which would govern the claim to recover money paid by him for the defendants or to enforce a charge which he has acquired on the property of the defendants. So far as the suit is a suit of this nature the claim is admittedly within time. If the suit were treated as a suit personally against the mortgagors the limitation would be three years from the date of payment. See article 61, schedule I, of the Limitation Act. If it is a suit to enforce a charge, as it obviously is, or for a declaration that he has a charge on the property, it is still within time. In this view no question of acknowledgment arises. There are several other questions involved in the case which the court of first instance did not try in consequence of its decision on the question of limitation. We accordingly allow the appeal, set aside the decrees of the courts below and remand the case to the court of first instance with instructions to restore it to its original number in the register and to try and dispose of the other questions which arise in the case. Costs here and hitherto will be costs in the cause.

Appeal allowed and cause remanded.

Before Mr. Justice Walsh and Mr. Justice Wallach.

SHIKRI PRASAD (APPLICANT) *v.* AZIZ ALI AND OTHERS (OPPOSITE PARTIES.)*

1921
July, 18.

Act No. V of 1920 (*Provincial Insolvency Act*) *sections* 4, 5 *and* 75 (2)—*Insolvency—Procedure—Appeal—Question of title—Act No. IV of* 1882 (*Transfer of Property Act*), *section* 53.

A court exercising insolvency jurisdiction under Act No. V of 1920 has to administer the law under its own procedure and to decide questions arising in insolvency which are covered by special provisions of the Insolvency Act. But it also has to decide all questions of general law, including such questions as are raised by section 53 of the Transfer of Property Act, 1882.

Where a decision on a question of title whether certain property was still the property of the insolvent or had been the subject of a valid alienation was pronounced after the coming into operation of Act No. V of 1920, although the action of the receiver which gave rise to the question was taken before, it was *held* that an appeal lay under the new Act as a matter of right at the instance of a creditor adversely affected by the decision.

THE facts of this case sufficiently appear from the judgment of the Court.

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* First Appeal No. 18 of 1921, from an order of H. J Collister, District Judge of Saharanpur, dated the 14th of May, 1920.

1921

SHIKRI PRASAD v. AZIZ ALI.

Mr. *Nihal Chand*, for the appellant.

Dr. *M. L. Agarwala*, for the respondents.

WALSH and WALLACH, JJ. :—This order cannot stand. The learned Judge has totally misconceived the position. The original application was by the insolvent complaining under the old Act, which is now repealed, against an act of the receiver. The act of the receiver was an act attaching some very valuable property which the receiver in a very clear, closely reasoned, and strong report has come to the conclusion had been sold by the insolvent some three years before the insolvency, merely with intent to defraud and delay his creditors, or, as the receiver says, to hoodwink his creditors and save the property. The District Judge has held, rightly, that it does not come within any of the express provisions of the insolvency law, and he has gone on to hold, erroneously, that a transaction cannot be attacked, under the provisions of the Transfer of Property Act or under general provisions of the law, in the Insolvency Court. Here he is wrong. The Insolvency Court has to administer the law under its own procedure and to decide questions arising in insolvency which are covered by special provisions of the Insolvency Act, where, for example, a trustee is given a higher title than the original debtor. But the Insolvency Court also has to apply, and to decide, all questions of general law, including such questions as are raised by section 53 of the Transfer of Property Act. That is one reason why the administration of insolvency is so onerous and imposes a very heavy burden on the district courts. If the receiver is right in fact, clearly this transaction was void under section 53 of the Transfer of Property Act, and the property attached by the receiver ought to be distributed as part of the estate among the creditors. But the receiver is not a judicial officer, and it is not sufficient for the Judge merely to refuse to disagree with him. We are of opinion in this case that, owing to his having considered the question of law to be a final bar, he has not applied his mind at all to the question of fact. He has only said that the receiver's reasoning is sound enough. There ought to be a full inquiry between the receiver and the creditor on one hand, and the debtor and his family on the other, as to the *bona fides* of this transaction.

Whether you call it summary or not, it ought to follow the ordinary course of a suit. In the main the provisions of the Code of Civil Procedure are applicable to such inquiry, and there ought to be sworn testimony and the same care used with regard to documents, and the admission or rejection of documentary evidence, as in a suit. We remit the case to the District Judge to hear and decide the application as though it were a question of title involving matters of law and fact under section 4 of the new Act, which was not in force when he adjudicated. He must allow the respective parties to adduce any material evidence they may be advised to do.

Mr. *Agarwala* on behalf of the respondent has very forcibly urged upon us the contention that we ought to dismiss this appeal on the ground that no appeal lay. Probably no appeal did lie under the old Act, under which this proceeding was commenced and decided. At any rate no appeal lay without the permission of the court and no permission has been given. The new Act of 1920 became law on the 25th of February, 1920. This decision was passed on the 5th of May, 1920. The appellant had to consider at the date when the decision was passed what his right of appeal was, if any. The old Act of 1907 had been repealed and the only Act in force was the Act of 1920. Section 75, sub-section (2), of the Act of 1920 gives a right of appeal to any creditor against a decision of the District Court of the nature specified in schedule I of that Act. Amongst the decisions specified in schedule I of that Act is the decision under section 4 of a question of title. We are clearly of opinion that the decision which is appealed against was a decision on a question of title within the meaning of section 4, although section 4 did not exist when the case arose, and being such a decision it was one against which the creditor had a right of appeal by the only Act in force at the time when the appeal was filed. We therefore remit the case as above mentioned, and on the whole justice will be done by allowing costs to abide the result.

Appeal decreed and cause remanded.