1957

December 20.

BOMBAY DYEING & MANUFACTURING CO., LTD.

v.

THE STATE OF BOMBAY AND OTHERS

(BHAGWATI, VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

Labour Welfare—Law creating a fund for welfare activities Companies called upon to pay fines realised from employees and unpaid accumulation of wages—Constitutional validity—Bombay Labour Welfare Fund Act (Bom. XL of 1953), ss. 3(1) 3(2)(a)(b)—Constitution of India, Arts. 31(2) 19(1)(f).

The Bombay Labour Welfare Fund Act (Bom. XL of 1953) was enacted by the State Legislature with the object of constituting a fund for the financing of activities for the welfare of labour and s. 3(1) of the Act provided as follows:—

"There shall be constituted a fund called the Bombay Labour Welfare Fund and, notwithstanding anything contained in any other law for the time being in force, the sums specified in sub-section (2) shall be paid into the Fund."

Section 3(2) provided, inter alia, as follows:—

"The Fund shall consist of:—

(a) all fines realised from the employees;

(b) all unpaid accumulation;"

.....

Notices were served on the appellant's company as also on other companies similarly situated, by the Welfare Commissioner, appointed under the Act, calling upon them to remit to him the fines and unpaid accumulations in their custody. The appellant in reply questioned the validity of the Act on the ground that it contravened Art. 31(2) of the Constitution and, thereafter, filed a Writ petition, out of which the present appeal arises, which was treated by consent of parties as a test case. The Judges of the Division Bench who heard the matter held that the impugned Act was *intra vires*, though on different grounds, and dismissed the petition. The sole point for determination in the appeal was whether s. 3(1) and sub-cls. (a) and (b) of s. 3(2) of the Act were void as being violative of Art. 31(2) of the Constitution:

Held, that the unpaid accumulation of wages remaining with the appellant company was its own property and s. 3(1) of the impugned Act in so far as it directs the payment of it under 3(2)(b) of the Act contravenes Art. 31(2) of the Constitution and must be invalid. Article 31(2A) of the Constitution has no retrospective effect and cannot apply and the matter must be decided on the law as it stood at the date of the Writ petition.

The State of West Bengal v. *Subodh Gopal Bose*, [1954] S.C.R. 587 and *Dwarkadas Shrinivas of Bombay* v. *Sholapur Spinning and Weaving Co. Ltd.*, [1954] S.C.R. 674, applied.

Assuming that money was not property within the meaning of Art. 31(2) and Art. 19(1)(f) applied that Article also would be of no help to the respondent as the Act could not be supported under Art. 19(5) of the Constitution.

Commonwealth of Australia v. *Bank of New South Wales*, [1950] A.C. 235, held inapplicable.

The State of Bihar v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*, [1952] S.C.R. 889, considered.

The impugned Act had not the effect of substituting the Board as the creditor in place of the employee nor could it be said to be a legislation in respect of abandoned property.

Although by defining 'unpaid accumulation' in the way it did the Legislature obviously intended that only such wages of the employees as were time-barred should be taken by the State, it being well settled that the law of limitation only bars the remedy but does not extinguish the debt, ss. 3(1), 5(2) and 17 of the Act must be held to have the effect of transferring to the Board the debts due by the appellant to its employees free from the bar of limitation.

Such a transfer can be valid only if it gives a complete discharge to the employer from the debts. If it does not, the Act must be held to infringe Art. 19(1)(f) of the Constitution. The Act contains no provision granting a discharge to the debtor. The bar of limitation prescribed either by s. 15 of the Payment of Wages Act (Act IV of 1936) or Art. 102 of the Limitation Act or the provisions of s. 56 of the Contract Act, assuming they applied, could not give such a discharge.

Where the Statute deals with rights arising out of a contract and interferes with the rights of one of the parties to it, it must affect those of the other parties to it as well. Consequently, the impugned Act which takes over the rights of the employees in respect of wages due to them without compensation and is, therefore unconstitutional, as contravening Art. 19(1)(f) or Art. 31(2) of the Constitution, would be unconstitutional as regards the appellant as well.

The purpose of a legislation relating to abandoned property must be, in the first instance, to safeguard the property in the interest of the true owner and thereafter, in absence of any claim, the taking over of it by the State. The impugned Act which vests the property absolutely in the State without any regard for the claims of the true owner cannot be said to be a law relating to abandoned property.

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Connecticut Mutul Life Insurance Company v. *Moore*, 333 U.S. 541, *Anderson National Bank* v. *Luckett*, 321 U.S. 233 and *Standard Oil Company* v. *New Jersey*, 341 U.S. 428, referred to.

As regards the fines mentioned in s. 3(2)(a) of the Act the appellant must be held to be a bare trustee under s. 8 of the Wages Act having no beneficial interest in fund created by that Act, and, consequently, ss. 3(1) and 3(2)(a) of the Act cannot contravene Art. 31(2) or Art. 19(1)(f) of the Constitution.

Nor could it be said that the Act by extending the circle of beneficiaries had encroached on the rights of the employees of the appellant. These sections must, therefore, be held to be constitutionally valid.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 167 of 1954.

Appeal from the Judgment and decree dated September 14, 1953, of the Bombay High Court in Misc. Application No. 267 of 1953.

R. J. Kolah, B. Narayanaswamy and *J. B. Dadachanji*, for the appellants.

H. M. Seervai, Advocate General for the State of Bombay and *R. H. Dhebar*, for the respondents.

1957. December 20. The following Judgment of the Court was delivered by

Venkatarama Aiyar J.

VENKATARAMA AIYAR J.—The appellant is a limited Company incorporated under the Indian Companies Act, 1879. It is carrying on business in the manufacture of textiles, and owns three factories called Spring Mills, Textile Mills and Bombay Dye Works, all of which are situate in Bombay. In its balance sheet for the year 1951, it has shown as one of its liabilities a sum of Rs. 1,65,731-1-0 under the heading "Unclaimed wages". This amount is made up of wages earned by the workmen in the factories but remaining undrawn by them, and represents accumulations from year to year ever since the formation of the Company which, it is stated, was about the year 1880. The dispute in this appeal mainly relates to this amount.

In 1953, the Legislature of the State of Bombay enacted the Bombay Labour Welfare Fund Act (Bom. XL of 1953) (hereinafter referred to as the Act), and it came into force on June 4, 1953. We may, at this stage refer to the relevant

provisions of the Act, as it is their validity that is the main point for our determination in this appeal. The preamble to the Act recites that "It is expedient to constitute a Fund for the financing of activities to promote welfare of labour in the State of Bombay and for conducting such activities". Section 2 is the definition section; sub-s. (2) defines an "employee" as meaning "any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in an establishment". "Employer" is defined in sub-s. (3) as meaning "any person who employs either directly or through another person either on behalf of himself or any other person, one or more employees in an establishment and includes—in a factory any person named under s. 7(i)(f) of the Factories Act, 1948, as the manager". Sub-section (10) defines "Unpaid accumulations" as meaning "all payments due to the employees but not made to them within a period of three years from the date on which they became due whether before or after the commencement of this Act including the wages and gratuity legally payable". "Wages" is defined in sub-s. (11) as meaning "all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment:.....".

Then, there is s. 3, which runs as follows:

(1). "There shall be constituted a fund called the Bombay Labour Welfare fund and, not withstanding anything contained in any other law for the time being in force, the sums specified in sub-section (2) shall be paid into the Fund.

(2). The Fund shall consist of—

(a) all fines realised from the employees;

(b) all unpaid accumulations;

(c) any voluntary donations;

(d) any fund transferred under sub-section (5) of section 7; and

(e) any sum borrowed under section 8.

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(3). The sums specified in sub-section (2) shall be collected by such agencies and in such manner and the accounts of the Fund shall be maintained and audited in such manner as may be prescribed."

Section 7(1) provides that "the Fund shall vest in and be held and applied by the Board as Trustees subject to the provisions and for the purposes of this Act."

Sub-section (2) of s. 7 is very material, and is as follows:

"Without prejudice to the generality of sub-section (1) the moneys in the Fund may be utilized by the Board to defray expenditure on the following:

(a) community and social education centres including reading rooms and libraries;

(b) community necessities;

(c) games and sports;

(d) excursions, tours and holiday homes;

(e) entertainment and other forms of recreations;

(f) home industries and subsidiary occupations for women and unemployed persons;

(g) corporate activities of a social nature;

(h) cost of administering the Act including the salaries and allowances of the staff appointed for the purposes of the Act; and

(i) such other objects as would in the opinion of the State Government improve the standard of living and ameliorate the social conditions of labour:

Provided that the Fund shall not be utilized in financing any measure which the employer is required under any law for the time being in force to carry out;

Provided further that unpaid accumulations and fines shall be paid to the Board and be expended by it under this Act notwithstanding anything contained in the Payment of Wages Act, 1936 (IV of 1936), or any other law for the time being in force".

Section 11 provides for the appointment of an officer called the Welfare Commissioner, and defines his powers and duties. Section 17 enacts that,

"Any sum payable into the Fund under this Act shall, without prejudice to any other mode of recovery, be recover-

able on behalf of the Board as an arrear of land revenue."

Section 19 authorises the State Government to make rules to carry out the purposes of this Act, Section 23 provides that,

"In section 8 of the Payment of Wages Act, 1936 (IV of 1936), to sub-section (8) the following shall be added, before the Explanation, namely:

"but in the case of any factory or establishment to which the Bombay Labour Welfare Fund Act, 1953 (Bom. XL of 1953), applies all such realisations shall be paid into the Fund constituted under the said Act."

Rules were framed by the State of Bombay in exercise of the powers conferred by s. 19, and they were published on June 30, 1953. The material rules are Nos. 3 and 4, which are as follows:

3. "*Payment of fines and of unpaid accumulations by employer*—(1) Within fifteen days from the date on which the Act shall come into force in any area, every employer in such area shall pay by cheque, money order or cash to the Welfare Commissioner—

(a) all fines realised from the employees before the said date and remaining unutilized on that date; and

(b) all unpaid accumulations held by the employer on the aforesaid date.

(2) The employer shall along with such payment submit a statement to the Welfare Commissioner giving full particulars of the amounts so paid.

(3) Thereafter, all fines realised from the employees and all unpaid accumulations during the quarters ending 31st March, 30th June, 30th September and 31st December shall be paid by the employer in the manner aforesaid to the Welfare Commissioner on or before the 15th of April, 15th of July, 15th of October and 15th of January succeeding such quarter and a statement giving particulars of the amounts so paid shall be submitted by him along with such payment to the Welfare Commissioner.

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4. *Notice for payment of fines and unpaid accumulations by Welfare Commissioner*—The Welfare Commissioner may, after making such enquiries as he may deem fit, and after calling for a report from the Inspector, if necessary, serve a notice on any employer to pay any portion of fines realised from the employees or unpaid accumulations held by him which the employer has not paid in accordance with rule 3. The employer shall comply with the notice within 14 days of the receipt thereof."

On July 7, 1953, the Welfare Commissioner, Bombay appointed under s. 11 of the impugned Act, sent a notice to the appellant and other companies similarly situate, inviting their attention to the relevant provisions of the Act and of the rules and calling upon them to remit the fines and unpaid accumulations remaining with them, in accordance with the directions contained therein. To this, the appellant sent a reply on the same date impugning the validity of the Act as being in violation of the provisions of Art. 31(2), and followed it up by filing the writ petition out of which the present appeal arises, it being treated by consent of parties as a test case.

The application was heard by Chagla C. J. and Tendolkar J. who held that the impugned Act was *intra vires* but on different grounds. The learned Chief Justice was of the opinion that, on its true construction, the Act merely substituted the Board as a creditor in the place of the employees, that there was not taking of property, and that, in consequence, there was no contravention of Art. 31(2). Tendolkar J. held that "unpaid wages" were unquestionably moneys which belonged to the employer and that he was being deprived of them, but there was no taking of possession or acquisition of property within Art. 31 (2) of the Constitution but a deprivation of moneys, and as it was done under the authority of law, it fell within the protection of Art. 31(1). In the result, the petition was dismissed. The learned Judges, however, granted a certificate under Art. 132, and that is how the appeal comes before us.

The sole point for determination in this appeal is whether s. 3 (1) and sub-cls. (a) and (b) of s. 3 (2) of the Act are void as contravening the provisions of the Constitution; but to decide it, we have to consider quite a number of questions which have been raised and discussed in the arguments before us. It will be convenient to deal with the two items, fines realised from the employees, s. 3(2)(a) and unpaid accumulations, s. 3(2) (b) separately, as the issues involved in the determination of their validity are different.

Taking first unpaid accumulations, s. 3(2) (b), the contention of Mr. Kolah for the appellant is that s. 3(1) is repugnant to Art. 31 (2) inasmuch as it deprives the employers of moneys belonging to them without payment of any compensation merely on the ground that they represent wages due to the employees. Now, money is undoubtedly property, and it cannot be disputed that a person who has money does not cease to be its owner merely by reason of the fact that he owes debts in satisfaction of which it may have to be applied. Until the creditor takes appropriate proceedings under the law for the realisation of his debt and the title of the debtor is extinguished in those proceedings, the title to the property continues in the debtor. Mr. Kolah is therefore clearly right in his contention that the liability of the appellant to pay wages to the employees does not *ipso facto* extinguish its title to the moneys belonging to it even *pro tanto*, and that the effect, therefore, of s. 3(1) is to take away money belonging to it. Then, the question is whether such a provision is hit by Art. 31(2) on the ground that it is acquisition or taking possession of property for a public purpose without payment of compensation. It is common ground that the taking is for a public purpose. The point in dispute is whether what is sought to be done under s. 3 is acquisition or taking possession of property within Art. 31(2). Tendolkar, J., answered this question against the appellant, because, in his view, Art. 31(2) would apply only if there was a transfer of title to or beneficial interest in the amounts to the State, that s. 3(1) effected neither,

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that it did deprive the employers of their moneys, but that fell under Art. 31(1) and not Art. 31 (2), and that as that was done under the authority of law, it could not be questioned.

Subsequent to this decision, this Court had occasion to consider the true scope of Art. 31(2) in relation to Art. 31(1) in *The State of West Bengal* v. *Subodh Gopal Bose*(1) and in *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning and Weaving Co. Ltd*(2). In *The State of West Bengal* v. *Subodh Gopal Bose*(1), the majority of the learned Judges took the view that Arts. 31(1) and 31(2) were not mutually exclusive, that it was not an essential requisite of acquisition under Art. 31(2) that there should be a transfer of title to the State, that deprivation of property and substantial abridgement of the rights of the owner were also within Art. 31(2), and that a law which produced those results must, in order to be valid, satisfy the conditions laid down in that Article. Das, J., (as he then was) differed from this view, and held that the contents of the two provisions were distinct, that while Art. 31(1) had reference to the "police power" of the State, Art. 31(2) dealt with the power of "eminent domain". In *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning and Weaving Co.*(2) the majority of the Judges again reiterated the view expressed in *The State of West Bengal* v. *Subodh Gopal Bose*(1) that Arts. 31(1) and 31(2) covered the same ground, and that substantial interference with rights to property would be within the operation of Art. 31 (2).

On these decisions, it should follow that s. 3 of the impugned Act is bad as infringing Art. 31(2), in that it deprives the appellant of its moneys without giving any compensation. Mr. Seervai, however, resists this contention on the strength of Art. 31(2A), which was introduced by the Constitution (Fourth Amendment) Act, 1955. It is as follows.

"Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall

(1) [1954] S.C.R. 587. (2) [1954] S.C.R. 674.

not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

The argument is that the theory that acquisition in Art. 31(2) is not confined to cases of transfer of ownership to the State, and that even deprivation of property would fall within it, which is the basis of the decisions in *The State of West Bengal* v. *Subodh Gopal Bose*(1) and in *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning and Weaving Co. Ltd.*(2) can, in view of the above amendment, no longer be accepted as correct, and that those decisions therefore require to be reconsidered in the light of the new Art. 31(2A). But it is not disputed that this provision has no retrospective operation and that the rights of the parties must be decided in accordance with the law as on the date of the writ application, and that on the provisions of the Constitution as they stood on that date and as interpreted in *The State of West Bengal* v. *Subodh Gopal Bose*(1) and *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning and Weaving Co. Ltd.*(2), s. 3 (1) of the impugned Act would be obnoxious to Art. 31(2). This should be sufficient to conclude this question in favour of the appellant, but the respondents contend that s. 3(1) is not within the prohibition of Art. 31(2), because it operates only on money, and money is not property for purposes of that Article.

There is considerable authority in America that the power of eminent domain does not extend to the taking of money, the reason being that compensation which is to be paid in respect of money can only be money, and that, therefore, in substance it is a forced loan. In *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga*(3), this view was adopted by Mahajan J. at pages 943-944, by Mukherjea J. at page 961 and by Chandrasekhara Aiyar J. at pages 1015 to 1018. It is argued for the respondents that the position under Art. 31(2) is the same as in America, as the

(1) [1954] S.C.R. 587. (2) [1954] S.C.R. 674.
(3) [1952] S.C.R. 889.

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provision therein that either the amount of the compensation should be fixed or the principles on which and the manner in which compensation is to be determined should be specified, involves that what is taken is not money. It is argued, on the other hand, for the appellant that the latest trends in American law show, as was observed by Das J. (as he then was), at pages 984-985 in *The State of Bihar* v. *Maharajadhiraj Sir Kameshwar Singh of Darbhanga*(1), a departure from the view held in earlier authorities that moneys and choses in action could not be the subject of "eminent domain"; and that, in any case, the principles of American law should not be applied in the interpretation of the provisions of our Constitution. If the contention of the respondents is to be accepted, the question naturally arises what protection a person has in respect of moneys belonging to him if he can be deprived of them by process of legislation. The answer of Mr. Seervai is that that protection is to be sought in Art. 19(1)(f), that the word "property" therein has a wider connotation that what it bears in Art. 31(2) and includes money, and that the citizens have the right to hold money subject only to law such as is saved by Art. 19(5). In support of this position, he relied on the decision in *Bijay Cotton Mills Ltd.* v. *The State of Ajmer*(2) in which this Court applied Art. 19(6) in pronouncing on the validity of the Minimum Wages Act (XI of 1948) requiring the employers to pay wages at a rate not less than that to be fixed by the Government.

Assuming that the correct position is what the respondents contend it is, the question that has still to be determined is whether the impugned Act could be supported under Art. 1905. There was some discussion before us as to the scope of this provision, the point of the debate being whether the words "imposing reasonable restriction" would cover a legislation, which not merely regulated the exercise of the rights guaranteed by Art. 19(1)(f) but totally extinguished them, and whether a law like the present one which deprived the owner of his properties could be held to fall within that provision. It was argued that a law authorising the State to

(1) [1952] S.C.R. 889.
(2) [1955] 1 S.C.R. 752.

seize and destroy diseased cattle, noxious drugs and the like, could not be brought within Art. 19(5) if the word 'restriction' was to be narrowly construed, and that accordingly the power to restrict must be held to include, in appropriate cases, the power to prohibit the exercise of the right. That view does find support in the observations of Lord Porter in *Commonwealth of Australia* v. *Bank of New South Wales*(1); but the present legislation cannot be sustained even on the above interpretation of the word 'restriction', as s. 3(1) of the Act deals with moneys and money cannot be likened to diseased cattle or noxious drugs so as to attract the exercise of police power under Art. 19(5). It appears to us that whether we apply Art. 31(2) or Art. 19(5), the impugned Act cannot be upheld, and it must be struck down, unless we accept the other contentions which have been urged for the respondents in support of its validity. Those contentions are firstly, that the Act merely substitutes the Board as the creditor in the place of the employees, and that ss. 3 and 17 merely prescribe the mode in which the obligation is to be enforced and—that was the ground on which Chagla C. J. based his judgment; and secondly, that the impugned legislation is one in respect of abandoned property, and it is not open to attack as contravening either Art. 19(1)(f) or Art. 31(2). It is those contentions that now fall to be considered.

As regards the first contention, the question is whether on a fair construction of the provisions of the impugned Act, it is possible to spell out a substitution of creditors. When an employee has done his work, the amount of wages earned by him becomes a debt due to him from the employer, and it is property which could be assigned under the law. If the employee had assigned the debt to the Board constituted under the Act, the latter would be entitled to recover it from the employer. And what could be done by act of parties can also be done by legislation. What we have to see, therefore, is whether on the provisions of the statute it could be held that

(1) [1950] A.C. 235, 311.

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there is a statutory transfer of the wages earned by the workman to the Board. Section 5 of the Act vests the amounts mentioned in s. 3(2) in the Board, and s. 3(1) directs that those amounts should be paid by the employer to the Board. Counsel for the appellant contends that there are in the Act no words of transfer of the debts to the Board, and that there is only a provision for payment of the amounts. But this is taking too narrow a view of the true scope of those provisions. Looking at the substance of the matter, we are of opinion that s. 3(1) and s. 5(1) do operate to transfer the debts due to the employees, to the Board.

It will be observed that the definition of "unpaid accumulations" takes in only payments due to the employees remaining unpaid within a period of three years after they become due. The intention of the Legislature obviously was that claims of the employees which are within time should be left to be enforced by them in the ordinary course of law, and that it is only when they become time-barred and useless to them that the State should step in and take them over. On this, the question arises for consideration whether a debt which is time-barred can be the subject of transfer, and if it can be, how it can benefit the Board to take it over if it cannot be realised by process of law. Now, it is the settled law of this country that the statute of Limitation only bars the remedy but does not extinguish the debt. Section 28 of the Limitation Act provides that when the period limited to a person for instituting a suit for possession of any property has expired, his right to such property is extinguished. And the authorities have held—and rightly, that when the property is incapable of possession, as for example, a debt, the section has no application, and lapse of time does not extinguish the right of a person thereto. Under s. 25(3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount. When a debtor makes a payment without any direction as to how it is to be appropiated, the creditor has the right to appropriate it towards a barred debt. (Vide s. 60 of the Contract Act). It has also been held that a creditor is entitled to recover the debt from

the surety, even though a suit on it is barred against the principal debtor. Vide *Mahant Singh* v. *U. Ba Yi*(1), *Subramania Aiyar* v. *Gopala Aiyar*(2), and *Dil Muhammad* v. *Sain Das*(3). And when a creditor has a lien over goods by way of security for a loan, he can enforce the lien for obtaining satisfaction of the debt, even though an action thereon would be time-barred. Vide *Narendra Lal Khan* v. *Tarubala Dasi*(4). That is also the law in England. Vide Halsbury's Laws of England (Hailsham's Edition), Vol. 20, page 602, para. 756 and the observations of Lindley L.J. in *Carter* v. *White*(5) and of Cotton L. J. in *Curwen* v. *Milburn*(6). In American Jurisprudence, Vol. 34, page 314, the law is thus stated.

"A majority of the courts adhere to the view that a statute of limitations, as distinguished from a statute which prescribes conditions precedent to a right of action, does not go to the substance of a right, but only to the remedy. It does not extinguish the debt or preclude its enforcement, unless the debtor chooses to avail himself of the defence and specially pleads it. An indebtedness does not lose its character as such merely because it is barred; it still affords sufficient consideration to support a promise to pay, and gives a creditor an insurable interest."

In Corpus Juris Secundum, Vol. 53, page 922, we have the following statement of the law:

"The general rule, at least with respect to debts or money demands, is that a statute of limitation bars, or runs against, the remedy and does not discharge the debt or extinguish or impair the right, obligation, or cause of action."

The position then is that under the law a debt subsists notwithstanding that its recovery is barred by limitation, and no argument has been addressed to us by the appellant that the transfer of such a debt is invalid; and indeed it could not be, in view of the provisions in the impugned Act, which re-

(1) (1939) L.R. 66 I.A. 198. (2) (1910) I.L.R. 33 Mad. 308.
(3) A.I.R. 1927 Lah. 396. (4) 1921) I.L.R. 48 Cal. 817, 823
(5) (1883) 25 Ch. D. 666, 672. (6) (1889) 42 Ch. D. 424, 434.

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lease the debts due to the employees from the bar of limitation. Section 3(1) provides that payment shall be made of the amounts specified in sub-cl. (2) "notwithstanding anything contained in any other law for the time being in force." A similar provision is again enacted in the second proviso to sub-s. (2) of s. 5 that "unpaid accumulations" and fines shall be paid to the Board "notwithstanding anything contained in the Payment of Wages Act, 1936, or any other law for the time being in force." One of those laws is the law of limitation, and the effect of these provisions is to suspend limitation in respect of the claims to which s. 3(2) relates. To dispel any doubt as to whether it was competent to the Legislature of the Bombay State to modify the provisions of the Limitation Act, it should be stated that limitation is a topic enumerated in the Concurrent List, being Entry 13 in List III in Seventh Schedule to the Constitution, and under Art. 254(2), the State Legislature can enact a law modifying the Central Act, provided it is reserved for consideration by the President and assented to by him, and that has been done in the present case. Coming to the impugned Act, there is one other provision therein to which reference must be made. Section 17 provides that without prejudice to other modes of recovery, the sums payable to the fund under s. 3 may be recovered as arrears of land revenue. This is a provision which is generally made when amounts are due and payable to the State, and Mr. Kolah concedes, that if the impugned law is otherwise valid, it cannot be said to be bad by reason of this section. On the above analysis, there cannot be any doubt that the effect of the relevant provisions of the Act is to transfer to the Board the debts due by the appellant to its employees free from the bar of limitation.

The question still remains whether there has been a substitution of creditors, and that can only be, if the debt due to the employee is discharged and in its place there is substituted the debts in favour of the Board. If, however, the employer is not released from his liability to the employee, then the effect of s. 3(1) is only to create in the Board a statutory

creditor in addition to the creditor under the contract of employment, and there can be no question of substitution. Mr. Seervai agrees that if the Act does not operate to discharge the employer from his obligations to the employees in respect of the wages due to them, then it must be held to be unconstitutional as infringing Art. 19(1)(f), because his contention that the effect of the Act was only to take the property of the employer in discharge of its obligations could not then be maintained.

The real point for determination, therefore, is whether on payment of the amounts in accordance with s.3(1) of the Act, the appellant gets a discharge of his obligation to the employees in respect of wages due to them. The Act does not contain any provision to that effect, and the absence thereof has been strongly relied on by the appellant as showing that no substitution of creditors was intended. In answer to this contention, Mr. Seervai urges firstly that though the Act does not, in terms, provide for the discharge of the appellant on payment of the amount under s. 3(1), that is the result of the provisions of the Payment of Wages Act (Act IV of 1936). hereinafter referred to as the Wages Act, and secondly, that the effect of s. 3(1) of the Act is to render the contract of employment void under s. 56 of the Contract Act, and the appellant is thereby discharged from his obligations thereunder. We shall now examine both these contentions.

To appreciate the first contention, it is necessary to refer to the relevant provisions of the Wages Act. Section 2(vi) defines "wages" in terms which comprehend whatever falls within the definition of that word in s. 2(11) of the impugned Act. Section 3 casts on the employer the responsibility for payment of wages to persons employed by him. Section 4 provides for the fixing of wage periods, which, however, are not to exceed one month. Under s. 5, the wages have to be paid before the expiry of ten days after the last day of the wage period in case of employees who continue in service and in the case of those whose employment has been terminated, within the second working day of such termination.

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Section 15 provides that where an unauthorised deduction has been made from the wages of an employed person or payment of wages has been delayed, such person may apply to the authority appointed under the Act for a direction for payment of the amount deducted or the delayed wages, as the case may be, together with payment of compensation. Such application has to be made within six months from the date on which the deductions were made or the date on which the payment of wages became due, and by Act No. 62 of 1953 of the Bombay Legislature, the period of six months has been enlarged to one year. There is a proviso to this section that an application thereunder can be made after the period prescribed therein "when the applicant satisfies the authority that he had sufficient cause for not making the application within such period." Section 22(d) of the Act provides that,

"No Court shall entertain any suit for the recovery of wage of any deduction from wages in so far as the sum so claimed could have been recovered by an application under section 15....."

Now, the argument of the respondents is that under the provisions aforesaid, an employee has to prosecute his claim for unpaid wages before the authority within the time limited by s. 15 of the Wages Act, which is one year in the State of Bombay, that if he fails to do so it becomes unenforceable, and a suit with respect thereto under the general law is also barred: The result is, it is contended, that having regard to the definition of "unpaid accumulations" as meaning all payments due to the employees but not made to them within a period of three years, the employer runs no risk of being called upon to pay to the employee what has been paid by him to the Board under s. 3(1), and that therefore a payment under the impugned Act gives him what is, for all practical purposes, a good discharge. This argument rests on the supposition that so far as unpaid wages are concerned, the operation of the Wages Act is co-extensive with that of the impugned Act. But that clearly is erroneous. It is true that wages as

defined in the Wages Act would include whatever are wages under the impugned Act. But s. 1(6) limits the application of the Wages Act to wages which are below Rs. 200 for a wage period. In respect of wages of Rs. 200 or more, it is the general law that would apply, and the period of limitation is not one year under s. 15 of the Wages Act but three years under Art. 102 of the Limitation Act, which period is capable of extension under the provisions of the Limitation Act beyond the three years mentioned in s. 2(10) of the impugned Act. Then, it is to be noted that under the proviso to s. 15(1), the authority has the power to admit a petition even beyond the period mentioned there, if sufficient cause is shown therefor. To this, the reply of the respondents is that as on the terms of s. 3(1) and the second proviso to s. 5(2) they are to take effect notwithstanding anything contained in the Wages Act or any other law, they override the power conferred by the proviso to s. 15(1) of the Wages Act or the provisions of the Limitation Act.

Even as regards s. 22 of the Wages Act, there is divergence of judicial opinion as to its true scope. In *Simpalax Manufacturing Co. Ltd.* v. *Alla-Ud-Din*(1), it was held that if there was any *bona fide* dispute as to the amount payable, the jurisdiction of the Civil Court was not barred by s. 22. On the other hand, it was held in *Bhagwat Rai v. Union of India*(2) that the jurisdiction of the Civil Court would be barred, even if there was a *bona fide* dispute, and that the bar under s. 22(d) was absolute, and certain observations in *Modern Mills Ltd.* v. *Mangalvedhekar*(3) and *A. R. Sarin* v. *B. C. Patil*(4) were relied on, as supporting this contention. Even if Mr. Seervai is right in his contention that the law is correctly laid down in *Bhagwat Rai* v. *Union of India*(2) and that the decision in *Simpalax Manufacturing Co. Ltd.* v. *Alla-Ud-Din*(1) is wrong, the fact remains that claims in respect of unpaid wages to which the impugned Act applies must, in view of s. 1(6) of the Wages Act, fall at least in part outside the pur-

(1) A.I.R. 1945 Lah. 195. (2) I.L.R. 1953 Nag. 433.
(3) A.I.R. 1950 Bom. 342, 145. (4) A.I.R. 1951 Bom. 423.

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view of that Act, and the protection afforded by s. 15 of that Act will not be available with reference thereto.

It is next contended that even if the impugned Act does not protect the employer in respect of unpaid wages which fall outside the Wages Act, it should be upheld in so far as it relates to those claims which fall within the purview of that Act, as the bar of limitation under s. 15 of that Act is sufficient safeguard to the employer against being made liable at the instance of the employees for wages which had been paid to the Board. And it is also contended that even with reference to claims for unpaid wages which fall outside the Wages Act the impugned Act should be held to be valid if such claims are barred under the provisions of the Limitation Act. In other words, the contention is that the impugned Act should be upheld in respect of that portion of the unpaid wages the recovery of which by the employees is barred by limitation whether under s. 15 of the Wages Act or the Limitation Act.

The impugned Act, it should be noted, merely enacts that all unpaid accumulations should be paid to the Board. It makes no distinction between claims for unpaid wages which are barred by limitation and those which are not so barred. It is contended for the respondents that when the subject-matter of a law comprehends distinct matters as to some of which it is unconstitutional and bad, it should nevertheless be upheld as regards the others, if those others form a distinct category, and that this principle applies not only when a classification into distinct categories appears on the face of the law but also when it exists in fact. Now, the doctrine of severability in application is well-established in our law (vide *The State of Bombay* v. *F. N. Balsara*(1). *The State of Bombay* v. *The United Motors (India) Ltd.*(2), and *R.M.D. Chamarbaugwalla* v. *Union of India*(3), and the principles applicable have been stated fully in *Chamarbaugwalla's Case*(3). But assuming on the basis of the above authorities that we can con-

(1) [1951] S.C.R. 682. (2) [1953] S.C.R. 1069.
(3) [1957] S.C.R. 930.

fine the operation of the impugned Act to those claims of unpaid wages which are barred by limitation, the question still is whether the impugned Act gives a discharge to the employer even in respect of those claims; for, as already stated, the operation of Art. 19(1)(f) can be avoided only if it is established that there has been a substitution of creditors, which can only be if and when the employer gets a discharge from those obligations to the employees. The point to be decided therefore is whether the effect of the bar of limitation is to discharge the employer from liability to the employees.

It has been already mentioned that when a debt becomes time-barred it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them. The following passages in Anson's Law of Contract, 19th Edition, page 383, are directly in point:

"At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration.

"But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; *interest reipublicae ut sit finis litium*. The remdies are barred, though the right is not extinguished."

And if the law requires that a debtor should get a discharge before he can be compelled to pay, that requirement is not satisfied if he is merely told that in the normal course he is not likely to be exposed to action by the creditor.

That this distinction is not purely academical but is of practical importance will be seen, when regard is had to the

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provisions of the Industrial Disputes Act. Under that Act, there is no period of limitation prescribed for referring a dispute for adjudication by a tribunal. Even when a claim for wages falls within the purview of the Wages Act and an application under s. 15 of that Act would be barred, it can nevertheless give rise to an industrial dispute in respect of which action can be taken under the provisions of the Industrial Disputes Act. It was held by the Federal Court in *Shamnagore Jute Factory Co. Ltd. v. S. M. Modak*(1) that s. 22(d) of the Wages Act did not take away the power of the authorities to refer to a tribunal set up under the Industrial Disputes Act a claim which could be made under the Wages Act, as that section had application only to suits and did not exclude other proceedings permitted by law for the enforcement of payment. If a tribunal appointed under that Act can direct an employer to make payment of wages, it follows that the bar under s. 15 of the Wages Act does not give an absolute protection to the employer, and the same consequence must follow when the bar of limitation arises under the Limitation Act. The result therefore is that when an employer makes a payment under s. 3(1) of the Act he gets no discharge from his obligation to the employees, even when the enforcement thereof is barred by limitation.

The contention based on the provisions of the Wages Act failing, Mr. Seervai falls back on s. 56 of the Contract Act as furnishing a ground for holding that the employer is discharged. Para. (2) of s. 56 provides that,

"a contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

It is argued that by operation of s. 3 of the impugned Act, the performance of the contract by the employer has become impossible, and the contract has thereby become void. Section

(1) [1949] F.C.R. 365.

56 of the Contract Act embodies the law relating to frustration of contracts, and the true scope of that section was considered by this Court in *Satyabrata Ghose* v. *Mugneeram Bangur and Co.*(1). The position was thus stated by Mukherjea J.:

"In the large majority of cases however the doctrine of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from the performance of the contract. The relief is given by the court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. Here there is no question of finding out an implied term agreed to by the parties embodying a provision for discharge, because the parties did not think about the matter at all nor could possibly have any intention regarding it. When such an event or change of circumstances occurs which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court which can pronounce the contract to be frustrated and at an end. The court undoubtedly has to examine the contract and the circumstances under which it was made. The belief, knowledge and intention of the parties are evidence, but evidence only on which the court has to form its own conclusion whether the changed circumstances destroyed altogether the basis of the adventure and its underlying object. This may be called a rule of construction by English Judges but it is certainly not a principle of giving effect to the intention of the parties which underlies all rules of construction. This is really a rule of positive law and as such comes within the purview of section 56 of the Indian Contract Act."

Counsel for the respondents relies on these observations, and contends that when the contract of service was entered into between the employer and the employees, they could

(1) [1954] S.C.R. 310, 323.

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not have contemplated that the Legislature would have intervened and required the employer to pay the arrears of wages to the Board, and that that is a supervening impossibility which brings s. 56 into play and renders the contract void. We are not satisfied that the performance of the contract of service has been rendered impossible by reason of s. 3(1) of the impugned Act. But assuming that that is the position, what follows? The matter would then be governed by s. 65 of the Contract Act, which provides that when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. Under this section, the employer is liable to make compensation to the employee for the work done by him, and that liability can be enforced against him in spite of the fact that he has paid the unclaimed wages to the Board under s. 3(1) of the Act. We are therefore of opinion that even if the matter is governed by s. 56 of the Contract Act, the employer is no more discharged than by the operation of the bar of limitation under s. 15 of the Wages Act, or the provisions of the Limitation Act. In this view, it must be held that the provisions of the impugned Act are unconstitutional, in that they take away the property of the appellant in violation of either Art. 19 (1) (f) or Art. 31(2) of the Constitution.

A contention was also raised on behalf of the appellant that even if the impugned Act did not encroach on any of the Constitutional rights of the appellant, it clearly violated the rights of the employees in that it deprives them of their right to wages earned by them, that it was therefore void as against them as being in contravention of Art. 31(2), and being void against them, it was void against the appellant as well. For the respondents, it is contended that the Act cannot be held to infringe Art. 31(2) even as regards the employees, as choses in action equally with money are outside the operation of that Article, and reliance is placed on the observations already referred to in *The State of Bihar* v. *Maharajadhi-*

raja Sir Kameshwar Singh of Darbhanga (supra) at pages 942, 960-961 and 1015 to 1018. Now, as the Act takes over the rights of the employees in respect of wages due to them even when they are not barred without making any provision for compensation of the same to them, it must at least to that extent be held to be unconstitutional, whether as contravening Art. 19(1) (f) or Art. 31(2) it is unnecessary to decide.

It is then argued that this is an objection open only to the employees, and that the appellant can make no grievance of it. It is no doubt true that a question as to the constitutionality of a statute can be raised only by a person who is aggrieved by it; but here, the statute deals with rights arising out of contract, and that presupposes the existence of at least two parties with mutual rights and obligations, and it is difficult to see how when the rights of one party to it are interfered with, those of the other can remain unaffected by it. Let us assume that the appellant makes a payment to the Board under s. 3 (1) of the impugned Act on the footing that the law is not unconstitutional as against him. What is there to prevent the employee from suing to recover the same amount from the appellant on the ground that the Act is unconstitutional? It will be no answer to that claim to plead that the appellant has already paid the amount to the Board. The fact is that a statute which operates on a contract must affect the rights of all the parties to the contract, and if it is bad as regards one of them, it should be held to be bad as regards the others as well. It is unnecessary to pursue this question further, as we have held that the Act is unconstitutional even as regards the appellant.

It remains to deal with the contention of the respondents that the impugned legislation is, in substance, one in respect of abandoned property, and that, by its very nature, it cannot be held to violate the rights of any person either under Art. 19(1) (f) or Art. 31(2). That would be the correct position if the character of the legislation is what the respondents claim it to be, for it is only a person who has some interest in property that can complain that the impugned legis-

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lation invades that right whether it be under Art. 19(1) (f) or Art. 31(2), and if it is abandoned property *ex hypothesi* there is no one who has any interest in it. But can the impugned Act be held to be legislation with respect to abandoned property? To answer this question, it is necessary to examine the basic principles underlying such a legislation, and ascertain whether those are the principles on which the Act is framed. The expression "abandoned property" or to use the more familiar term "*bona vacantia*" comprises properties of two different kinds, those which come in by escheat and those over which no one has a claim. In Halsbury's Laws of England, Third Edition, Vol. 7 page 536, para. 1152, it is stated that "the term *bona vacantia* is applied to things in which no one can claim a property and includes the residuary estate of persons dying intestate". There is, however, this distinction between the two classes of property that while the State becomes the owner of the properties of a person who dies intestate as his ultimate heir, it merely takes possession of property which is abandoned. At common law, abandoned personal property could not be the subject of escheat. It could only be appropriated by the Sovereign as *bona vacantia*. Vide Holdsworth's History of English Law, Second Edition, Vol. 7, pages 495-496. In *Connecticut Mutual Life Insurance Company* v. *Moore*(1), the principle behind the law was stated to be that "the State may, more properly, be custodian and beneficiary of abandoned property than any other person." Consistently with the principle stated above, a law relating to abondoned property enacts firstly provisions for the State conserving and safeguarding for the benefit of the true owners property in respect of which no claim is made for a specified and reasonable period, and secondly, for those properties vesting in the State absolutely when no claim is made with reference thereto by the true owners within a time limited.

There has been quite a number of laws on abandoned property in the American States, and their validity has been

(1) 333 U.S. 541, 546; (1947)) 92 L. Ed. 863, 869.

the subject of numerous decisions in the Supreme Court of United States. In *Anderson National Bank* v. *Luckett*(1), the law related to Bank deposits. It provided that if moneys in deposit had not been demanded or operated on, for a period of 10 years in the case of demand deposits and 25 years in the case of non-demand deposits, they might be presumed to have been abandoned and the Banks were to transfer them to the State. Claims to the deposits might be made to the Commissioner of Revenue, who was to determine on their validity, his decision being open to review by the Courts. The validity of this law was questioned on the ground that sufficient opportunity had not been given to the depositors to claim the deposits, and that as they could attack the law as unconstitutional, the Bank got no protection by payment to the State. In repelling this contention, the Supreme Court observed that the Act did not deprive the depositors of any of their rights, they being given ample opportunity to establish their rights, and that it merely substituted the State in the place of the Bank as their debtor. The Court also held that it was "within the Constitutional power of the State to protect the interests of depositors from the risks which attend long neglected accounts, by taking them into custody when they have been inactive so long as to be presumptively abandoned". In *Connecticut Mutual Life Insurance Co.* v. *Moore* (supra), the law was with reference to moneys payable on life insurance policies, which had matured. It provided that if those amounts had remained unclaimed for a period of seven years, then it had to be advertised by the companies in the manner provided therein, and if no claims were preferred thereafter, the amounts were to be paid to the State Comptroller for care and custody. In holding that the law was valid, the Court observed.

"There is ample provision for notice to beneficiaries and for administrative and judicial hearing of their claims and payment of same. There is no possible injury to any beneficiary."

(1) 321 U.S. 233, 241; (1943) 88 L. Ed. 692, 701.

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In *Standard Oil Company* v. *New Jersey*(1), the law related to shares and unpaid dividends, and provided for the State taking them over, if they remained unclaimed for a period of 14 years. There was a provision for notice to the unknown owners by advertisement. It was held following *Connecticut Mutual Life Insurance Company* v. *Moore* (supra) that the law was valid.

In the light of the above discussion, there cannot be any reasonable doubt that the impugned Act cannot be regarded as one relating to abandoned property. The period of three years mentioned in s. 2(10) of the Act is merely the period of limitation mentioned in Art. 102 of the Limitation Act, and even taking into account the class of persons whose claims are dealt with in the Act, as counsel for respondents would have us do, the period cannot be regarded as adequate for raising a presumption as to abandonment. A more serious objection to viewing the legislation as one relating to abandoned claims is that there is no provision made in the Act for investigating the claims of the employees or for payment of the amounts due to them, if they established their claims. The purpose of a legislation with respect to abandoned property being, in the first instance, to safeguard the property for the benefit of the true owner and the State taking it over only in the absence of such claims, a law which vests the property absolutely in the State without regard to the claims of the true owners cannot be considered as one relating to abandoned property. This contention of the respondents must also be rejected.

In the result, we are of opinion that s. 3(1) in so far as it relates to unpaid accumulations in s. 3(2)(b) is unconstitutional and void.

We have now to deal with the question as to the validity of s. 3(1) and s. 3(2) (a) of the Act, which require the employers to hand over to the Board the fines realised from the employees. So far as this item is concerned, the position of the

(1) 341 U.S. 428; (1950) 95 L.Ed. 1078.

employers is wholly different from what it is as regards unpaid accumulations. Section 8 of the Wages Act deals with the question of fines which could be imposed by the employer, and it provides that they should be entered in a separate register, and applied for the benefit of his employees. It is not denied by the appellant that under this provision the fines are constituted a trust fund, and that the employers are bare trustees in respect of such fund. Now, the grievance of the appellant is that the Act deprives it of its rights as trustees, and vests them in the Board, and that, further, while the beneficiaries under s. 8 of the Wages Act are its own employees, under s. 5(2) of the impugned Act they include other persons as well. There might have been substance in the complaint that the appellant had been deprived of its rights as trustee if it had any beneficial interest in the fund. But admittedly, it has none, and it is therefore difficult to hold that there has been such substantial deprivation of property, as will offend Art. 31(2) according to the decisions in *The State of West Bengal* v. *Subodh Gopal Bose and Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning and Weaving Co. Ltd.* (supra) or such unreasonable interference with rights to property, as will infringe Art. 19(1)(f). It is argued with some emphasis that in enlarging the circle of beneficiaries, the Act has encroached on the rights of the employees of the appellant. But then, the trust is the creation not of the appellant but of the Legislature, which gave the employees certain rights which they did not have before, and what it can give, it can also take away or modify, and we do not see how the employers are aggrieved by it. We are of opinion that no valid grounds exist on which s. 3(1) and s. 3(2)(a) of the impugned Act could be attacked as unconstitutional, and they must accordingly be held to be valid.

In the result, we hold, in modification of the order of the Court below, that the provisions of the impugned Act are unconstitutional and void in so far as they relate to "unpaid accumulations", but that they are valid as regards "fines"; and an appropriate writ will issue against the respondents in the terms

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stated above. The appeal succeeds in part, but as it is stated that "unpaid accumulations" form by far the most substantial portion of the claim, we direct the respondents to pay half the costs of the appellant here and in the Court below.

Appeal allowed in part.

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January 22.

RAJA GANGA PRATAP SINGH

v.

THE ALLAHABAD BANK LTD., LUCKNOW

(S. R. DAS C. J., VENKATARAMA AIYAR, B. P. SINHA, J. L. KAPUR and A. K. SARKAR JJ.)

Statute, Constitutional validity of—Whether a question of interpretation of the Constitution—Severability, if should be considered before deciding question of validity—Duty of Court —Code of Civil Procedure (V of 1908), s. 113 proviso—Constitution of India, Art. 228.

The respondent, a scheduled bank, sued the appellant for recovery of money under a mortgage. The appellant claimed reduction of the debt under the Uttar Pradesh Zamindari Debt Reduction Act, 1953. An advance or debt due to a scheduled bank was excluded from the definition of "debt" given in the Act. The appellant contended that the definition in so far as it excluded certain debts offended Art. 14 of the Constitution as it made an arbitrary distinction between several classes of debtors. The appellant applied to the court under the proviso to s. 113 of the Code of Civil Procedure praying that a case be stated for the opinion of the High Court as to the validity of the impugned portion of the definition. The Court rejected the application. The appellant made an application in revision to the High Court and also an application under Art. 228 of the Constitution for withdrawing the case for a decision of the question of the validity of the definition. The High Court dismissed the applications. The Courts below held that in either view of the question as to the validity of the impugned portion of the definition, the appellant would be left without the remedy which he sought, because that portion of the definition was not severable from the rest and the whole definition would have to be excluded and therefore it was not necessary to decide that question to dispose of the case: