

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Official Assignee, Bombay v. The Registrar, Small Cause Court, Amritsar, and another, from the Chief Court of the Punjab; delivered the 9th March, 1910.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

LORD SHAW.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal against a Judgment of the Chief Court of the Punjab, which affirmed that of the Insolvent Estates Court, Amritsar. The controversy involved in the Appeal relates to an alleged conflict of jurisdiction between two Courts, both having Insolvency jurisdiction, but jurisdiction created by different legislative authority and different in its local extent.

Under the Imperial Act of Parliament, 11 and 12 Vict., c. 21, relating to insolvency proceedings before what are now the High Courts in the Presidency towns in India, jurisdiction is conferred upon those Courts extending, for the present purpose, over the whole of India, and for many purposes over much wider limits.

Under the Punjab Laws Act, IV. of 1872, in a series of sections beginning with section 22, the ~~Punjab Legislature~~ ^{Governor-General in Council} has created a system of insolvency of its own, but, of course, such an Act can be effective only within the ambit ~~of the jurisdiction of the Legislature which passed it.~~ ^{prescribed by the Act.} These are the two systems of Insolvent administration which have to be considered in disposing of the present Appeal, and have, if possible, to be reconciled.

There is, indeed, a third system in India, ~~created by yet another legislative authority namely, the Legislature of India,~~ embodied in Chapter 20 of the Civil Procedure Code. This last-mentioned system need not be further alluded to; for their Lordships are of opinion that the learned Judges of the Chief Court were right in considering that it had no application to the circumstances of the present case.

The facts of the present case are simple. The debtors were a firm of traders who carried on business at Amritsar and other places in the Punjab, and also at Bombay and elsewhere. On the 3rd December, 1906, the Amritsar Insolvency Court, on the application of a creditor, ordered a notice to issue calling upon the debtors to show cause why they should not be declared insolvent, and attaching their property in the Punjab. On the 12th December, in the presence of four out of the five members of the debtor firm, another Order was made declaring them insolvent, and requiring them to furnish security, and to put in lists of property, creditors and debtors.

On the 31st May, 1907, certain other creditors applied to the High Court at Bombay, in its Insolvency jurisdiction, against all the members of the debtor firm, praying that they might be adjudicated insolvent under 11 and 12 Vict. c. 21.

On the 3rd December, 1902, the Plaintiff petitioned that a Decree might be drawn up embodying the dismissal of his claim for the money paid into Court. This petition was dismissed.

The claim for damages still remained, and evidence bearing upon it was proceeded with. On the 25th May, 1903, the Plaintiff asked to be allowed to withdraw his Claim for damages under Section 373 of the Civil Procedure Code (that is to say with liberty to sue again) and again asked that a Decree should be drawn up with reference to the Claim dismissed. These Applications were refused; and thereupon the Plaintiff absolutely withdrew from the Claim for Damages, but not from that for the recovery of the money paid.

After that the Defendant proceeded to give Evidence upon all the issues which had been raised, the Plaintiff not appearing. In the result the District Judge dismissed the whole case for default, under Section 102 of the Civil Procedure Code.

On appeal to the Chief Court, the majority of the learned Judges of that Court held that the Suit having been dismissed under Section 102 of the Civil Procedure Code, no Appeal lay, and against that decision the present Appeal has been brought.

Their Lordships are of opinion that the case should not be allowed to stand as it does now. As to the principal claim of the Plaintiff, that relating to the money paid to release the Attachment, there was in substance a clear decision of the District Judge adverse to the Plaintiff; after which, in substance, no question as to that claim remained open in the Court of first instance.

to their Lordships that no such inconvenience necessarily arises.

Under the Imperial Act, 11 and 12 Vict., c. 21, when an adjudication is made by the Court which is now the High Court of Bombay the estate of the debtor vests in the Official Assignee and he is to administer it. What has been held by the Chief Court is, that in the present case, that law did not apply to property in the Punjab which had belonged to the debtors concerned, because that property had, before the date of the Vesting Order of the Bombay Court been transferred under the Punjab Act, already referred to, to the Punjab Court. The question therefore is, whether the Chief Court was right in holding that the property in the Punjab had vested in that Court, so as to exclude the operation of the Bombay Vesting Order.

Their Lordships are unable to agree with the learned Judges of the Chief Court.

The section of the Punjab Laws Act on which the power of the Punjab Court depends for the present purposes, is as follows:—

Section 27 says :

“The property of the Insolvent shall be sold or administered under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest of the creditors, and the proceeds shall be divided rateably amongst them.”

It appears to their Lordships to be clear that under the Punjab Act, what is entrusted to the Punjab Court is merely administration, and that under that Act no transfer of property takes place.

Their Lordships regret that they have to deal with this question in an Appeal heard *ex parte*. The difficulty thus arising is diminished, however, by the fact that the question is purely one of law.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be allowed, and the Judgments of the Chief Court of the Punjab and of the Insolvent Estates Court, Amritsar, set aside with costs in both Courts, and in lieu thereof it should be declared that the property of the Insolvents in the Punjab is vested in the Official Assignee, Bombay.

The costs of this Appeal are to be taxed as between solicitor and client and paid out of the Insolvents' estate.

THE OFFICIAL ASSIGNEE, BOMBAY,

2.

THE REGISTRAR, SMALL

CAUSE COURT, AMRITSAR, AND

ANOTHER.

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