, and section 22, and they cannot be said to be exhaustive or to contain the whole law of limitation applicable to cases under the Act. In the matter of procedure the Act has to be supplemented by the Civil Procedure Code at every step. The reasons given in the case of *Beni Prasad Kuari v. Dharaka Rai* (2) for holding that the N.-W. P. Rent Act of 1881 was not a complete Code, apply with equal force to the Provincial Insolvency Act. There are cases in which it has been held that the time requisite for obtaining copies will not be deducted; but it has been held in those cases that it was not necessary to file copies of the decree or order appealed from; *In the matter of petition of Sita Ram* (3), *Kumara Akkappa v. Sithala Naidu* (4), *Fazal Muhammad v. Phul Kuar* (5). In the case of an appeal under the Provincial Insolvency Act, it is necessary to file a copy of the order appealed from. Section 47 lays down that the procedure is to be the same as in the case of civil suits. If the time requisite for obtaining a copy be not deducted, great hardship may result to the appellant, who may be deprived of his right of appeal through no fault of his own. An order may be passed, an appeal from which lies under section 46 to the District Judge, a day or two before the court closes for the long vacation, and although the appellant may apply for a copy at once, yet he may not get it till

(1) (1891) I. L. R., 18 Calc., 268.

(2) (1901) I. L. R., 23 All., 277 (279).

(3) (1892) I. L. R., 15 All., 14 (19).

(4) (1897) I. L. R., 20 Mad., 476 (477).

(5) (1879) I. L. R., 2 All., 192.

after the re-opening of the court when his appeal would be time-barred. The Legislature could not have intended such a result, by which an appellant would be punished for no fault of his own.

Should the court be disposed to decide the point against the appellant, an opportunity should be given to him to file an affidavit to show why he brought the appeal to be filed after the expiry of 90 days. He was under the impression that he would get the benefit of the period requisite for obtaining the copy, and under the circumstances the court may extend the time.

*Babu Girdhari Lal Agarwala*, in reply :—

The whole policy of the Provincial Insolvency Act is to expedite the proceedings and prevent delay. The provisions of section 46, clause (4) should, therefore, be strictly enforced. The Act is a complete Code in itself.

**KNOX and PIGGOTT, JJ.** :—A preliminary objection is taken to the hearing of this appeal to the effect that it is time-barred. In support of the objection reliance is placed upon the provisions of section 46 of the Provincial Insolvency Act No. III of 1907. That section in clause (4) lays down that the “periods of limitation for appeals to the District Court and the High Court under this section shall be thirty days and ninety days respectively.” It is admitted that the order appealed from falls within the provisions of section 46. The date on which the order was passed was the 13th of August, 1909. The memorandum of appeal was not presented until the 1st of December, 1909. The period of ninety days had thus expired before the appeal was presented to this Court. But the appellant seeks to call to his aid the provisions of section 12 of Act No. IX of 1908 and wishes to extend the 90 days allowed by section 46 of Act No. III of 1907 by 19 days, the time occupied in obtaining the copy of the order appealed from. The question we have to consider is whether we can apply to the Provincial Insolvency Act of 1907 the provisions contained in parts II and III of Act No. IX of 1908. Section 29 of Act No. IX of 1908 lays down that nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application, by any special or local law now or hereafter in force in British India. Act No. III of 1907 is such a special law, and at first sight it would seem that the provisions of

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section 29 of Act No. IX of 1908 effectually prevent our applying to the period of limitation specially prescribed in Act No. III of 1907 any of the general provisions contained in Act No. IX of 1908. The question has been several times before the different courts in this country. At one time the Calcutta Court, for instance, was prepared to apply the general provisions of the limitation of the time to special or local laws. In this connection we may refer particularly to *Behari Lall Mookerjee v. Mungolanath Mookerjee* (1). But the later trend of rulings in that court has been in the opposite direction; vide *Nagendra Nath Mullick v. Mathura Mohun Parhi* (2). In this court there is only one case that we know of bearing upon the point, namely, *Beni Prasad Kuari v. Dukkhi Rai* (3). In this case the learned Judges who decided the question held that section 5 of the Indian Limitation Act of 1877 did apply to a suit under section 93 (a) of the local law, North-Western Provinces Act No. XII of 1881. This case, however, proceeds upon a very special line of reasoning. The learned Judges held that section 5 of the Indian Limitation Act did not extend any period of limitation. It seems that the period prescribed for the suit had expired on a day when the court was closed, and it was held that nevertheless the suit might be instituted on the day when the court re-opened. It was further held that it is impossible to consider that the Rent Act of 1881 constituted by itself a complete code so as to render inapplicable the provisions of the Limitation Act generally to a case under the Rent Act. The Provincial Insolvency Act sets out in its preamble that it is expedient to consolidate and amend the law relating to insolvency in British India as administered by courts having jurisdiction outside the Presidency towns and the town of Rangoon. We think that the Provincial Insolvency Act was intended to be, and is, so far as matters governed by it are concerned, a complete code in itself and retains its own limitation law. If we hold otherwise, it is easy to conceive that cases would occur where we should be asked to apply a section like section 6 of Act No. IX of 1908 to insolvency proceedings. This could never have been contemplated. Finally, there is no doubt that if we were to

(1) (1879) I. L. R., 5 Calc., 110. (2) (1891) I. L. R., 18 Calc., 368.  
(3) (1904) I. L. R., 23 All., 270.

allow the appellant the period occupied in obtaining the copy of the order appealed against, we should be altering the special period of limitation contained in section 46, clause (4). A good deal of argument on behalf of the appellant turned on the hardship which would arise if we did not allow this period for which he is in no way responsible and which was entirely beyond his control. The answer is that he can always present his petition of appeal and ask for time under the special circumstances to obtain and file subsequently a copy of the order under appeal. As it happens in the present case the appellant had in his hands the copy on the 9th of September, 1909. This Court re-opened after the long vacation on the 26th of October, 1909, and the appeal was not presented until the 1st December, 1909. The special case of hardship owing to the closing of the Court for vacation is moreover met by the provisions of section 10 of the General Clauses Act No. X of 1897. The preliminary objection succeeds and the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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## PRIVY COUNCIL.

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SADIQ HUSAIN (DEFENDANT) v. NAZIR BEGAM AND ANOTHER  
(PLAINTIFFS).

[On appeal from the Court of the Judicial Commissioner of Oudh, at Lucknow.]  
*Arbitration—Arbitrator refusing to act—Compromise of suit and decree in terms of compromise—Compromise stating matters in dispute and nominating arbitrators to decide them—Power of Court on arbitrator refusing to act—Civil Procedure Code (1882), sections 375, 506, 508, 510—Court determining matters referred to arbitration.*

Section 510 of the Code of Civil Procedure (Act XIV of 1882), which provides that "if an arbitrator refuses to act the Court may in its discretion appoint a new arbitrator . . . or make an order superseding the arbitration, and in such case shall proceed with the suit," is applicable even if the person appointed arbitrator has not accepted office before refusing to act. When he has been nominated by the parties his refusal to act is signified as clearly by his refusal to accept nomination as by any other course he could pursue; and any other construction would defeat the provisions of the Act.

*Pugardin Ravutan v. Motkinsa Ravutan* (1) and *Bepin Behari Chowdhry v. Anurbi Prasad Moolik* (2) disapproved of.

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*Present*:—JORD MACNAGHLEN, LORD SHAW, LORD MERSEY, and MR. AMEBER ALL.  
(1) (1882) I L. R., 6 Mad., 414. (2) (1891) I L. R., 18 Calc., 324.

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