

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Fford.

SRI NARAIN (DEFENDANT) Appellant,

versus

**LIQUIDATOR, UNION BANK OF INDIA
(APPLICANT) Respondent.**

1922

Dec. 24.

Letters Patent Appeal No. 13 of 1922.

*Indian Companies Act, VII of 1918, section 186, sub-section (1)—
Whether a time-barred debt can be enforced against a contributory under
that section.*

The Liquidator of the Union Bank of India called upon the present appellant, a contributory of the Bank, to pay to him certain sums of money amongst which was an item of Rs. 2,000, payable on a promissory note, dated 13th April 1911, payable to the order of the Bank on demand. A suit to enforce payment of this debt would admittedly be barred under the Indian Limitation Act, but it was argued that it could be enforced against a contributory by an order under section 186, sub-section (1), of the Companies Act at any time.

Held, that section 186 of the Indian Companies Act does not create new liabilities or confer new rights. It merely provides a summary procedure for enforcing existing legal liabilities. Consequently a debt which is time-barred and cannot be enforced in an action at law cannot be enforced by the Liquidation Court by its summary order under the provisions of this section.

*Appeal under clause 10 of the Letters Patent from
the judgment of Mr. Justice Chevis, dated the 2nd De-
cember 1921.*

M. N. MUKHERJEE for Appellant.

PREM LAL, for Respondent.

The judgment of the Court was delivered by—

FFORD J.—The appellant B. Sri Narain is a contributory of the Union Bank of India, Delhi, which is now in course of liquidation. The Official Liquidator has called upon B. Sri Narain under the provisions of section 186 of the Indian Companies Act to pay to him certain sums of money amongst which is an item of Rs. 2,000. This sum of Rs. 2,000 is expressed to be payable upon foot of a promissory note, dated the 13th of April 1911, made by the appellant, and payable to the order of the Union Bank of India on demand.

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The District Judge of Delhi made an order under section 186 calling upon the appellant to pay to the Official Liquidator the several sums demanded, and the appeal is brought in respect of the item of Rs. 2,000.

Under the Indian Limitation Act a suit to enforce payment of this note would be barred by time. This is admitted; but it is claimed on behalf of the Liquidator that this statute-barred debt may be enforced against the contributory by an order under section 186, sub-section (1), of the Indian Companies Act. The relevant part of the section reads as follows:—

“The Court may at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay in manner directed by the order any money due from him * * * to the Company exclusive of any money payable by him * * * by virtue of any call in pursuance of this Act.”

It is contended by counsel for the Liquidator that the words “at any time” exclude the idea that there is any period of limitation within which the order may be made. In other words, that the Court by virtue of this section may order the payment of any debt due by a contributory to the Company in liquidation regardless of the time when that debt was incurred. We are asked to hold that this section overrides the provisions of the Limitation Act, that it enables the Court to enforce by a summary order the payment of a debt which it could not have enforced in an action at law. We cannot accept this view of the powers conferred upon the Court by section 186. This section does not create new liabilities or confer new rights. It merely provides a summary procedure for enforcing existing legal liabilities. The words “at any time” can only mean at any time in the course of liquidation proceedings, commencing from the date of the winding up order. The section creates new machinery for bringing in debts due by a contributory to the Company, and nothing more.

We, therefore, hold that the payment to the Liquidator of the Rs. 2,000 represented by the promissory note cannot be enforced in the manner sought. We accordingly allow the appeal with costs throughout.

A. N. C.

Appeal accepted.