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BADARANNESSA CHAUDHURANI
v.
RAMCHANDRA-MALA DAS.

GRAHAM J.

GRAHAM J. I agree that the appeal must be allowed on the ground that the order appealed against is without jurisdiction and is not in accordance with any section either of the Code of Civil Procedure or in the Court-fees Act. The proper procedure for the learned Judge to adopt was under sub-section ii of section 12 of the Court-fees Act. But that procedure has not been followed. I concur in the order which my learned brother has made.

G.S. *Appeal allowed; case remanded.*

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

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April 11.

SAILENDRAKRISHNA RAY
v.
RASHMOHAN SAHA*.

Insolvency—Discovery of insolvent's property—"Creditor who has proved his debt"—Presidency Towns Insolvency Act (III of 1909), s. 36.

The phrase "creditor who has proved his debt" in section 36 of the Presidency Towns Insolvency Act (III of 1909) means a creditor who has done all that the Act requires him to do in the matter and does not necessarily imply that his proof has been admitted by the Official Assignee.

Re Abdul Samad (1) disapproved.

APPEAL from an order of Pearson J.

This was an application on the part of Sailendrakrishna Ray and others, insolvents, asking for an order made by the Registrar in Insolvency for examination of certain witnesses under section 36 of the Presidency Towns Insolvency Act to be rescinded on the ground that the creditor obtaining such order had no *locus standi*. The learned Judge sitting in Insolvency dismissed the application. Thereupon the present appeal was filed.

*Insolvency Appeal, No. 1 of 1929, in Case No. 90 of 1921

(1) (1922) 26 C. W. N. 744.

Mr. B. K. Ghose and *Mr. N. C. Chatterjee*, for the appellants.

Mr. S. M. Bose and *Mr. J. N. Majumdar*, for the respondents.

RANKIN C. J. This case arises out of an order made by my learned brother Mr. Justice Pearson, refusing to interfere with an order made by the Registrar in Insolvency refusing to review an order made by him for the attendance of certain persons to be examined under section 36 of the Presidency Towns Insolvency Act (III of 1909). The merits of the case and the necessity for holding the enquiry proposed seem plain enough; but the point which is relied upon on behalf of the appellant is a technical point.

Section 36 begins in this way :—

" The court may, on the application of the Official
" Assignee or of any creditor who has proved his debt,
" at any time after an order of adjudication has been
" made, summon before it in such manner as may be
" prescribed the insolvent or any person known or
" suspected to have in his possession any property
" belonging to the insolvent, or supposed to be
" indebted to the insolvent, or any person whom the
" court may deem capable of giving information
" respecting the insolvent, his dealings or property;
" and the court may require any such person to
" produce any documents in his custody or power
" relating to the insolvent, his dealings or property."

On that it appears that this insolvency is a very old one, the order of adjudication having been made on the 9th August, 1921. The creditor, on whose application the order was made, in the form prescribed for affidavit and proof of debt, had proved his debt about 7 years ago. Various things happened. He was treated as a creditor while certain negotiations for composition were going on, he was a member of the committee of inspection and so on. It does not appear that rule 25 of the second schedule of the Presidency Towns Insolvency Act has been complied

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with by the Official Assignee and it further appears that so far as the Insolvency rules of the court go, no time is limited within which the Official Assignee is obliged to comply with the provisions of that rule. The Official Assignee does not question the proof of debt, but the proof of debt itself is not formally and in writing admitted. In these circumstances, it is said that the phrase "creditor who has "proved his debt" in section 36 does not include this creditor because it is said that, until the claim is formally admitted, the creditor is not a creditor who has proved his debt. That proposition is laid down in the decision of Mr. Justice Greaves in *Re Abdul Samad* (1) and the learned judge definitely holds that the phrase "'a creditor who has proved his debt' "means not merely a creditor who has lodged proof "of his debt but a creditor whose proof has been "admitted by the Official Assignee under the provi-"sions contained in section 25 of the second schedule "of the Insolvency Act." I am of opinion that the decision of Greaves J. is erroneous and ought not to be adhered to. The ordinary meaning in bankruptcy of "a creditor who has proved his debt" is a creditor who has done all that the Act requires the creditor to do and in the second schedule of the English Act this is made perfectly clear, because the second rule of the second schedule says that "a debt may be "proved by delivering or sending through the post in "a prepaid letter to the Official Receiver or if a "trustee has been appointed, to the trustee, an affidav-"it verifying the debt." When the creditor has done that, he is said to be a creditor who has proved his debt. Whether the proof is admitted or not is a question entirely different from the question whether the creditor who has done his part can be said to have proved. It is true that the language in the Presidency Towns Insolvency Act has been altered and apparently it is a possible view that the draftsman was not content to copy the language which is found in the English statute from which the Indian

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statute is an abridged transcript, because it says that "a proof may be lodged by delivering an affidavit "verifying the debt." At the same time it has to be remembered that the phrase "a creditor who has "proved his debt," is to be regarded in the light of the context. We find, for example, section 48 of the Act, says, "with respect to the admission and rejec-"tion of proofs and other matters referred to in the "second schedule, the rules in that schedule shall be "observed." It is clear that proof is one thing and admission or rejection is another and I am not prepared to hold that it is a reasonable construction of the language to deny to the phrase "a creditor who "has proved his debt" its ordinary English meaning. If the debt has been proved, then in that case the question may arise at a meeting of creditors whether, by reason of the provisions of the first schedule, the creditors' proof has been admitted or has not been admitted for the purpose of voting. But here we are asked to hold that a creditor has not proved his debt at all unless and until the Official Assignee under the rules has admitted the proof for the purpose of dividend. There is no question about this creditor's right. The creditor has complied with the formalities set forth and has given the required proof of debt. The point taken is not made out and in my opinion this appeal must be dismissed with costs.

GHOSE J. I agree.

Appeal dismissed.

Attorneys for the appellants: *Chaudhuri & Chaudhuri.*

Attorneys for the respondents: *Mitra & Mukherjee.*

N. G.