Privy Council Appeal No. 153 *of* 1923.

Sat Narain - - - - - - - - - *Appellant*

v.

Behari Lal and others - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 21ST OCTOBER, 1924.

Present at the Hearing:

VISCOUNT CAVE.
LORD CARSON.
SIR JOHN EDGE.
MR. JUSTICE DUFF.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiff in the suit from a decree of the High Court at Lahore, which dismissed his suit. The suit was brought on the 17th March, 1915, by the plaintiff, then a minor, through his next friend, in the Court of the District Judge of Delhi for possession of a house in Delhi by pre-emption. The District Judge gave the plaintiff a decree, but the High Court in appeal dismissed the suit on the sole ground that his father had been adjudicated insolvent on the 27th September, 1913, under the Presidency-towns Insolvency Act, 1909, the High Court being of opinion that on that adjudication of insolvency the plaintiff had ceased to have a right to pre-empt the house in question.

The question on which this appeal depends is, what is the right or interest which an official assignee acquires under Act III of 1909, the Presidency-towns Insolvency Act, 1909, in the joint and unpartitioned immovable property of a Hindu joint family governed by the law of the Mitakshara on, and solely by virtue of, an adjudication by a High Court that one of the coparceners of the joint property is insolvent? The question is one of importance and it depends on the true construction of the Presidency-towns Insolvency Act, 1909. In considering that question it has to be borne in mind that it is well established law that in families governed by the law of the Mitakshara no coparcener has in the

joint family property any separate and defined share, although in Northern India at least a coparcener of such joint family property has a right to obtain a partition and on such partition he will obtain a separated and defined share of the joint family property. A creditor of a coparcener may, under certain circumstances, obtain a partition of his debtor's share in joint family property, and when in executing a decree a Court sells what is joint family property as the property of the judgment debtor the purchaser at the Court sale may under certain circumstances obtain a good title to what he purchases.

The facts of the present case are as follow :—Rai Bahadur Sri Kishen Das and his two sons, who were minors and the elder of whom is Sat Narain, the plaintiff, were Hindus governed by the law of the Mitakshara, and were possessed of joint family property as coparceners. It is not suggested that the property was self acquired property of Sri Kishen Das. Sri Kishen Das on behalf of himself and his two sons was the manager of the property. On the 27th September, 1913, Sri Kishen Das by an order of the High Court of Bombay was adjudicated insolvent and by Section 17 of the Presidency-towns Insolvency Act, 1909, his property vested in the official assignee and became divisible among his creditors. Section 52 of the Act defines the property of an insolvent which shall or shall not be divisible among his creditors thus :—

> " 52. (1) The property of the insolvent divisible amongst his creditors and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely :—
>
> (*a*) property held by the insolvent on trust for any other person ;
>
> (*b*) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessel, and furniture of himself, his wife and children, to a value inclusive of tools and apparel and other necessaries as aforesaid not exceeding three hundred rupees the whole.
>
> (2) subject as aforesaid the property of the insolvent shall comprise the following particulars, namely :—
>
> (*a*) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge ;
>
> (*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge ; and "
>
> * * * * *

The power to obtain a partition of the joint family property was a power which the official assignee might have exercised under (*b*), but he has not exercised that power.

The definition section of the Act is so far as it is material in this case as follows :—

> 2. In this Act, unless there is anything repugnant in the subject or contract,—
>
> * * * * *
>
> (*e*) " property " includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ;
>
> * * * * *

The property of an insolvent which by Section 17 vests in the official assignee must mean only the property which by that section and Section 52 is divisible amongst his creditors.

On the 10th April, 1914, Lala Mannun Lal, the third defendant, sold the house in Delhi which the plaintiff seeks to pre-empt by this suit, to Behari Lal and Jamna Das, the first and second defendants. The house is urban immovable property within the meaning of the Punjab Pre-emption Act, 1913, which the plaintiff was and is entitled to pre-empt by reason of that sale, unless he had lost that right by reason of the order of the 27th September, 1913, adjudging his father Sri Kishen Das an insolvent. The right to pre-empt is claimed by the plaintiff as a cosharer, coparcener, in an adjoining house, that adjoining house being "immovable property contiguous to the property sold" within the meaning of Section 16 of the Punjab Pre-emption Act, 1913.

Lala Mannun Lal, the vendor of the house in question, did not defend the suit. The other two defendants Behari Lal and Jamna Das by their written statement raised this question, which has to be considered, thus :—

> "These defendants admit that the plaintiff with his father R. B. Sri Kishen Das forms a joint Hindu family but deny that at the date of the sale of the house in suit or at the date of this suit the plaintiff had any proprietary right in the property through which he claims pre-emption. The real facts are that Rai Bahadur Sri Krishen Das, the father of the plantiff, and the head and manager of his family, family estate and family firms as well as in his personal capacity was, in consequence of the failure of the family business, adjudicated insolvent on 27th September, 1913, by the order of the High Court of Bombay, and on and from the said date the whole of the family estates and effects as well as the right, title and interest of the insolvent became vested in the Official Assignee of Bombay, who since then became the legal owner with powers of control and disposal and obtained possession of and over all the estate and properties including the house through which plaintiff claims possession.

That means that when a Hindu, who happens with his sons to constitute a joint family subject to the law of the Mitakshara, is adjudged an insolvent under the Presidency-towns Insolvency Act, 1909, not only his own rights but all the rights and interests of his sons who are his coparceners in joint family property vest in the official assignee by virtue of the adjudication alone. That is a startling proposition. It must depend on the wording of the Presidency-towns Insolvency Act, 1909, and the question is whether that could have been the intention of the Governor-General of India in Council when that Act was passed. It is quite clear that if this joint family could be treated as a firm carrying on its business in partnership an order adjudging the father who managed the business or even an order adjudging the firm insolvent could not be made under that Act even if the firm consisted solely of a Hindu father and his two minor sons, which would affect the interests of a minor who happened to be a partner in the firm.

The learned District Judge who tried this suit framed four issues. The first issue, which is the only material issue in this

appeal, was as follows :—1. Does the adjudication of Rai Bahadur Lala Sri Krishen Das as an insolvent vest the interest of the present plaintiff in the proprietary house in the official assignee, and if so, does he (the plaintiff) cease to be an owner for the purposes of Section 16 of the Punjab Pre-emption Act ? On that issue several cases decided by Indian High Courts were cited on behalf of the answering defendants. The learned District Judge decided the first issue in favour of the plaintiff, and on the 30th May, 1915, gave him a decree for pre-emption.

From that decree the defendants 2 and 3 appealed to the Chief Court at Lahore. The appeal came on for hearing before Shadi Lal and Wilberforce, JJ. of the High Court, and these learned judges after considering the authorities cited in argument before them stated that as far as the insolvency proceedings were concerned they were inclined to take the view of the Calcutta High Court in *Sanyasi Charan Mandal* v. *Asutosh Ghose*, I.L.R. 42, Cal. 225, although they observed that that case was not directly relevant, and were inclined not to follow the decision of the Division Bench of the Chief Court at Lahore in *Harmukh Rai-Munna Lal* v. *Radha Mohan*, 1919 P.R., No. 158, and they referred to the Full Bench of the High Court the question—Does an order of adjudication (as an insolvent) passed against a father vest in the official receiver (assignee) his son's interest in the joint family property ?

The question so referred came before a Full Bench consisting of Sir Shadi Lal, CJ. and Sir William Chevis and Abdul Raoof JJ., judges of the High Court.

The answer of the Full Bench to the question referred was given by Sir Shadi Lal, with whose opinion the other two judges concurred. The concluding part of his opinion is thus stated :—

> " The result of the above survey of the judicial decisions is decidedly in favour of the contention urged on behalf of the official assignee, but I must say that if the matter were *res integra*, I should find considerable difficulty in subscribing to the doctrine that the son's interest in the joint family property should, in the event of the father's insolvency, be regarded as the latter's property which vests in the Official Receiver. Upon general principles of the Hindu Law governing the rights of the father and his son in the coparcenary property I should be inclined to hold that an order of adjudication against the father has only the effect of replacing the father by the Official Receiver, and that the order does not by itself vest in the latter the interest of the son in the property. As the son's share is in certain cases liable for the debts of the father, the Official Receiver may be able to enforce that liability provided that he takes appropriate proceedings for the purpose and satisfies the conditions which alone render the son's interest liable for the father's debts.
>
> It has, however, been repeatedly held, *vide, inter alia* Jagabhai Lalubhai *v.* Vijbhukandas Jagjivandas and another, I.L.R. XI, Bombay 37 and the Privy Council decision cited therein, that the joint family property can be attached and sold in execution of a decree for money passed against the father, and that the sale affects the interest of the son as well as that of the father, and in principle I see no real difference between an individual creditor realizing his debt from the coparcenary property and an official assignee who represents the general body of the creditors, seizing it for the satisfaction of their debts. It is to be observed that Section 266 of the

Civil Procedure Code of 1882, which enumerates the various kinds of property of a judgment-debtor, which are liable to be attached and sold in execution of a decree for money as well as Section 60 of the Code of 1908, which has replaced that Section mentions, *inter alia*, the property over which or the profits of which a judgment-debtor 'has a disposing power which he may exercise for his own benefit.' And as pointed out already, this is exactly the phraseology which has been used in the Insolvency Act, and it would be most undesirable that the same expression used in two enactments dealing with the rights of the creditors should receive two different interpretations.

Having regard to these considerations and to the judgments which are directly in point, I would answer the question referred to the Full Bench in the affirmative. The son, no doubt, has his remedy, but as pointed out in VII Bom. 438, he has to establish the circumstances which would show that his share is not liable for the debts of his father."

Their Lordships are of opinion that the question to be decided in this appeal must be decided on the wording of the Presidency-towns Insolvency Act, 1909, and on that Act alone. Cases which have arisen under Section 266 of the Code of Civil Procedure, 1882, or under Section 60 of the Code of Civil Procedure, 1908, depended on different considerations, and decisions in cases under those sections are likely to mislead a Court which has to construe the Presidency-towns Insolvency Act, 1909. A sale under Section 266 of the Code of Civil Procedure, 1882, or under Section 60 of the present Code is a sale by a Court in execution of a decree which until the contrary is shown can be executed against the property which has been attached. When the decree which was executed was made in a suit to which the sons were not parties and the property sold was the joint property of the father and the son, the sale was good on the principle of Hindu law that it is the pious duty of a Hindu son to pay his father's debts unless it is shown that the debt in respect of which the decree was made was contracted by the father to the knowledge of the lender for the purposes of immorality. Section 266 of the Code of Civil Procedure is so far as it is necessary here to refer to it:—

"266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:"

Their Lordships do not intend to say one word which might have the effect of disturbing and raising doubts as to decisions under Section 266 of the Code of Civil Procedure, 1882, or under Section 60 of the present Code, but they must deal with the matter upon the words of the statute which has to be applied in this case.

Their Lordships will now briefly refer to the more important of the cases mentioned or referred to in the answer of the Full Bench to the question submitted to it, observing that none of the cases

apparently required that the Presidency-towns Insolvency Act, 1909, should be construed.

In 1883 the case of *Fakirchand Motichand* v. *Hurruckchand*, I.L.R. 7, Bombay 438, came before a Judge of the High Court at Bombay sitting alone. In that case a vesting order had been made by the High Court under Section 7 of the Indian Insolvency Act, 11 & 12 Vic. cap. 21, vesting in an official assignee the real and personal estate of the Hindu father who with his son was a member of a joint family. It would appear that the father had carried on a separate business as a shroff and stopped payment and that it was in respect of a debt incurred by him in that business that the vesting order was made. After the death of the father the official assignee sold four houses which had been the joint property of the father and the son, and the son brought a suit for a declaration that he was entitled to a part of the four houses. Latham J. held that as under the Mitakshara law a father has the right to dispose of his son's interest in ancestral immovable estate for the payment of his own debts not contracted for immoral purposes, a vesting order made under Section 7 of that Act vested that right in the official assignee, who could therefore give a good and complete title to such ancestral estate to a purchaser. Latham J. referred to *Girdhari Lall* v. *Kantoo Lall*, L.R. 1, I.A. 321, and quoted the ruling of the Privy Council in *Suraj Bunsi Koer* v. *Seo Prasad Singh*, L.R. 6, I.A. 88, for the propositions :—

> " First, that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for father's debts, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the purchasers had notice that they were so contracted ; and, secondly, that the purchasers at the execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings."

(As to what is an antecedent debt in the case of a mortgage, see the most recent case of *Brij Narain* v. *Mangla Prasad* and *others*, L.R. 51, I.A. 129.)

Latham J. in *Fakirchand Motichand* v. *Hurruckchand* was putting his construction upon S. 7 of 11 & 12 Vic. c. 21, which is as follows :—

> " VII. And be it enacted, That upon the filing of any such Petition as is aforesaid, it shall be lawful for the said Court and the said Court is hereby authorized and required to order that all the Real and Personal Estate and Effects of such Petitioner, whether within the Territories within the Limits of the Charter of the *East India* Company or without, except the Wearing Apparel, Bedding, and other such Necessaries of such Petitioner and his Family, and the Working Tools and Implements of such Petitioner and his Family, not exceeding in the whole the Value of Company's Rupees Three Hundred for each Petitioner with his Family, and all Debts due to him and all the future Estate, Right, Title, Interest, and Trust of the said Petitioner in or to any Real or Personal Estate or Effects within or without the said Territories which such Petitioner may purchase, or which may revert, descend, be devised or bequeathed or come to him, and all Debts growing due to him before the Court shall have made its Order in the Nature of a Certificate as herein-after mentioned, do vest in the Official Assignee for the Time being of the said

Court, and that all Books, Papers, Deeds, and Writings in any Way relating to such Petitioner's Estate and Effects in his Possession, or under his Custody or Control, shall be deposited with such Assignee, and such Order shall be entered of Record in the said Court, and such Notice thereof shall be published as the said Court shall direct ; and such Order, when so made, shall by virtue of this Act relate back to and take effect from the filing of the said Petition, and shall instantly, and without any Conveyance or Assignment, vest all the Real and Personal Estate, Effects, and Debts as aforesaid in the said Official Assignee, who shall have full Powers for the Recovery thereof, and shall hold and stand possessed of the same for the Purposes and in manner herein-after mentioned : Provided always, that in case, after the making of any such Vesting Order, the Petition of any such Petitioner shall be dismissed by the said Court, such Vesting Order made in pursuance of such Petition shall from and after such Dismissal be null and void to all Intents and Purposes : Provided also that in case any such Vesting Order as aforesaid shall become null and void by the Dismissal of such Petition, all Acts theretofore done by any Assignee or other Person acting under his Authority according to the Provisions of this Act shall be good and valid, and no Action or Suit shall be commenced against any such Assignee, nor against any Person duly acting under his Authority, except to recover any Property of such Petitioner detained after an Order made by the said Court for the Delivery thereof, and Demand made thereupon : and until the Appointment of an Official Assignee as herein-after is directed the Common Assignee of the Court shall stand and be in the Place of the Official Assignee, and this present Clause shall apply and have effect accordingly."

Section 30 of the 11 & 12 Vic. c. 21, was as follows :—

" XXX. And be it enacted, That all Powers vested in any such Insolvent which he might lawfully execute for his Benefit shall be and are hereby vested in the Assignee or Assignees of the Real and Personal Estate of such Insolvent or Insolvents by virtue of this Act, to be executed by his Assignee or Assignees for the Benefit of his Creditors."

If their Lordships had to construe Section 7 of the 11 & 12 Vic. c. 21, they would doubt that the Imperial Parliament sitting at Westminster in passing the 11 & 12 Vic. c. 21, ever contemplated or intended that " the Real and Personal Estate of such Petitioner " which a Court might order to be vested in an official assignee, or a right to sell it for the debts of a Hindu father, might be held to include or should include the unpartitioned separate interest of a Hindu coparcener, who was not a petitioner, in the immovable property of a joint family.

In *Ragayya Chetti* v. *Thanikachalla Mudali*, I.L.R. 19 Mad. 74, a vesting order was made under " Insolvent Act, s. 7 " (? 11 & 12 Vic. c. 21, s. 7) against the managing member of a Hindu joint family who was adjudicated an insolvent. The joint family consisted of the managing member of the family who was the insolvent, his sons and his brother. The official assignee conveyed a house which was part of the joint property of the family to a purchaser, who sued for possession. Subramania Ayyar J. following the judgment of Latham J. in the case reported in I.L.R. 7 Bomb. 438, which has been above referred to, held that the official assignee could convey the share of the sons in the joint property, but not the share of the brother, and in so holding called in aid in support of his finding section 266 of the Code of Civil Procedure, 1882, and the decision in *Jagabhai Lalubhai* v.

Vijbhukandas Jagjivandas, I.L.R. 11 Bomb. 37, of West and Birdwood JJ. in reference to that section.

In *Nunna Brahmayya Setti* v. *Chidaraboyina Venktaswamy*, I.L.R. 26, Mad. 214, seven brothers who were of full age and a minor son of one of them were members of a joint Hindu family governed by the law of the Mitakshara, and carried on a business, which had previously been carried on for very many years by the joint family to which they belonged. The seven brothers applied under 11 and 12 Vic. c. 21, to be adjudged insolvents. The minor member of the family who was a son of one of the seven brothers was not a party to that application. The debts in the schedule to the application were all debts incurred in carrying on the family business. Upon that application a vesting order was made under Section 7 of the Act. The official assignee sold a portion of the property of the joint family to the plaintiffs. Subsequently to that sale a person, who was a defendant to the suit, obtained a money decree against the son, who had been a minor, and in execution of that decree the son's share in the land was sold and was purchased by the defendant. Thereupon a suit was brought by the plaintiffs for a declaration that the purchase by the defendant was inoperative by reason of the prior sale to them by the Official Assignee. The suit came on appeal before Bhashyam Ayyangar and Moore JJ. who followed the decision of Latham J. which has already been referred to. They referred to the decision of West and Birdwood JJ., which has been also mentioned, and they relied in support of their judgment upon decisions under s. 266 of the Code of Civil Procedure, 1882. These learned judges followed the ruling of Latham J., but they referred to an observation which had been made by him in the case which he had decided, " That it has been suggested that this right vests in the official assignee as being a 'power' within the meaning of Section 30. But I think it falls more appropriately within the words of Section 7, and that there is no occasion to resort to Section 30, which seems to apply to powers in the ordinary legal sense of the term, created by will or instrument *inter vivos*," and they held that the power could be derived only under Section 30 and not under Section 7. The 11 & 12 Vic. c. 21 was repealed by the Presidency-towns Insolvency Act, 1909, so far as it had not been previously repealed.

In *Sanyasi Charan Mandal* v. *Asutosh Ghose*, I.L.R. 42 Cal. 225, the question related to the power of a Court under the Provincial Insolvency Act of 1907 to adjudicate an infant an insolvent, who was a Hindu and a member of a family which carried on what is described in the report as " a joint family ancestral business in rice and firewood " in the District of the 24 Parganas. It also related to the power of a Court to appoint a receiver of the infant's property. It is not stated in the report of the case what was the school of Hindu law which governed the family. The material facts appear to have been that one Bhuban Mohun Mandal, who had carried on the business, had five sons of whom the infant was one. The five sons are said in the report to have " inherited " the business. It does not appear in the report when Bhuban Mohun

died. On the 19th February, 1912, creditors, whose firm name was *Kishenchand Kesharichand*, applied to the District Judge of the 24 Parganas to have all the partners in what may be described as the debtor firm adjudicated insolvents, and praved for the appointment of a receiver of all the properties of the partners in the business. At the time when the application was made to the Court one of the five sons, Sanyasi Charan Mandal, was a minor. The District Judge refused the application for the adjudication of the minor son, but granted it with regard to the four other sons and appointed a receiver of all the business of the four sons who were of full age and of all the properties purchased after the death of Bhuban Mohun Mandal and of four-fifths only of the properties inherited by the brothers from their father. From that order the minor son and the creditors separately appealed to the High Court. The appeals were heard by Mookerjee and Beachcroft JJ. who held that the minor being an infant under age could not be adjudicated insolvent and that his property and share in the business would not vest in a receiver who might be appointed. Those learned Judges also held that under the law in India when a partner in a firm has become bankrupt (adjudicated insolvent) the partnership is not necessarily dissolved except by an order of a Court made in a suit by a partner who has not been adjudicated insolvent, and added

> "Consequently, in this country (India), when a person has been adjudicated an insolvent the partnership is not necessarily dissolved, and the receiver who is appointed under section 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm, that is, the receiver and the partners who have not been adjudicated insolvents continue to constitute the firm. It may possibly be open to the receiver to take steps for the dissolution of the partnership, but he cannot claim, as receiver in insolvency to take exclusive possession of the assets of the firm, including, in this case, the interest of the infant who has not been adjudicated an insolvant. . . . But whatever remedies may be available hereafter to the receiver or to the creditor, it is clear that the properties of the infant cannot be dealt with by either of them in these proceedings."

It does not appear from the report of the case whether any of the debts in respect of which the proceedings in insolvency were taken had been incurred when Bhuban Mohan Mandal was carrying on the business, but Sir Shadi Lal C.J., in his judgment on the question submitted to the Full Bench, with which the other learned Judges concurred, referred to the decision of the Calcutta High Court in *Sanyasi Charan Mandal* v. *Asutosh Ghose* (*supra*), although he considered it not directly relevant to the question before the Full Bench.

The only other case to which their Lordships think it is necessary to refer is that of *Harmukh Rai-Munna Lal* v. *Radha Mohan*, case No. 158 in 54 Punjab Rulings 423 ; it was relied upon in the answer of the Full Bench in this case. In that case one Jai Narain and his son Banwari Lal, a minor, constituted a joint Hindu family, governed by the law of the Mitakshara, and carried on business as a firm under the name of Rama Nand-Jai Narain. Jai Narain was adjudicated insolvent on 21st August, 1912, under the Provincial Insolvency Act, III of 1907. His son, Banwari Lal,

was not adjudicated an insolvent. Their Lordships are unable from the report to state the facts of the case with any accuracy, but it appears that in execution of a decree against Jai Narain and Banwari Lal a cotton press belonging to them was sold on 7th October, 1912, and Rs. 5,000 was realised by the sale. It also appears that a firm of Harmukh Rai-Munna Lal obtained an *ex parte* decree against Jai Narain and Banwari Lal, and that Banwari Lal made an unsuccessful application to set aside that decree on the ground that he was a minor. Harmukh Rai-Munna Lal applied for on the 28th November, 1912, and obtained a *pro-rata* share amounting to Rs. 2382.15.9 of the Rs. 5,000 which had been realised by the sale of the 7th October, 1912. It also appears that the receiver in the adjudication against Jai Narain brought a suit against Harmukh Rai-Munna Lal to recover the Rs. 2382.15.9 and that it was held by Broadway and Abdul Roof JJ., that the Receiver was entitled to recover the Rs. 2382.15.9 on the ground that it was the duty of Banwari Lal to pay the debts of his father Jai Narain. These learned judges appear to have relied for that decision on the judgment of Latham J., in the case reported in I.L.R. 7 Bomb. 438, which they considered was followed by Subramania Ayyar J. in the case reported in I.L.R. 19 Mad. 74, and by Bhashyam Ayyangar and Moore JJ., in the case reported in I.L.R. 26 Mad. 214.

No one has appeared for respondents and consequently this appeal has been argued *ex parte*. Their Lordships have carefully considered the Presidency-towns Insolvency Act, 1909, and will now express the conclusions at which they have arrived.

In their Lordships' opinion the question referred to the Full Bench of the High Court should have been answered in the negative. It is true that Section 17 of the Act of 1909 provides that on the making of an order of adjudication "the property of the insolvent" shall vest in the official assignee and shall become divisible among his creditors, and that by Section 2 "property" is defined as including any property over which any person has a disposing power which he may exercise for his own benefit ; and it may be said that a Hindu father's power to sell the joint property and apply the proceeds to the payment of his debts is such a power. But the definitions in Section 2 are only to apply "unless there is something repugnant in the subject or context" ; and it is necessary therefore to consider the effect of the definition of "property" contained in that section in relation to the subject-matter which is being dealt with and the other sections of the Act. Now, as to the subject-matter—namely, the joint property of an undivided Hindu family—it is certainly a startling proposition that the insolvency of one member of the family should of itself and immediately take from the other male members of the family their interests in the joint property and from the female members their right to maintenance and transfer the whole estate to an assignee of the insolvent for the benefit of his creditors. The father's power to dispose of the joint property is not absolute, but con-

ditional on his having debts which are liable to be satisfied out of that property ; and Section 2 seems to contemplate an absolute and unconditional power of disposal. And if the later sections of the Act are examined, it becomes apparent that this cannot have been the intention of the statute. Section 52 provides that the property of the insolvent divisible among his creditors shall comprise "the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit," and it is difficult to reconcile this provision with the proposition that the property itself vests in the assignee. Section 23 provides that when an adjudication is annulled the property of the debtor shall (subject to any direction of the Court) revert to the debtor to the extent of his right or interest therein ; but this section contains no provision for the reverter of property over which the debtor had a disposing power only to the persons who were entitled to it subject to that power. Section 76, which enacts that the insolvent shall be entitled to any surplus remaining after payment in full of his creditors, is equally silent as to the destination of surplus property in which others had an interest. Having regard to these considerations and to the scope of the Act, their Lordships are satisfied that it was not the intention of the Act that on the insolvency of a father the joint property of his family should at once vest in the assignee. It may be that under the provisions of Section 52 or in some other way that property may in a proper case be made available for payment of the father's just debts ; but it is quite a different thing to say that by virtue of his insolvency alone it vests in the assignee, and no such provision should be read into the Act.

As to the authorities cited, it does not appear to their Lordships that they are inconsistent with the above conclusion. The cases of *Fakirchand Motichand* v. *Motichand Hurruckchand* (I.L.R. 7, Bombay 438), *Rangayya Chetti* v. *Thanikachalla Mudali* (I.L.R. 19, Madras 74), and *Nunna Brahmayya Setti* v. *Chidaraboyina Venktaswamy* (I.L.R. 26 Madras 214) were decided under a different statute. *Sanyasi Charan Mandal* v. *Asutosh Ghose* (I.L.R. 42. Cal. 225) and *Harmukh Rai Munna Lal* v. *Radha Mohan* (54 Punjab Rulings 423) were partnership cases and are not directly in point.

For the reasons above given, their Lordships will humbly advise His Majesty that this appeal should be allowed with costs, that the decree of the High Court should be set aside with costs and the decree of the District Judge should be affirmed, except that the date for the payment of the Rs. 11,500 less the costs of the plaintiff appellant incurred by him on the appeal to the Court below and his costs of this appeal should be extended to six months from the date of the receipt in the High Court of the Order in Council.

In the Privy Council.

SAT NARAIN

v.

BEHARI LAL AND OTHERS.

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