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according to where the onus lies, either the executor has failed to defend, or the third party has failed to upset, the existing probate. It is, I think, desirable that that should be made clear, in view of the premature order of the Appellate Court in *Neogi* v. *Neogi* revoking the probate in that case before it had been determined whether there were in fact any grounds for its revocation or not.

I agree that the reference should be answered in the sense in which my Lord the Chief Justice suggests.

FULL BENCH (CIVIL).

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Dunkley, and Mr. Justice Braund.

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Mar. 25.

IN RE SOONIRAM RAMNIRANJANDAS
v.
JUNJILAL AND OTHERS.*

Partnership Act, ss. 69, 74—Firm not registered—Suit by firm to recover debt—Right to sue accruing before commencement of Act—Remedy not barred.

When a suit has been instituted after the 1st October 1933 for recovery of a debt accruing before that date by a firm not registered under the Partnership Act the suit is not barred by the provisions of s. 69 but is saved by the provisions of s. 74 of the Act.

A remedy is the legal means to recover a right and if a remedy exists in respect of a right accrued before the commencement of the Act s. 74 clearly says that it shall not be affected either by s. 69 or any other section.

Daumal v. *Baburam*, I.L.R. 58 All. 495 ; *Miller* v. *Salomons*, 21 L.J. Ex. 161, referred to.

Krishan Lal v. *Abdul Ghafur*, I.L.R. 17 Lah. 275, distinguished.

Ram Sundar v. *Madhu Sudhan*, 40 C.W.N. 1180 ; *Surendranath De* v. *Manohar De*, I.L.R. 62 Cal. 213, dissented from.

An order of reference in the following terms was made by

MOSELY, J.—In the suit, which is the subject of this second appeal, the plaintiff-appellants, the firm of Sooniram

* Civil Reference No. 8 of 1937 arising out of Civil 2nd Appeal No. 59 of 1937 of this Court.

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Ramniranjandas, sued the defendant-respondents for Rs. 2,712-10, due on a promissory note dated the 7th March, 1932. A decree was given against the 2nd defendant on confession. The 3rd defendant raised the defence that the plaintiff firm had not been registered at the time of institution of the suit, which was on the 28th February, 1935. It was registered on the 21st June, 1935. On this the suit was dismissed *in toto* against the remaining defendants, and this was upheld in appeal by the learned District Judge.

The Indian Partnership Act (IX of 1932), came into force (*vide* section 1), on the 1st October, 1932, except section 69, which came into force on the 1st October, 1933.

The grounds of this appeal are (1 and 2) that under the provisions of section 74 of the Indian Partnership Act, section 69 does not bar a suit for a debt incurred before the Act came into force. An additional ground has also been filed (No. 3), where it is pleaded that the suit should in any case not have been dismissed, as registration had subsequently been effected before the decision of the suit.

Section 69, sub-section 2, reads as follows :

> " No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

Section 74 reads as follows :

> " Nothing in this act or any repeal effected thereby shall affect or be deemed to affect—
>
> (*a*) any right, title, interest obligation or liability already acquired, accrued or incurred before the commencement of this Act ; or
>
> (*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or
>
> (*c*) anything done or suffered before the commencement of this Act, or etc."

The first reported ruling is a Bench decision of 1934, *Surendranath De* v. *Manohar De* (1). It was said there, rightly, that section 69 (2) is an enactment dealing with procedure and is;

(1) (1934) I.L.R. 62 Cal. 213.

therefore, ordinarily retrospective, and would be applied to pending litigation. It was thought, therefore, that that was an argument in favour of the Court's interpretation of section 74 (*b*), that it was intended to save only suits which were pending when the Act came into force from the operation of section 69. It was thought that the words " before the commencement of the Act " might be taken as referring to the words " legal proceeding or remedy, etc." It was considered that the terms of section 74 were ambiguous, and it was said that the intention of the Legislature must be sought for in the statute as a whole. It was said that section 1 (3) suspended the operation of section 69 in order to give unregistered firms a reasonable chance to register.

The words " any such right " in section 74 (*b*) obviously refer to the rights described in section 74 (*a*).

The discussion was a very brief one. I am bound to say that I cannot see any ambiguity in section 74 (*b*). The meaning appears clearly to be that nothing in the Act shall affect any legal proceeding or remedy in respect of any right accrued before the commencement of this Act, or anything done or suffered before the commencement of this Act. I cannot see how the section can possibly be strained so as to mean any legal proceeding or remedy (taken) before the commencement of this Act. The learned Judges appear to have ignored the word " such " before the words " right, title, interest " in section 74 (*b*). Nor do I think that it can be presumed that the intention of the legislature was to give firms a year within which to register. It may just as well have been to give them a breathing space in order to learn the provisions of the Act. This ruling was briefly followed in *Basanta Kumar Pal* v. *Late Durgadas Akrur Chandra Banik* (1), where McNair J. said that the rights of the parties, [section 74 (*a*)] were not affected by section 69 but remained intact, and that section 69 merely provided as to their enforcement. I would agree respectfully, but section 74 (*b*), which deals with the enforcement of these rights or saving of the remedy, was not considered.

In another single Judge case, reported in an unauthorised ruling, *Ram Prasad Thakur Prasad* v. *Kamta Prasad Sita Ram* (2), Kendall J. came to the same conclusion on section 74 (*a*) only. This interpretation of section 74 (*a*) was again briefly followed by a Bench in *Krishan Lal Ram Lal* v. *K. S. Abdul Ghaffur Khan* (3).

(1) 39 C.W.N. 1080. (2) A.I.R. (1935) All. 898.
(3) (1935) I.L.R. 17 Lah. 275, 277.

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In *Ram Sundar Bhowmick* v. *Madhu Sudhan Deb Nath* (1), R. C. Mitter J. dealt very briefly with section 74 (*b*) where he said that it only dealt with legal proceedings commenced before the Act came into force. He relied on *Surendranath De* v. *Manohar De* (2).

Mya Bu J. in *Ah Pway* v. *Tan Paik Choe* (3), dismissed in revision a decree of the Small Cause Court, Rangoon, obtained by a firm which had not been registered. The provisions of section 74 were not considered there.

In *Radha Charan Saha* v. *Matilall Saha* (4), which was a similar case to the present one where the plaintiff firm was registered after the institution of the suit, D. N. Mitter J., sitting as a single Judge in revision, held that section 69 did not take away the jurisdiction of the civil Court altogether but only suspended the jurisdiction for a certain period. He said that as soon as the registration of the firm was effected it was competent to the plaintiff to institute the suit which would not have been open to objection under section 69. The statute, he said, must not be interpreted in such a way as to prevent the Court from moulding it in such a manner as to be consistent with the justice of the case. He, therefore, set aside the order dismissing the suit and allowed it to be restored to the file.

I have discussed all the rulings quoted by Mr. Clark for the appellant, and on them I formed the opinion that these decisions could not be justified, and that the plain meaning of section 74 (*b*) was that any legal proceeding in respect of a right accrued before the commencement of the Act could not be affected by section 69 of the Act.

Mr. Mootham for the respondents very fairly put another ruling before the Court,—a ruling in which the same decision as the rulings above quoted was arrived at—, but the dissentient or *quasi*-dissentient judgment of Sulaiman C.J., there strongly fortifies me in my opinion : this case is *Dannal Parsholamdas* v. *Baburam Chhotelal* (5). This was a revision case. Bennet J., who wrote the first judgment, said that section 74 (*b*) dealt with substantive rights and not with procedure. He said (page 497), that the section may mean that a right would exist to take a legal proceeding or remedy, which is a vested right which came into

(1) 40 C.W.N. 1180.
(2) (1934) I.L.R. 62 Cal. 213.
(3) Civ. Rev. No. 110 of 1935, H.C. Ran.
(4) 41 C.W.N. 534, 536.
(5) (1935) I.L.R. 58 All. 495.

existence before the Act, but that it did not follow that the legal proceeding or remedy should not follow the procedure laid down by the Act. He thought that, if the sub-section 74 (*b*) was intended to deal with procedure, it would begin with the words "the procedure in any legal proceeding or remedy"; I am bound to say that I do not think that this complies with the ordinary rules or custom of draftsmanship, and where the section specifically enacts that nothing in the Act shall be deemed to affect any right or any legal proceeding in respect of such right, I find it hard to argue that it was not intended to mean that the right to institute a suit was not affected by section 69. I cannot in such a case distinguish the right to institute the suit from the procedure by which it is instituted. Bennet J. also referred to the analogy of section 6, sub-clause (*e*) of the General Clauses Act (X of 1897), where it is said that "where this Act, or any Act thereafter made, * * * * * repeals any enactment" hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

> "(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation liability, penalty, forfeiture or punishment as aforesaid.'

He said that decisions have always held that under the General Clauses Act for matters of procedure a new Act must always be followed in the "legal proceeding or remedy", but that where any right, etc., which has already accrued under the Act, which has been repealed, will remain. Sulaiman C.J. repeats, if I may respectfully say so, the conclusions at which I had arrived before this case was cited. He said (page 500), that section 1, sub-section (*3*) may have postponed the enforcement of section 69 in order to give un-registered firms a reasonable chance to get themselves registered before the section began to operate against them. "But" he added, "there is also a possibility that the intention was to allow time to people, trading under the name of an un-registered firm, to come to know of the drastic change in the law, which should affect all contracts entered into after the expiry of that period." He went on to point out (pages 501 to 502), that the words "any such right" in sub-section (*b*) refer to any right, etc. "acquired before the commencement of the Act" mentioned in sub-section (*a*). He said that there was great difficulty in interpreting sub-section (*b*) as if the words "before the commencement of the Act" were an adjectival clause qualifying the nouns "legal proceeding or remedy", and not

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an adverbial clause indicating a point of time modifying the words "done or suffered." "If the former had been the intention" it was said, "then the words should have been 'any legal proceeding or remedy *taken* before the commencement of this Act' for the words 'done or suffered' are inappropriate for being used in connection with 'proceeding or remedy.' On the other hand, as a mere adverbial clause, they can very well modify the words 'done or suffered', without any difficulty from the point of view of grammar or meaning. The section would then mean that nothing in the Act, including the provisions of section 69, can affect any right, title, interest or liability, already, acquired, accrued or incurred, before the commencement of the Act, or can affect any legal proceeding or remedy in respect of any right, title, etc., acquired before the commencement of the Act. It will then follow that a suit which is brought to enforce a right which had already accrued would not be governed by the provisions of section 69 of the Act."

As regards section 6 of the General Clauses Act, he said :

> "There are a large number of cases in which it has been held that suits filed after the coming into force of the Civil Procedure Code or the Limitation Act are generally governed by the later Acts and not by the earlier Acts under which the right might have accrued, but those decisions, I understand, proceeded mainly on the interpretation of the provisions of the Civil Procedure Code and the Limitation Act themselves and not on the application of section 6 (*e*). It seems that section 6 (*e*) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, section 6 (*e*) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself."

The judgment continues as follows :

> "I would therefore have great reluctance in holding that section 74 of the Partnership Act should be given a

restrictive meaning and that although it specifically provides that any legal proceeding in respect of a right, title, etc., acquired, accrued or incurred before the commencement of this Act should not be affected by anything in this Act, section 69 still governs such suits. I have, however, a feeling that although the words chosen were altogether unhappy, the real intention might probably have been what my learned brother infers. The case of *Surendra Nath De* v. *Manohar De* (1) certainly supports his view, for the learned Judges in that case laid down that where a suit is instituted after the commencement of the Partnership Act, though the cause of action accrued before the commencement of the Act, it was not saved by section 74 (*b*), and that that section applies only to pending proceedings, that is to say, proceedings which were pending at the time when the Act came into force. This interpretation would unfortunately involve the introduction of words like 'pending' in sub-section (*b*) of the Act. The case of *Ram Prasad Thakur Prasad* v. *Kamta Prasad Sita Ram* (2) is also directly in favour of the same view. As the case comes up before us in revision, I am not bound to interfere. Accordingly I think that on the whole I should concur in the order proposed by my learned brother that the revision be dismissed."

It appears, then, that Sulaiman, C.J. only acquiesced in the order proposed by Bennet J. with great reluctance and as the case was a revisional one, and had the matter come before him in appeal, the decision might have been to the opposite effect.

It appears to me that whatever may have been the intention of the legislature, section 74 (*b*) is clear and unambiguous and can only be interpreted in the sense that I would adopt.

I think also that D. N. Mitter J. was right in *Radha Charan Saha* v. *Matilal Saha* (3), and that, in any case, the suit should not have been dismissed once the plaintiff firm was registered. On the other hand the weight of authority, including the decision of this Court, is to the opposite effect.

I do not think, however, in view of the volume of authority to the contrary effect, that I should decide this case myself as a

(1) (1934) I.L.R. 62 Cal. 213. (2) A.I.R. (1935) All. 898.
(3) 41 C.W.N. 534, 536.

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single Judge in second appeal. I will, therefore, refer to a Bench or Full Bench, as his Lordship the Chief Justice may decide, the following two questions :

1. When a suit has been instituted after the 1st October 1933 by a firm not registered under the Indian Partnership Act (IX of 1932) for recovery of a debt accruing before that date, is the suit barred by section 69 of the Act, or is it saved by the provisions of section 74 (*a*) or section 74 (*b*) of the Indian Partnership Act (Act IX of 1932) ?
2. In any case, if a suit is brought by a firm not registered under the Act, can such a defect be cured by subsequent registration of the firm before the decision of the suit or the appeal from the suit ?

Clark for the appellant. The on-demand promissory note upon which the appellant sued is dated 7th March 1932, *i.e.*, it was in existence before the Partnership Act came into force, and before s. 69 (*2*) of the Act came into operation. Both the right and the remedy in respect of the note were acquired before the commencement of the Act. The words of s. 74 are clear and unambiguous and this saving clause expressly saves both the right and the remedy. The appellants are asking for a remedy that has arisen before the Act came into operation. " Legal proceeding " means something that has been started, whilst " remedy " is something more than something pending. Where there is an enactment interfering with an existing right, it should be construed strictly, but where it saves rights it should be construed liberally.

S. 74. (*b*) does not merely save suits that were pending when the Partnership Act came into force. It saves all rights and remedies existing at such dates. The Indian decisions to the contrary are wrong in view of the plain words of the section. In *Danmal* v. *Baburam* (1), Sulaiman C.J. has correctly interpreted s. 74.

(1) I.L.R. 58 All. 415.

Registration of a firm during the pendency of a suit by the firm is effective and the suit ought not to be dismissed. *Radha Charan Saha* v. *Motilal* (1).

Paget for the 1st and 3rd respondents. S. 74 (*b*) saves only pending suits. The "remedy" is by way of suit. An unregistered firm cannot maintain a suit, though the money may have become due before 1932. *Shazad Khan* v. *Darbar Khan* (2); *Perakan Catholic Sangham* v. *Ravi Varma* (3); *P. Sundaraja* v. *P. Mannarsami* (4).

A. N. Basu for the 2nd respondent. The intention of the Legislature was to induce firms to register within a year the Act came into operation. S. 69 imposes a disability for non-compliance. Pending suits were saved because of limitation. If s. 74 (*b*) is read too liberally, it would be contrary to s. 69 (*b*).

Clark in reply. Wharton's Law Lexicon gives the definition of "remedy" as legal means to recover a right.

ROBERTS, C.J.—The questions referred to the Full Bench of this Court for decision are as follows:

1. When a suit has been instituted after the 1st October, 1933, by a firm not registered under the Indian Partnership Act (IX of 1932) for recovery of a debt accruing before that date, is the suit barred by section 69 of the Act, or is it saved by the provisions of section 74 (*a*) or section 74 (*b*) of the Indian Partnership Act (Act IX of 1932)?

2. In any case, if a suit is brought by a firm not registered under the Act, can such a defect be cured by subsequent registration of the firm before the decision of the suit or the appeal from the suit?

The matter arose in the following way. The appellant-plaintiffs, a firm of merchants, sued the

(1) 41 C.W.N. 534.
(2) A.I.R. (1937) Pat. 16.
(3) A.I.R. (1937) Mad. 419.
(4) A.I.R. (1937) Mad. 528.

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respondents for the sum of Rs. 2,712-10-0 due on a promissory note dated the 7th March, 1932. The suit was filed on the 28th February, 1935, and at this date the plaintiff firm was not registered under the Indian Partnership Act.

Section 69, sub-sections (*1*) and (*2*), of that Act runs as follows :

"(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

By section 1, sub-section (*3*), of the same Act, the Act came into force on the 1st October, 1932,* except section 69, which came into force on the 1st October, 1933. Section 74 runs as follows :

"Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(*c*) anything done or suffered before the commencement of this Act."

The remaining sub-sections are not material.

* A Notification of the Governor-General in Council, dated the 8th October 1932 (*Gazette of India*, 1932, Pt. 1, p. 1145) directs that Ch. VII of the Act shall not apply to any part of Burma except the towns of Rangoon, Akyab, Bassein, Moulmein, and Mandalay—*Ed.*

In my opinion, there is no ambiguity in section 74 of the Act. It was pointed out by Baron Parke in *Miller* v. *Salomons* (1) that in interpreting a statute

> "words which are plain enough in their ordinary sense may, when they would involve any absurdity, or inconsistency, or repugnance to the clear intentions of the Legislature, to be collected from the whole of the Act or Acts in *pari materia* to be construed with it, or other legitimate grounds of interpretation, be modified or altered so as to avoid that absurdity, inconsistency or repugnance, but no further."

It is argued that the intention of the Legislature was not to enforce the provisions of section 69 till the 1st October, 1933, but that after that date it was to apply to all suits which an unregistered firm desired to bring, and that the words in section 74 in their ordinary sense are repugnant to that clear intention and must be read as though they were "any legal proceeding or remedy taken before the commencement of this Act."

I respectfully agree with the judgment of Sulaiman C.J. in *Dammal Parshotamdas* v. *Baburam Chhotelal* (2), which is alluded to in the order of reference. We must construe the Act in its plain terms, and where its terms admit of no doubt anything in the nature of speculation as to the intention of the Legislature should be avoided. Section 74 (*a*) says that nothing in the Act shall affect any right acquired before the commencement of the Act; and section 74 (*b*) extends this saving clause to any legal proceeding or remedy in respect of any such right; that is, any such right as is mentioned in sub-section (*a*) and has accrued before the commencement of this Act.

It appears that as the case cited came before a Bench in Allahabad by way of revision only the learned Chief Justice was reluctant to interfere, but the force of his

(1) 21 L.J. Ex. 161, 191. (2) (1935) I.L.R. 58 All. 495, 500.

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reasoning remains unimpaired. It seems unnecessary to me to repeat all his observations upon the matter before us now: they clearly set out the law as I understand it to be.

In *Surendranath De* v. *Manohar De* (1) a contrary decision was arrived at, the Judges being of opinion that the words "before the commencement of the Act" might be taken as referring to the legal proceedings or remedy in respect thereof. The matter was approached from an angle which, with all respect, I cannot help regarding as dangerous; for having first imputed an intention to the Legislature, the Court then endeavoured to interpret the Act as expressing that intention, instead of construing its plain words in their ordinary and natural meaning. In my opinion in so doing the use of the phrase "any such right" in section 74 (*b*) was lost sight of; it must refer to a right under section 74 (*a*) namely a right which accrued before the commencement of the Act. There is nothing in the Act which says when the legal proceeding is to be taken or the remedy to be enforced. According to Wharton's Law Lexicon a remedy is "the legal means to recover a right", and if a remedy exists in respect of a right accrued before the commencement of the Act the section says in the clearest possible language that it shall not be affected either by section 69 or any other section.

In *Basanta Kumar Pal* v. *Late Durgadas Akra Chandra Banik* (2), which was cited in argument, the effect of section 74 (*b*) was not considered. In *Ram Sundar Bhowmick* v. *Madhu Sudhan Deb Nath* (3), Mitter J. said that sub-section (*b*) only dealt with legal proceedings already commenced before the Partnership Act came into force and followed the two previous decisions, but he appears not to have

(1) (1934) I.L.R. 62 Cal. 213. (2) 39 C.W.N. 1080.
(3) 40 C.W.N. 1180.

considered the word "remedy." I do not find it easy to see how there can be a "pending remedy", though a legal proceeding may be "pending." Thus in my judgment it would be wrong to say that section 74 (*b*) saves only suits which are pending at the time when the Act comes into force. It saves a remedy, which connotes the right to institute a suit, as well.

The case of *Krishan Lal Ram Lal* v. *K.S. Abdul Ghaffur Khan* (1) was referred to : it is however distinguishable because the cause of action was there held to have arisen after the date of the commencement of the Act and upon that ground the saving clause would have no application.

Put shortly, then, the appellants had a remedy in respect of a right accrued before the commencement of the Partnership Act, 1932. They could institute a suit and this remedy is not affected by the Act, by reason of the express provisions of section 74 (*b*).

In these circumstances, I would answer the first question propounded in the affirmative ; in my opinion the second question thereupon becomes academic and it is therefore unnecessary to answer it because it does not directly arise.

We assess the advocate's fee in this reference at ten gold mohurs ; costs of this reference to be costs in the appeal.

DUNKLEY, J.—I agree with the answer proposed by my Lord the Chief Justice. In the decisions to the contrary which he has mentioned, the learned Judges have, with the greatest respect, apparently overlooked the fact that the provisions of section 74 of the partnership Act are of general application and apply to the whole Act, and not merely to Chapter VII. The interpretation which they have placed on section 74

(1) (1935) I.L.R.

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would have a curious effect if applied to certain other sections outside Chapter VII ; *e.g.*, section 42 (*d*).

The terms of section 74 (*b*) are, to my mind, perfectly plain, and how the adverbial phrase " before the commencement of this Act " can be held to qualify the nouns " proceeding or remedy " I am unable to understand. Set out in full, section 74 (*b*) would read as follows :

> "any legal proceeding or remedy in respect of any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or in respect of anything done or suffered before the commencement of this Act."

When set out in this way, the provisions of the clause are so plain as hardly to give room forcomment. As my Lord has said, even if the word " pending " be introduced (quite unjustifiably) before " legal proceeding ", it is difficult to understand what could be meant by a " pending remedy."

I agree that the answer to the first question should be that the suit is not barred, but is saved by the provisions of section 74 (*b*) of the Act ; and I also agree that the second question does not then arise.

BRAUND, J.—I agree and have nothing to add.