

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gill v. Barron and Rattray, from the Court of Common Pleas of the Island of Barbadoes; delivered 1st July, 1868.

Present:

THE MASTER OF THE ROLLS.
SIR JAMES W. COLVILLE.
SIR E. VAUGHAN WILLIAMS.
THE LORD CHIEF BARON.

THEIR Lordships do not think it necessary to trouble the Respondents' Counsel in this case.

It appears that the Appellant has been convicted before the Court of Insolvent Debtors, or rather the Court of Common Pleas, possessing jurisdiction as an Insolvent Debtors Court in the Island of Barbadoes, upon what, for the purposes of this case, we may refer to as four distinct charges of fraud or misconduct within the Act of Parliament passed in respect of Insolvent Debtors in the Island, and has been sentenced to eighteen months' imprisonment. Against this judgment he now appeals to Her Majesty in Council, and the question is, whether either on the technical grounds of law—for they are purely technical—which have been urged in his favour, and urged with considerable ability, by the learned Counsel who has appeared before us, or upon the substantial merits of the case, he is entitled to maintain this appeal?

It appears that the case, which is of a somewhat extraordinary character, is as follows: The Appellant, being a trader and having been engaged in extensive mercantile transactions in this Island as long back as the year 1857, quitted Barbadoes, after having disposed of his property in a way hereafter to be referred to, leaving his books and his accounts in a state of the greatest confusion, and also leaving a number of debts

unpaid, and consequently a great number of unsatisfied creditors. He appears to have proceeded to England, and there certain proceedings took place to which hereafter reference will be made. The Appellant having quitted the Island, his creditors proceeded to take steps under what may be called the Insolvent Debtors Act in force there, and on the 29th of April, 1857, upon what is called a Petition in Insolvency, he was adjudicated an insolvent, and was placed within the jurisdiction of the Court in Barbadoes. Every effort was made to realize the property. Proceedings took place from time to time, as well as the Insolvent Court and its officers were able to resort to proceedings, in order to inquire into the state of his affairs and to realize his effects. Something resulted from this, for it seems that some dividend has been declared, but he was found to be, substantially speaking, without books of account. It was impossible from the books that were found to ascertain the true state of his affairs, and nothing could be learnt concerning them but from a number of scraps of paper and memoranda and accounts of a very uncertain and irregular character which were found in his house or in his office. The result was, that though something was realized, nothing satisfactory could be done under these proceedings in insolvency. In the meantime, it seems he had come to England as early as the year 1856, and that in the year 1857, having contracted a debt, he was sued and taken in execution and thrown into prison. He remained in prison for about six months. During that imprisonment, and in order to obtain his liberation, he seems to have resorted, and with success, to some course of proceeding under the Bankruptcy Laws of this country. Their Lordships have no very distinct evidence, except from his own statement, as to what the real nature and real merits of the proceeding in question were; but certainly he himself admits that the adjudication proceeded upon a fictitious debt, alleged to have existed between himself and a person of the name of Parker. It does appear, however, that a person bearing another name, claiming a debt of £53, was the petitioning creditor, and the result at last was, that he obtained his discharge, on the 28th of October in the same year, 1857; and some five

years afterwards, under circumstances which are not fully before us, he succeeded in obtaining a certificate, which no doubt discharged him from his debts. Afterwards, having returned to Barbadoes, and being found in that Island, his creditors very naturally resorted to such proceedings as they were enabled to resort to, according to the law of insolvent debtors in that Colony, and in January, 1865, a motion was made to restore his name to the list of insolvents, and a day was then fixed for his final examination. The notice was given to himself, and the creditors proceeded to make the charge which has led to this conviction, and to the sentence against which he now appeals. The whole matter came on to be heard, and was heard during several days. Witnesses were examined and he himself was examined, at considerable length, as well as witnesses on his behalf, and the whole matter of these various charges appears to have been fully, and their Lordships are of opinion fairly, and according to law, investigated and considered by the Court in Barbadoes. He was found guilty, and conviction was pronounced upon four of those charges to which we are now about to advert, and he was sentenced accordingly to eighteen months' imprisonment on account of the frauds and misconduct of which he was thus found guilty. The sentence would have been the most severe that the law allows,—that is to say, two years' imprisonment,—but as he had suffered an imprisonment of six months in England, the Court was pleased to reduce the term to eighteen months, and accordingly to eighteen months' imprisonment in the jail at Barbadoes the Appellant has been sentenced.

He now appeals against that judgment and sentence, and substantially it is upon two grounds. It was indeed rather suggested than seriously argued, that from the beginning the Court of Barbadoes had no jurisdiction, though certainly the petition of insolvency appears to be rather informal in its terms and in its character; but upon that petition, which does substantially though not formally or very explicitly disclose enough to give the Court jurisdiction, the Court pronounced an order or decree of insolvency, and from that time to this their jurisdiction and the decree itself have never been questioned, and this Appeal is not, in terms at least,

directed against that decree. Their Lordships therefore pass by that part of the case altogether.

But then it is contended that the proceedings in bankruptcy in this country, under an Act of the Imperial Legislature, the adjudication in bankruptcy, and finally the certificate granted by the Commissioner in Bankruptcy in the year 1862, have the effect not only of discharging the Insolvent from the debts which he had contracted in Barbadoes,—indeed any debts to which he might be liable, contracted in any part of the world,—but of superseding the authority of the Court in Barbadoes altogether, and depriving them of the jurisdiction which they had acquired under the adjudication in insolvency in 1857, and of disabling them to proceed further in that matter, and therefore of course to hear the complaint and to pronounce the judgment and sentence against which this appeal has been brought. Now it is quite true that an adjudication in bankruptcy followed by a certificate of discharge in this country under the bankrupt laws passed by the Imperial Legislature, has the effect of barring any debt which the bankrupt may have contracted in any part of the world, and it would have the effect of putting an end to any claims in the Island of Barbadoes or elsewhere, to which the Appellant might have been liable at the date of the adjudication. There is, indeed, much to throw a deep shade of suspicion over these proceedings, but there they are, recorded according to law in this country; there is the adjudication, and there is the certificate. The adjudication has never been superseded or annulled; the certificate remains in full force; and their Lordships do not, whatever may be their opinion of the circumstances under which the adjudication was originally obtained, feel themselves at liberty to treat the proceeding as otherwise than valid, and of full force as far as it can have any legal effect upon the debts or the proceedings in Barbadoes.

But then the question arises whether the effect of these proceedings in bankruptcy in this country can supersede the authority of the Court in Barbadoes, and deprive that Court of jurisdiction to inquire afterwards into frauds and offences committed against the law of Insolvent Debtors in that Island, when the Insolvent has returned and placed himself

again within its jurisdiction; and their Lordships are of opinion that the proceedings in bankruptcy in this country have no such effect. The Court of Common Pleas, possessing jurisdiction in the matter of Insolvent Debtors in the Island of Barbadoes, having acquired jurisdiction over the whole matter in the year 1857 by the decree then pronounced, their jurisdiction continues, and continues unimpaired to this day and in all time to come. It is quite true that the debts may be barred, so that the Court could not proceed to enforce the payment of those debts directly or indirectly as against the debtor or in any other way; but although the debts may be irrecoverable, the jurisdiction of the Court to inquire into offences committed or alleged to have been committed against the law of insolvent debtors in that country still continues. It is under that jurisdiction, and in a proceeding perfectly regular in all its forms and in all its stages, that the Insolvent, the now Appellant, has been called before the Court, and these four charges have been preferred against him, upon which four charges he has been convicted and subjected to the sentence in question.

All that now remains for their Lordships to consider is whether the Court has done wrong, and therefore whether this Appeal ought to be allowed upon the merits of the case in respect to these four charges or any of them?

The first of those charges is that the Insolvent had contracted a debt with the now Respondent without having any reasonable or probable expectation at the time when it was contracted of being able to pay it. Now the learned Counsel for the Appellant has admitted, and he could not do otherwise, that in fact the charge is substantiated and true, and he only contends that the debt itself being extinguished by the proceedings in bankruptcy in this country, the criminal charge can no longer be sustained. Their Lordships are of opinion that that is not so, but that the offence having been committed, it was only by an accident that upon this and the other charges he had not been arraigned and prosecuted to conviction in the Island. It was owing to his having departed from the Island, and thus wilfully and fraudulently evaded the process of the law, that he was not prosecuted for these offences

at a much earlier period; but, as has been already observed, the jurisdiction of the Court still continuing, although the debt is cancelled, he still remains liable to the criminal charge, and upon that charge it is admitted that he has been properly convicted.

Passing over the fifth charge, which has been withdrawn, their Lordships now come to the sixth, which is in substance that, having purchased with his own money a house or property called Hastings House, instead of having the conveyance made to himself, which would have placed it within the reach of his creditors under this very proceeding by virtue of the Insolvent Debtors Act, he caused it to be conveyed to the trustees of his marriage settlement in effect for the benefit of some members of his family. Without going into what afterwards took place as to the sale, and other machinery with which the transaction became involved, it is perfectly clear that this was in itself a fraud within the express words of the Insolvent Debtors Act in Barbadoes, and that therefore he was properly convicted. He seeks to excuse himself in his examination by alleging that he was indebted to the trustees, and that he had had £900 of their money. If that were so, that would not justify him, unless he had openly and regularly, in satisfaction of that debt, and not by way of fraudulent preference, expressly in consideration of that debt, conveyed the property in question to his trustees. Then he says he purchased it very cheap, but it appears to have been worth considerably more than the £900 which he alleges he owed to the trustees. Its value is said to have been £3000, and this property he withdraws and abstracts from his creditors, and conveys to these trustees, and then runs away from the Island, leaving his creditors without the means of obtaining satisfaction of their debts. This charge is therefore established.

The seventh charge presents a very simple and clear case of fraud in relation to Hastings House, and comes within the express words of the Insolvent Debtors Act of this Island. It appears that he prevailed upon the Rev. Mr. Braithwaite, a connection of his own, to suffer a judgment for a debt due or alleged to be due by Braithwaite to himself, not in his own name,—which, of course,

in the event of these proceedings having taken place, would have given to his creditors the full benefit of that judgment, and put the £8000 in their hands to be divided among the creditors,—but he causes the judgment to be suffered in the name and for the benefit of the trustees under his marriage settlement, and for the benefit of his own family. He himself scarcely denies the fact. He seeks to say there were some transactions under which this might be justified; but, in truth, it is a very confused story which he tells, and the plain English of the whole appears to be this, that there being a debt due,—for one cannot suppose that any gentleman in his senses would have suffered a judgment to be entered up against him for this large sum of £8000 unless he really owed the money in some way or other,—this debt, represented by this judgment, is thus transferred into the hands of the trustees under the marriage settlement, the judgment being suffered to them and in their names, the trustee himself who gave evidence in the case, knowing nothing about the transaction until he is informed that he has become possessed of this security for £8000, on behalf of the family of the insolvent. It is clear also that this charge is completely established.

Then, as to the eighth charge, that he contracted a debt to the estate of the same gentleman, the Rev. John Braithwaite, deceased, under whose Will he was a trustee, fraudulently and by means of a breach of trust,—that charge again, upon his own showing, is substantiated. It appears that after the death of Mr. Braithwaite, the insolvent and another person then in the Island of Barbadoes were co-trustees, and the trustee in the Island remitted to the Appellant, who was then in England, the sum of £500, in order to pay a debt claimed by the Government on account of revenue, in respect of the estate of the deceased Mr. Braithwaite. He received the £500; he does not deny that. He goes on to say, “It may have been to pay this debt; it certainly was for the estate of Mr. Braithwaite, and I applied it to my own use.” He pretends to justify that by saying he considered he was at liberty to do so, because he had lived with Mr. Braithwaite, or Mr. Braithwaite had lived with him. It is perfectly manifest that this sum

of £500 was remitted to him to be applied in discharge of a debt due to the Crown by the estate of Mr. Braithwaite, and that instead of doing his duty like an honest man and paying that debt, and so freeing the estate from the claim, he applied it to his own use.

All four of these charges, therefore, being completely substantiated, and there being no answer and no excuse that we can find in any part of these proceedings—even upon the statement of the Appellant himself,—it only remains for their Lordships humbly to advise Her Majesty to affirm the sentence of the Court of Common Pleas of Barbadoes, and to dismiss this Appeal with costs.