APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Costello J.

HIRALAL MURARKA

v.

MANGTULAL BAGARIA.*

1932

April 14, 15.

Practice—Insolvency—Order of administration of deceased debtor's estate in insolvency, when effective—Presidency Towns Insolvency Act (III of 1909), ss. 108, 109.

If, on an application under section 108 of the Presidency Towns Insolvency Act of 1919, an order is passed for administration of the estate of the deceased debtor, the whole estate of the said deceased debtor vests in the Official Assignee upon the pronouncement of such order by virtue of the provisions of section 109 of the said Act.

A court passing an order under section 108 of the Presidency Towns Insolvency Act can stay such order ; but the subsequent order in this case to the effect—"The order for administration in insolvency made on the (date) is not to be drawn up by order of (The Judge) till after the vacation when the matter will be mentioned to him,"—does not amount to a stay of proceedings.

After an order for administration of a deceased debtor's estate under section 108 of the Presidency Towns Insolvency Act has been passed no one except the Official Assignee has the right to sue for realising debts due to that estate.

In re *Manning* (1), *Blount* v. *Whiteley* (2), *The Script Phonography Company (Limited)* v. *Gregg* (3) and *Ex parte Hookey* (4) followed.

Metcalfe v. *The British Tea Association* (5) distinguished.

APPEAL from a judgment of Buckland J.

On or about the 18th of July, 1924, the plaintiff instituted the Insolvency Case No. 157 of 1924 by presenting an application to the High Court in its insolvency jurisdiction under the provisions of section 108 of the Presidency Towns Insolvency Act of 1909 for administration of the estate of Popat Velji Rajdeo, deceased. Subsequently, on or about the 2nd

*Appeal from Original Decree, No. 82 of 1931, in suit No. 1736 of 1928.

(1) (1885) 30 Ch. D. 480.
(2) (1898) 79 L. T. 635.
(3) (1890) 59 L. J. Ch. 406.
(4) (1862) 4 De G. F. & J. 456 ; 45 E. R. 1261.
(5) (1881) 46 L. T. 31.

1932

Hiralal Murarka v. *Mangtulal Bagaria.*

of August, 1924, Puri Bai Jetha Bai and another filed the suit No. 2156 of 1924 against Velji Moolji Rajdeo for administration of the said estate. On the 4th of August, 1924, an order was made by the High Court in the said insolvency case, directing administration of the said estate of Popat Velji Rajdeo in its insolvency jurisdiction. In the said suit No. 2156 of 1924 the plaintiff was appointed an administrator or manager in or about 1927. The plaintiff, after obtaining leave of this Hon'ble Court in the said suit No. 2156 of 1924, filed this suit against the defendants for minimum royalty due to the estate of the said Popat Velji Rajdeo, deceased; the trial court held that the suit could proceed, because the order, dated 4th of August, 1924, under section 108 of the Presidency Towns Insolvency Act, did not become effective as it has not been drawn up and filed. Hence the defendants preferred this appeal.

Page and *P. C. Basu* for the appellants.

Sir N. N. Sircar (Advocate-General), and *S. M. Bose* for the respondents.

RANKIN C. J. In this case, we have followed with the greatest care the argument of the learned Advocate-General, who appears for the plaintiff-respondent, and the point before us seems to be a very narrow one. The position, however, is that, in my judgment, the appeal should succeed.

The plaintiff brings his suit for certain royalties due to the estate of one Popat Velji Rajdeo upon the terms of a mining lease. The plaintiff claims to be, for this purpose, entitled to represent that estate under an order dated the 11th March, 1927, which was an order made in an administration suit. In that suit, the heirs and the widows of the deceased were litigating as to the succession and the court was asked for a more or less full order for administration of the estate of the deceased. The order in question, of the 11th March, 1927, appointed the present

plaintiff, Mangtulal, to be the manager, and it is in that capacity that he claims to be entitled to recover from the defendants whatever sums are due to Popat Velji Rajdeo's estate.

The point upon which the case turned was a point taken in one of the written statements from the beginning. It was shortly this: This very plaintiff, Mangtulal Bagaria, on the 18th July, 1924, applied to the learned Judge exercising jurisdiction under the Presidency Towns Insolvency Act and, on the 4th August, 1924, obtained an order under section 108 of the Act for administration of the estate of Popat. That order was obtained by him in his capacity as a creditor of Popat. He impleaded in those proceedings certain persons as being the legal representatives of the deceased. In their presence, the matter was argued by Mr. Khaitan—attorney for the applicant—and by Mr. Chatterjee—attorney for the legal representatives. The plaintiff satisfied the learned Judge that the case was within the section and the learned Judge pronounced an order of the character set forth in section 108—an administration order under the insolvency jurisdiction. Now, it is not contended and it is not a matter subject to doubt that, upon that order being pronounced and before it was drawn up, the property of the debtor vested in the Official Assignee of this Court. The matter is no different from what it would have been in the case of an order of adjudication and the position, therefore, was *prima facie* that the Official Assignee of this Court represented Popat's estate and no other person could claim to represent it. The order having been pronounced, it was minuted according to the practice of this Court. When a receiving order is made upon a "judgment summons" or when an order is made by the Judge in Chambers on summons, the English practice is that the Judge makes an endorsement of the order upon the summons itself. In this Court, that practice is not followed, but a minute of the order is made at the time and the fact that an order

1932

Hiralal Murarka v. *Mangtulal Bagaria.*

Rankin C. J.

was pronounced in this case is not capable of dispute as we shall see in a moment that steps were taken and an order was drawn up. The order as drawn up recited an affidavit of Mangtulal filed on the 30th July and it described Popat Velji Rajdeo as a person who died insolvent. It appears that the advisers of the legal representatives took exception to these passages in the draft and they applied to the learned Judge upon a proceeding which does not appear to be in writing. They applied to him orally, we are told, at his house during the vacation; but the statement of fact which we get from the plaintiff's own petition is that the application was an application to speak to the minutes of the order. Mr. Chatterjee was instructed apparently to get the order drawn up without the particular passages objected to. He attended before Mr. Justice Ghose and the learned Judge, when hearing the application at his house, was, of course, attended by an officer of the court, whose duty it was to make a minute of any order which the learned Judge might make. The minute which was made by the Court's officer was this:

> The order for administration in insolvency made on 4th August, 1924, is not to be drawn up by order of Ghose J. till after the vacation when the matter will be mentioned to him.

In these circumstances, we have to consider what was the effect or nature of the order after that direction was given. What happened, in fact, was that the matter was never mentioned to the learned Judge after the vacation in the exercise of his insolvency jurisdiction or at all, but that, in an administration suit which had been started on the 23rd September, 1924, various orders were made appointing sometimes one person and then another and finally the plaintiff to manage or represent the property of the deceased.

It is contended by learned counsel for the appellants that, under section 109 of the Presidency Towns Insolvency Act, the property vests in the Official Assignee the moment the order is pronounced.

1932

Hiralal Murarka v. Mangtulal Bagaria.

Rankin C. J.

That cannot be disputed. The drawing up of the order is not a matter which delays the vesting of the property at all and cases have been cited to us which show that this is an arrangement entirely consistent with what happens in insolvency in respect of other classes of orders. The case of *In re Manning* (1) is a particularly instructive case upon this point and it is to be noticed that the effectiveness of the order from the time of its pronouncement is not some special doctrine peculiar to the court of bankruptcy, but it is an ordinary doctrine of every court. I do not say that there are no exceptions to it. There are exceptions to it under the rules in the insolvency jurisdiction. Thus, an order for discharge is by the rules made effective only from the date of the drawing up. But the ordinary *prima facie* rule of all the courts of law and equity is that the drawing up of the order is not the bringing into existence of the order. There are many cases in which the drawing up of the order is, in effect, the bringing into existence of the order, namely, those cases where an order has no utility except in so far as it may be enforced: if, for example, a writ of attachment is issued, the Sheriff cannot proceed upon the writ until it is handed out and, in effect, the order is not an available order until after the drawing up. But the *prima facie* doctrine of all courts is as I have said and it is plain upon the face of the Civil Procedure Code, which requires that all decrees and orders are to be dated as on the date they are pronounced. That being so, on the 4th of August, there was an order which vested the property in the Official Assignee.

The question is whether the direction made on the 4th of September brought that position of affairs to an end. In my opinion, it did not. In the first place, the order does not say more than that the order is not to be drawn up till after the vacation. It does not say that it is never to be drawn up. We know

(1) (1885) 30 Ch. D. 480.

1932

Hiralal Murarka
v.
Mangtulal Bagaria.

Rankin C. J.

from the character of the application made by Mr. Chatterjee that there was no such question in the mind of any one at the time. The intention was that the learned Judge at a more convenient time would settle the particular dispute which had taken place upon certain words and that was all. If, when the time came, learned counsel had mentioned the matter to the Judge and if then the Judge had said "the "order not having been drawn up and perfected, I "am now minded to make another order altogether," the position would have been very different. I do not say what it would have been, because perhaps it is a serious question whether in that event the learned Judge would and could have divested the Official Assignee of the property. It would be a rather extraordinary thing to do, because the order had in the meantime enured to the benefit of all the creditors. But, if the learned Judge, on having the matter mentioned to him, had purported to say "my original "order was a mistake and I cancel it," it might very well be that the position would have been as if no such order had been pronounced.

It may be pointed out that there was one thing which the learned Judge did not do. The learned Judge might have said ""the order is not to be drawn "up till after the vacation and I stay execution "thereof in the meantime so far as the taking over "possession by the Official Assignee is concerned." Staying of execution could not affect the vesting of the property, but the learned Judge, it is to be noticed, did not even grant a stay so far as the acting on the order is concerned. All that he said was that the particular terms of the order, about which there was some little dispute, would be settled by him in future. That is the right view to take of what happened. We are bound by the authorities cited by Mr. Page to hold that the property vested in the Official Assignee and still vests in the Official Assignee. The learned Judge has discussed the general question of the effect of orders before they are

formally drawn up and he has observed the well-known doctrine that, until an order is formally drawn up, the Judge can withdraw it, alter it or change it in any way he likes. He still is *dominus* of the order. It does not require to come under the slip rule or any other principle of law to entitle him to make a variation. One case has been cited by the learned Advocate-General, where an order was made for winding up a company. The minutes of the order had been issued to the parties, but the order had not been perfected. In the meantime, certain persons paid the company's debts and, instead of making a winding up order, the learned Judge dismissed the winding up petition. This principle that the learned Judge is *dominus* of the order until it is drawn up is, in my judgment, of no avail to the plaintiff in the present case. The learned Judge had never, at any time, so far as I can see, shown the smallest intention of rescinding the order which he had made. He merely postponed till another occasion the consideration of the question as to how it should be drawn up.

When the defendants took the point that the plaintiff was not entitled to sue, it may be that the plaintiff could have gone to the learned Judge or the Judge having jurisdiction in insolvency and got an order which would bring to an end all operation of the order previously made. He did nothing of the kind. Up to this date, no one has gone to the learned Judge in insolvency to put the matter right. The position is that the order stands and any creditor of Popat Velji would be *prima facie* entitled to have it drawn up yet, by taking the proper steps. It is to be observed that the plaintiff's own view of the matter is disclosed by some of his affidavits and petitions in the administration suit. As a matter of fact, in one case, he put forward that the learned Judge had ordered that the order was to be in abeyance with a view to making a case that there was no one to protect

1932

Hiralal Murarka v. *Mangtulal Bagaria.*

Rankin C. J.

the assets. That was not a true representation of what the learned Judge had done at all. It suited the plaintiff, because, at that time, he wanted to have some one else to be appointed administrator. But there are other passages, from which it can be seen that the order was an order which was in existence still and was being completed; and he does suggest in one of his petitions at the very time the order was made on the 11th March, 1927, that there was an order which only required to be formally completed. I have no doubt that this is a case where we should apply the doctrine of *In re Manning* (1), *Blount* v. *Whiteley* (2), *The Script Phonography Company (Limited)* v. *Gregg* (3) and *Ex parte Hookey* (4). I am not prepared to follow the case of *Metcâlfe* v. *The British Tea Association* (5). It appears to me that much of what was said on that occasion was unnecessary for the decision of the case, which was the very special case of an order conditionally dismissing a suit. Nobody doubts that an order dismissing a suit out and out brings the suit to an end. On the other hand, for the purpose of the drawing up of the order it is in existence. All that the learned Judges in that case ultimately did was to extend the time for appealing and give leave to appeal from the order dismissing the suit. The plaintiff in this case chose to go on in spite of the warning light that was exhibited to him in the written statement of the defendants and the position now is that he never had at the date of the plaint a right to the sum which he now claims nor, so far as I can see, has anything happened since which would entitle him to say that his defective title has been cured.

In these circumstances, the appeal must be allowed and the suit must be dismissed with costs in both the

(1) (1885) 30 Ch. D. 480.
(2) (1898) 79 L. T. 635.
(3) (1890) 59 L. J. Ch. 406.
(4) (1862) 4 De G. F. & J 456; 45 E. R. 1261.
(5) (1881) 46 L. T. 31.

courts. This order for costs will be against the plaintiff personally.

1932

Hiralal Murarka
v.
Mangtulal Bagaria.

Rankin C. J.

COSTELLO J. I agree.

Appeal allowed.

Attorneys for appellants: *Mitra & Mitra.*

Attorney for respondents: *S. C. Sen.*

A. K. D.