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pays all his creditors in full should be liable to be made bankrupt on account of that act by some person to whom he afterwards became indebted."

In view of the above decision I dismiss the petition but leave the parties to bear their costs.

P. S.

Petition dismissed.

MISCELLANEOUS CIVIL.

Before Young C. J. and Monroe J.

HARKISHAN LAL—Petitioner

versus

OFFICIAL LIQUIDATOR, PEOPLES BANK OF
 NORTHERN INDIA (IN LIQUIDATION)

Respondent.

In Civil Original No. 120 of 1935.

High Court — Jurisdiction of — to transfer Insolvency proceedings from the lower Court to its own file — Letters Patent, Clause 9: "Suit" — meaning of — Provincial Insolvency Act, V of 1920, section 3 (1) — scope of.

Held, that the word "Suit" in clause 9 of the Letters Patent of the Lahore High Court should be interpreted widely, and includes a proceeding in the Insolvency Court.

And, that the Lahore High Court under that clause has power to transfer such a proceeding from the lower Court to its own file and to try and determine the same as a 'Court of extraordinary original jurisdiction.'

Lakshmi Narain v. Mst. Ratni (1), referred to.

Section 3 (1) of the Provincial Insolvency Act merely enacts that the ordinary jurisdiction in insolvency shall be in the District Courts. It does not exclude the extraordinary civil jurisdiction of the High Court.

Petition of Lala Harkishan Lal, praying that the order passed by the High Court, on the 19th November,

1935, directing the transfer of the petition of the Official Liquidator of the Peoples Bank, for the adjudication of the Petitioner as an insolvent, from the Court of the Insolvency Judge, Lahore, to the High Court be vacated and the proceedings sent back to the Insolvency Court for disposal.

FAQIR CHAND MITAL, for AJIT RAM, for Petitioner.

NEWAL KISHORE and BHAGWAT DAYAL, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—The point raised in this application is one of interest as it concerns the jurisdiction of the High Court. On the 18th November, 1935, the Official Liquidator of the Peoples Bank of Northern India filed a petition in the Court of the Insolvency Judge praying that Lala Harkishan Lal should be declared insolvent. On the next day the Official Liquidator filed an application under Clause 9 of the Letters Patent and sections 24 and 151 of the Civil Procedure Code for the transfer of that insolvency petition to the High Court for disposal. On this application an order was made by a Single Judge of this Court transferring the said petition. Lala Harkishan Lal subsequently filed an application praying this Court to vacate that order on the ground that it was *ultra vires*. It may here be said that paragraph 6 of Lala Harkishan Lal's application contains scandalous matter—allegations against the honesty of officers of this Court—allegations wholly without any foundation in fact. We order that paragraph 6 be struck out.

Counsel for Lala Harkishan Lal argues that the transfer order is without the jurisdiction of this

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Court. He prays in aid the terms of section 9 of the Letters Patent, which are as follows:—

“ And we do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence.”

It is argued that the word “ suit ” in clause 9 will not cover proceedings in the Insolvency Court.

It is further argued that section 3 (1) of the Provincial Insolvency Act which reads as follows:—

“ The District Courts shall be the Courts having jurisdiction under this Act ” excludes the jurisdiction of the High Court, that is, that the High Court has no jurisdiction to hear and determine a proceeding in insolvency. It is further argued that where the Legislature wishes to give insolvency jurisdiction to a High Court it has done so in express terms such as in the Presidency Courts and in the Rangoon High Court.

The last point is not difficult. This Court does not claim “ ordinary ” jurisdiction, but extraordinary jurisdiction on its appellate side.

With regard to the argument based on section 9 of the Letters Patent we consider that the word “ suit ” should be interpreted widely, and that the word “ suit ” in the Letters Patent does include a proceeding in the Insolvency Court. We are confirmed in this view by consideration of section 4 of the Provincial Insolvency Act itself. Section 4 (1) clearly contemplates proceedings in the nature of suits in the Insolvency Court in Insolvency matters. There is no doubt that proceedings in an Insolvency Court

operate as *res judicata* and at page 54 of Mulla's Insolvency Act, which is based upon authority, it is said that in proceedings in the Insolvency Court the same procedure should be adopted as in suits. In this connection we may also refer to the Government of India Act, section 107. That is the section which gives superintendence to the High Court over all Courts for the time being subject to its appellate jurisdiction. Section 107 (b) enacts that the High Court may direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction. The word "suit" in this section has been interpreted in *Lakshmi Narain v. Mst. Ratni* (1) to apply to the transfer of *proceedings* under the Legal Practitioners Act. We are satisfied therefore that the word "suit" in the Letters Patent ought not to be narrowly construed. We agree with the observation of Lord Campbell, a distinguished Lord Chief Justice of England, that where jurisdiction was subject to doubt it is the duty of a High Court to seize it. But in this case we do not think there is any doubt.

The next point argued was that section 3 of the Provincial Insolvency Act excludes the jurisdiction of the High Court. We do not agree. In our opinion section 3 (1) merely enacts that the ordinary jurisdiction in insolvency shall be in the District Courts. It does not exclude the extraordinary civil jurisdiction of the High Court. We are confirmed in this view by a consideration of the old Civil Procedure Code of 1882. Under section 344 of that Code the District Court had jurisdiction to hear and determine insolvency matters. The exact words were:—"Every such application

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(1) 1926 A. I. R. (Lah.) 199.

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shall be made to the District Court." Obviously this could not have excluded the jurisdiction in the High Court which was expressly given under section 25, which is equivalent to section 24 of the present Civil Procedure Code. When the Legislature thought fit to have a special Provincial Insolvency Act, we are satisfied, it merely meant in section 3 to give the District Court the same authority as the old Civil Procedure Code gave it. When we consider section 5 (2) of the Provincial Insolvency Act this appears to be clear. This section lays down that "subject as aforesaid" (to the provisions of this Act) "the High Court shall have the same powers and shall follow the same procedure as it has with regard to civil suits." "Subject as aforesaid" means, in our opinion, subject to the ordinary civil jurisdiction of the District Court in insolvency matters, that is, in all proceedings in insolvency the proceedings must commence in the District Courts in the same way as in the Allahabad High Court the original jurisdiction in matrimonial matters under the Indian Divorce Act is in the lower Court, but the High Court, undoubtedly can transfer cases to be disposed of in the High Court under its extraordinary civil jurisdiction. This point is made still clearer by a reference to section 2 (b) of the Provincial Insolvency Act where "District Court" is defined. It says "District Court" means the principal Civil Court of *original* jurisdiction in any area, etc. We agree that in the matter of original jurisdiction the District Courts have exclusive jurisdiction. Lastly, there can be no doubt that before the Provincial Insolvency Court came into existence the High Court of Judicature at Lahore did have jurisdiction to transfer proceedings in the Insolvency Court to itself for disposal. See

sections 25 and 344 of the Civil Procedure Code of 1882. It is well-settled law that no existing jurisdiction in a High Court can be taken away by the Legislature except by the use of express terms or by praying in aid a *necessary* implication. There certainly is no deprivation of the High Court of its jurisdiction in express terms in section 3 of the Provincial Insolvency Act, and, from what we have said above, it is equally clear that there cannot be any necessary implication that the jurisdiction in the High Court has been taken away by the terms of the said section. We have been referred to two decisions of Single Judges of Rangoon which we do not think really touch the point we have to consider. We have been referred also to *Goculdoss Jumnadoss v. Sadasivier* (1), but the only point in that case that appears at all relevant to this enquiry is that the learned Judge in that case came to the conclusion that the word "suit" in a similar clause in their Letters Patent included a proceeding in insolvency.

We, therefore, decide that this High Court under its extraordinary powers has jurisdiction to transfer a proceeding in insolvency from the lower Court to this Court for disposal. The Official Liquidator will have his costs. As the case was one of first impression and of a difficult nature we fix the costs at Rs.250 (Rs. Two hundred and fifty).

The second application is necessarily dismissed.

P. S.

Application dismissed.

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(1) (1929) I. L. R. 52 Mad, 57.