against any grantee starts to run from the date his title arises. The plaintiff's right accordingly cannot be jeopardised by anything that Rattan Amol Singh may have done. This decision does seem to negative the respondents' contention on whose behalf nothing convincing has been urged as to how on the present record they can at this stage ask this Court to hold the suit to be barred by time or that the defendents have matured their proprietary title by adverse possession.

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In the result, this appeal succeeds and allowing the same, we reverse the judgment and decree of the Court below and hold that the property in question is inalienable and impartible and the succession to it is governed by the rule of primogeniture. The partition and the alienations impugned in this suit would accordingly not effect the plaintiff's right as the eldest son of Rattan Amol Singh. In the peculiar circumstances, we leave the parties to their own costs in this Court.

S. B. CAPOOR, J.—I agree.

Capoor, J.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and Prem Chand Pandit, JJ.

LIFE INSURANCE CORPORATION OF INDIA,—*Appellant*

versus

FIRM TIRATH RAM & SONS AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 274 of 1960.

1965

May, 28th.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Ss. 17 and 18—Displaced person obtaining loan from a Bank in Pakistan before 15th August, 1947, by pledge of his goods—Goods insured against riot and civil commotion for the amount of the loan taken—Goods lost as a result of riots in Pakistan—Insurer—Whether liable to pay the amount of the policy—Displaced person—Whether can make application under S. 18—Creditors of the displaced person—Whether necessary to be joined as parties—Contract of insurance against fire or riot—Obligation of the insurer under, stated.

Held, that the intention of the provisions in sections 17 and 18 of the Displaced Persons (Debts Adjustment) Act, 1951, is that while a debtor is relieved in certain circumstances of his liability to pay personally or out of his own property to his creditors, the insurer, if any, in respect of the lost goods is not relieved of his obligation and, on the other hand, a direct relationship is established between the creditors of the insured and the insurer, and the creditors are entitled to recover from the insurer the amount of the claim under the insurance contract. No double benefit accrues to the insured because out of the insurance claim the creditors have first to be satisfied and the insured receives only the balance. The transaction of loan and the pledge of the goods is entirely a separate matter with which the insurer has no concern. In such circumstances the insured has suffered loss which the insurer is bound to make good.

Held, that the joining of the creditors in a petition filed by the insured under section 18 of the Dispaced Persons (Debts Adjustment) Act makes no difference and in fact the joining of the creditors is under the provisions of section 18, necessary, and a decree can be granted by the Tribunal which is intended to be for the benefit of the creditors in the first instance.

Held, that an insurance against fire or riot is a contract under which the insurer undertakes to make good to the insured any loss that the insured may suffer in respect of the insured goods caused by fire or riot, and further that only the actual loss to the insured is to be made good. It follows that if the insured does or can recover a part or whole of the loss so incurred from another party, the insurer is entitled to have that adjusted against his obligations.

Case referred by the Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice Prem Chand Pandit, on 1st May, 1964, to a Full Bench for the decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice P. C. Pandit, after deciding the question of law referred to them, sent back the case on 28th May, 1965 to the Division Bench for its final disposal. The Division Bench consisting of the Hon'ble Chief Justice, Mr. D. Falshaw and the Hon'ble Mr. Justice Mehar Singh decided the case finally on 25th August, 1965.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice D. K. Mahajan, dated 12thMay, 1960, in case F.A.O. No. 6 of 1957.

RAJINDAR SACHAR, MOHINDERJIT SINGH SETHI, AND RAJINDER KUMAR CHHIBBAR, ADVOCATES, for the Appellant.

D. S. NEHRA, K. S. NEHRA, R. N. SINGH AND S. P. GOYAL, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH.

DULAT, J.—Messrs Tirath Ram and Sons were doing business in what is now a part of Pakistan and before the 15th August, 1947 they had insured certain goods, being cotton and cotton seeds, against fire as well as riot and civil commotion, the sum assured being Rs. 27,000. The same goods had been pledged by the firm to a Bank and a loan of Rs. 27,000 taken from the Bank. The goods were lost as a result of rioting. Messrs Tirath Ram and Sons later moved to India and, after the enactment of the Displaced Persons (Debts Adjustment) Act, 1951, they made an application to a tribunal appointed under that Act for the recovery of Rs. 27,000 from the insurance company which company has now come to be represented by the Life Insurance Corporation of India. The main defence taken on behalf of the Insurance Corporation was that in law Messrs Tirath Ram and Sons had suffered no loss in respect of the insured goods and were consequently not entitled to recover anything from the Insurance Corporation. This plea rested on a provision in the Displaced Persons (Debts Adjustment) Act contained in section 17, according to which, the pledged goods being no longer available, the creditor, being the Bank, could recover nothing from the debtor, that is, Messrs Tirath Ram and Sons & the argument was that since Tirath Ram and Sons had already obtained Rs. 27,000 from the Bank, which was no longer returnable, there was no loss suffered by them. This objection prevailed in the first instance but on appeal to this Court Mahajan, J. reversed that conclusion and held that Tirath Ram and Sons had suffered loss as the goods had been lost to them and the Insurance Corporation was, therefore, liable. The Life Insurance Corporation then filed an appeal under clause 10 of the Letters Patent which came before two of us and, as the question raised on behalf of the appellant, appeared to us sufficiently important, we decided to refer it to a larger Bench. Two questions were thus framed and are for our decision— Dulat, J.

> "(1) If A, a displaced person, had pledged his goods, and thereby obtained a loan from a Bank and the goods had before the 15th August, 1947 been insured against riot and civil commotion for an identical sum of money and the goods had subsequently been lost as a result of riots in

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Pakistan, can A be said to have suffered any loss in respect of those goods in view of section 17 of the Displaced Persons (Debts Adjustment) Act assuming that section 17 is applicable?

(2) Do the provisions of section 18 of the Displaced Persons (Debts Adjustment) Act make any difference to the answer if in the above mentioned situation A files a "petition under section 18, to which petition the creditor-Bank is also a party, and can any decree be granted by the Tribunal in the circumstances?"

These questions were framed in view of the facts involved and the provisions of the Displaced Persons (Debts Adjustment) Act, the interpretation of which was in dispute. On the arguments placed before us it appears that the questions can be readily answered once it is clear what exactly is the loss which any insurer undertakes to make good when he issues a policy covering risk to the insured goods against fire or riot and civil commotion.

It is common ground that an insurance against fire or riot is a contract under which the insurer undertakes to make good to the insured any loss that the insured may suffer in respect of the insured goods caused by fire or riot, and further that only the actual loss to the insured is to be made good. It follows, and again there is agreement on the point, that, if the insured does or can recover a part or whole of the loss so incurred from another party, the insurer is entitled to have that adjusted against his obligation. On these premises Mr. Sachar has built the submission that if the insured receives any benefit in respect of the insured goods from any other source, then the advantage of that benefit must also go to the insurer. It is this inference which is in controversy. To put it in concrete terms it is agreed that if certain goods are insured against fire and fire breaks out causing loss to the goods, the insured may be able to recover a part or the whole of the loss from the person, if any, responsible for the fire, and in that event the insurer would be entitled to have it adjusted against his liability and that liability would be accordingly reduced. Mr. Sachar, however, goes further

and seeks to maintain that it is not only what may be recovered from a wrongdoer that is so adjustable against the claim but every other amount that may have been obtained or may be obtained by the insured, in respect of the insured goods. His submission, therefore, is that since in the present case the insured had obtained from the Bank a sum of Rs. 27,000 in respect of the insured goods by pledging them with the Bank and he has thus received that benefit, the same benefit must stand transferred to the insurer, and, since the goods were insured for Rs. 27,000, there has in law been no loss to the insured. It is, however, difficult to see on what principle this submission can be accepted, for what the insured took from the Bank had nothing to do with the fire or riot against which the goods were insured. The transaction of loan and the pledge of the goods was entirely a separate matter and it seems to me impossible to permit the insurer to enter into it merely because the insurer is liable only for the actual loss. Mr. Sachar admits that if in the course of his ordinary business the insured makes any profit out of the insured goods, he is not in that respect accountable to the insurer, but he still maintains that in the present case the connection between the benefit received by the insured and the loss suffered by him is closer, for here, according to Mr. Sachar, the Bank has paid for the goods lost in the form of the loan advanced by it and that loan is no longer returnable under the provisions of the Displaced Persons (Debts Adjustment) Act. Reliance is placed on section 17 which says—

> "(1) Where in respect of a debt incurred by a displaced debtor and secured by the pledge of movable property belonging to him, the creditor had been placed in possession of such property at any time before the debtor became a displaced person, the following rules shall regulate the rights and liabilities of the creditor and the debtor, namely:—
>
> (a) the creditor may, if he is still in possession of the pledged property, realise the sum due to him by the sale of such property after giving to the debtor reasonable notice of the sale;

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(b) the creditor shall not be entitled in any case where the pledged property is no longer in his possession or is not available for redemption by the debtor, to recover from the debtor the debt or any part thereof for which the pledged property was security."

The argument is that the law has by enacting these provisions conferred a benefit on the owner of the goods in case the goods have been lost and that benefit must go to the insurer, for, otherwise, the insured would be receiving double benefit and making a profit out of the contract of insurance. This argument ignores the fact that these provisions are intended to regulate the rights and liabilities between a creditor and a debtor in certain contingencies and insurance is not the contingency visualised by these provisions. Nor are the provisions intended to declare the rights and liabilities between an insured and an insurer. On the other hand, the contingency of insurance is provided for by another provision in the same section contained in sub-section (2), which says—

"Notwithstanding anything contained in this section, the creditor shall be entitled to receive, and to give a valid discharge in respect of, any sum due under this Act or under any other law for the time being in force from an insurance company in respect of any claim arising out of the loss or destruction of the pledged property but the creditor shall, in any case where the sum received from the insurance company is greater than the amount of the debt due to him, pay over the surplus to the debtor."

It would, therefore, appear that, while in sub-section (1) of section 17 the Legislature is providing for cases where the goods were lost while in the possession of the creditor in which case the debt is no longer recoverable by the creditor, in sub-section (2) the Legislature is providing for those cases where the goods lost were insured and in that contingency the creditor is given the right to recover from the insurance company the amount of the claim arising out of the insurance contract. The opening words of sub-section (2) are important, as the provision there is intended to take effect in spite of what is provided in sub-section

(1). The scheme of section 17, therefore, is that if the pledged goods are lost, the debtor is relieved from his liability to pay back the debt, but, if they were insured, then the creditor is entitled to recover from the insurer the claim due on the insurance contract. It is not, therefore, entirely right to say—what Mr. Sachar seems to imply—that in every case of pledged goods, which have been lost, the liability of the debtor to pay back the debt is completely wiped out. The liability, on the other hand, is kept alive in the case of insured goods, and it is discharged by payment by the insurer. The right to recover compensation from the insurer is by sub-section (2) of section 17 transferred from the insured to his creditor. There is, therefore, no question of the insured receiving any double benefit. This position is made clearer by section 18 which provides a machinery for claims against insurance companies and says that if property 'left in West Pakistan was insured' against certain risk including riot and civil commotion and loss has actually occurred, then the Tribunal appointed under the Displaced Persons (Debts Adjustment) Act will determine the amount of the loss and pass a decree accordingly, and sub-section (3) then says—

> "The amount realised from the insurance company under any decree passed under sub-section (2) shall first be applied towards the satisfaction of the debt due from the displaced person, and the balance, if any, shall be refunded to the displaced person."

Sub-section (4) provides that an application may be made either by a displaced person having a claim against an insurance company or by an assignee or any other person having an interest in the claim of any such displaced person, and to all such proceedings, according to the next sub-section, the insurance company and other interested persons 'shall be made parties'. To repeat what I have said, the intention of the provisions in sections 17 and 18 of the Act is that while a debtor is relieved in certain circumstances of his liability to pay personally or out of his own property to his creditors, the insurer, if any, in respect of the lost goods is not relieved of his obligation and, on the other hand, a direct relationship is established between the creditors of the insured and the insurer, and the creditors are entitled to recover from the insurer the amount of

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the claim under the insurance contract. No double benefit accrues to the insured because out of the insurance claim the creditors have first to be satisfied and the insured receives only the balance. Mr. Sachar's suggestion, therefore, that if we permit the insured to recover from the insurer compensation for his loss, he would be deriving double benefit because the law has relieved the insured of his liability to pay his creditors, is not well founded.

Mr. Sachar then says that in the present case no claim has been made by the creditors of the insured and the application, which is made by the insured himself, is merely an attempt to obtain a benefit for himself. This argument again ignores the provisions of section 18 of the Displaced Persons (Debts Adjustment) Act, sub-section (4) of which expressly authorises the insured, being a displaced person, to make an application. To such a proceeding the insurer and at the same time all other 'persons interested in the claim' have to be joined and that of course includes the creditors of the displaced person. The benefit of any decree granted in such a proceeding is to go to the 'creditors first' and only the balance, if any, is receivable by the insured. The fact, therefore, that the proceedings have been started by the insured, does not mean that they are not for the benefit of his creditors.

In support of his submission that the insured has suffered no loss, Mr. Sachar has relied strongly on a decision of the Court of Appeal in England reported as *Castellain* v. *Preston and others* (1). In that case a house belonging to Preston and Others had been insured against fire. The owners of the house later contracted to sell that property to another party and, after that contract had been made but before a legal conveyance deed was executed, the house was damaged by fire, the damage amounting to £330. The insurance company, not knowing about the sale, paid the insured £330. The insured then proceeded to convey the legal title to the purchasers and received full price. The insurance company on coming to know of the transaction of sale sued the insured to recover back the sum of £330 alleging that in the circumstances no loss was caused to the insured by fire. The Court of appeal allowed the insurer's claim. That decision is readily understandable once it is remembered that the house was damaged after

(1) 11 Q.B.D. 380.

the equitable title had in fact passed to another party so that the loss caused by fire had fallen actually not on the insured but upon the purchaser. That is why Cotton, L.J., began his judgment by observing that the house belonging to the defendants had been sold to certain purchasers 'before there was any loss', and, later on, that 'after the contract of sale the only interest the insured had in the property was an unpaid vendor's lien' which interest was not as a matter of fact damaged by fire, for the insured received the full price from the purchasers. It is true, as observed by the Court, that even at the time of the fire the insured had an insurable interest in the property but that was obviously confined to his lien as 'unpaid vendor' and since that lien was not at all affected by the damage, it was impossible to allow him to recover anything from the insurance company. The other ground mentioned by the learned Judges was that to permit the insured to retain the money paid to him by the insurance company, would be to permit him to make a profit out of the insurance contract. As is clear from the facts, the real person who had suffered by the fire was the purchaser. Mr. Sachar has referred to the observations of Brett, L.J., in the course of his judgment when he said that the "underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable". These observations, however, have to be read in the context of the facts of that case and read in that light they have no application to the present case. The goods that were damaged undoubtedly belonged to Tirath Ram and Sons. Those goods were lost as a result of rioting in Pakistan which was the risk covered by the insurance contract. The transaction of loan between Tirath Ram and Sons and the Bank, was a contract entirely distinct from the insurance contract and collateral to it and it is difficult to see what interest in that transaction the insurer can possibly claim. Suppose for a moment that a part of the goods had been lost but in spite of that the remaining goods had [illegible] appreciated in value, it could not possibly be [illegible] asons [illegible] ested that the benefit of such enhancement could go to the [illegible] surer, and even Mr. Sachar did not make that suggestion, the reason of course being that what the insured may realise by sale

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of any part of the goods is no concern of the insurer. It is, I think, unnecessary to pursue this matter further because in the present case the rights of the parties stand regulated by the provisions of the Displaced Persons (Debts Adjustment) Act and those provisions do not indicate that in a situation like the present the insured suffers no loss. All that happens is that the loss is transferred to the creditors of the insured and the creditors are authorised to recover from the insurer. I am, therefore, unable to say that in the circumstances mentioned in the first question referred to us the insured suffers no loss in law, and would answer it by saying that in those circumstances the insured has suffered loss.

Regarding the second question the answer, in my opinion, is that the joining of the creditors in a petition filed by the insured under section 18 of the Displaced Persons (Debts Adjustment) Act makes no difference and in fact the joining of the creditors is under the provisions of section 18 necessary, and a decree can be granted by the Tribunal which is intended to be for the benefit of the creditors in the first instance.

Grover, J.

A. N. GROVER, J.—I agree.

Pandit, J.

PREM CHAND PANDIT, J.—I also agree.

B.R.T.

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