

## REFERENCE UNDER THE COURT-FEES ACT.

Before Panckridge J.

*In re* OFFICIAL ASSIGNEE.\*

1938

June 27;  
July 8.

*Court-fee—Reference upon a difference as to necessity of fee—Insolvency Rules, Fee prescribed by—Competency of reference—Copy of the notes of an insolvent's examination—Exemption from fee—Court-fees Act (VII of 1870), ss. 3, 5—Calcutta Insolvency Rules, 1910, r. 204—Presidency-towns Insolvency Act (III of 1909), s. 115 (1).*

The fees prescribed by r. 204 of the Calcutta Insolvency Rules, 1910, and purported to have been imposed under s. 112 of the Presidency-towns Insolvency Act, 1909, are such as could have been imposed under s. 15 of 24 & 25 Vict., c. 104 (the High Courts Act, 1861), and are fees "payable by virtue of the power conferred by s. 15 of the High Courts Act, 1861" within the meaning of s. 3 of the Court-fees Act, 1870.

*Maung Ba Thaw v. M. S. V. M. Chettiar* (1) and *H. Mahomed Ishack Sahib v. Mahomed Moideen* (2) discussed and commented upon.

On a question whether a fee prescribed by r. 204 of the Calcutta Insolvency Rules, 1910, is payable or not, in respect of an office copy of the notes of an insolvent's public examination held under s. 27 of the Presidency-towns Insolvency Act, 1909, a reference under s. 5 of the Court-fees Act, 1870, is competent.

An office copy of any proceedings had before the insolvency Court is under s. 115(1) of the Presidency-towns Insolvency Act, 1909, exempt from payment of any stamp or duty, only when under the provisions of some law, or rule, having the force of law, there is a necessity for such copy in order that some step may be taken in the administration of the insolvent's estate.

Where an office copy is sought to be obtained of the notes of an insolvent's public examination held under s. 27 of the Presidency-towns Insolvency Act, 1909, in order that the Official Assignee may take steps to have a deed of settlement executed by the insolvent set aside, there is no such necessity. The prescribed fee is, therefore, payable by the Official Assignee.

REFERENCE by the Taxing Officer under s. 5 of the Court-fees Act, 1870.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

\*Reference by the Taxing Officer in Insolvency Case No. 204 of 1933.

(1) (1935) I. L. R. 13 Ran. 156.

(2) (1922) I. L. R. 45 Mad. 849.

*The Advocate-General, Sir Asoka Roy, and The Standing Counsel, S. M. Bose, for the Province of Bengal.*

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*S. C. Bose, H. N. Sanyal and S. K. Ray Chaudhury for the Official Assignee.*

*Cur. adv. vult.*

PANCKRIDGE J. This matter has been referred to me by the Taxing Officer as the judge specially appointed in that behalf by the Chief Justice under s. 5 of the Court-fees Act, 1870.

The circumstances are as follows:—One Uma Shankar Chatterji was adjudicated an insolvent by this Court under the Presidency-towns Insolvency Act, 1909, on February 13, 1934. The insolvent was thereafter publicly examined under s. 27 of the Act, his examination being concluded on February 17, 1938. The Official Assignee of Calcutta desires to have a certified copy of the notes of the insolvent's examination for the purpose of taking steps to have a deed of settlement executed by the insolvent on July 5, 1932, set aside.

The Registrar-in-Insolvency refuses to furnish the copy except on payment by the Official Assignee of a fee of annas 5 per folio as prescribed by r. 204 of the Rules made under s. 112 of the Act. The Official Assignee maintains that he is entitled to obtain a copy without charge under s. 115\* of the Act.

The learned Advocate-General appears instructed by the solicitor for the Province of Bengal and takes

\*Section 115 of the Presidency-towns Insolvency Act, 1909, is as follows :—

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof shall be exempt from payment of any stamp or other duty whatsoever,

(2) No stamp-duty or fee shall be chargeable for any application made by the Official Assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

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the objection that the reference by the Taxing Officer is incompetent. He points out that under s. 5 of the Court-fees Act a reference is only permissible in cases of fees payable under Chap. II of that Act. Accordingly, with regard to this particular fee, it must be shown that it is a fee payable by virtue of the power conferred by s. 15 of 24 & 25 Vict., c. 104 (the High Courts Act, 1861) or s. 107 of the Government of India Act.

I have examined the Gazette of India, and I find the Insolvency Rules were published therein under notification No. 44, dated January 16, 1910. The notification shows that the High Court purported to make the Rules under s. 112 of the Insolvency Act.

*Primâ facie*, therefore, the Rules were not made by virtue of the powers conferred by s. 15 of the High Courts Act.

Reference has been made to *Maung Ba Thaw v. M. S. V. M. Chettiar* (1). The facts were as follows :—

The High Court purporting to act under s. 107 of the Government of India Act had prescribed the fees payable in respect *inter alia* of appeals under cl. 13 of the Letters Patent for the High Court of Rangoon which corresponds to cl. 15 of the Letters Patent for this Court. An unsuccessful litigant desired to appeal against a decree passed by the High Court in the exercise of its ordinary original civil jurisdiction, and objected to pay the fee on the memorandum of appeal in accordance with the scale prescribed, on the ground that s. 107 did not give the Court the power to prescribe fees with regard to proceedings on the Original Side or to appeals from judgments of the Original Side. Section 107 of the Government of India Act is as follows :—

Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say:—

(a) call for returns ;

(b) direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction ;

- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts ;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and in other cases of the Local Government.

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Leach J. accepted the contention that s. 107 only refers to Courts which are subordinate to the High Court, but he held that the power to make rules and orders for the purpose of regulating all proceedings in civil cases conferred by cl. 35 of the Rangoon Letters Patent, corresponding to cl. 37 of our Letters Patent, included the power to impose and collect fees in connection with the reception of appeals from the Original Side. He further held that the fact that the notification purported to be made pursuant to the provisions of s. 107(e) made no difference as to its legality. After referring to various authorities he said (1) :—

The Court, in issuing the notification referred to, undoubtedly intended to exercise the powers vested in it. The reference to s. 107 of the Government of India Act may be unfortunate, but for the reasons indicated I do not consider that it invalidates the operative parts of the notification.

The question as to the applicability of s. 5 of the Court-fees Act does not appear to have been raised, and the discussion proceeded on the assumption that the section could be utilised to test the legality of any Court-fee prescribed by the High Court.

I do not think that that assumption is correct, and I agree with the Advocate-General that before s. 5 can be applied, it must be shown that the subject-matter of the reference is a fee covered by s. 3 of the Act. On the other hand, I think it is right to give a reasonably wide construction to s. 3, and I consider that if a particular fee could have been imposed under

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the High Courts Act or the Government of India Act, it is payable by virtue of the power conferred by that Act within the meaning of the section, even although the High Court purported to impose the fee under a power derived from some other source.

The question is, therefore, whether r. 204 of the Insolvency Rules could have been made under s. 15 of the High Courts Act, which for this purpose may be regarded as identical with s. 107 of the Government of India Act.

Leach J., as has been seen, held that the sections only apply to Courts under the superintendence of the High Court. In so holding he differed from Coutts-Trotter J. who held in *H. Mahomed Ishack Sahib v. Mahomed Moideen* (1) (a case where the question of the applicability of s. 5 of the Court-fees Act was specifically raised) that in making rules for the imposition and collection of Court-fees in respect of proceedings on its Original Side, the High Court was acting under the general rule-making powers conferred by s. 15 of the High Courts Act, 1861. Coutts-Trotter J. states that such fees are not "fees to be allowed to the sheriffs, attorneys, and all clerks and officers of Courts", and considers that the table of fees derives its validity from the High Court's "power to make and issue general rules for regulating the practice and proceedings of such Courts". I incline to the view that where the section used the words "such Courts" it refers only to those Courts which are subject to the appellate jurisdiction of the High Court and over which the High Court has superintendence. On the other hand, when the words "all clerks and officers of Courts" are used, all Courts in the Province are meant including the High Court. This is the more natural construction grammatically. Moreover, if the High Court is to be excluded the mention of the sheriff and attorneys becomes unnecessary.

I do not agree with Coutts-Trotter J. that "fees allowed" refers exclusively to those fees which the

(1) (1922) I. L. R. 45 Mad. 849.

clerks and officers could formerly claim as a perquisite. I see no reason why the phrase should be limited in this way. It cannot have that meaning in s. 107(e) of the Government of India Act, 1915, as that statute was enacted long after the system of remuneration by fees had given place to remuneration by salaries.

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My conclusion, therefore, is that r. 204 of the Insolvency Rules could have been made by the High Court under the powers conferred on it by s. 15 of the High Courts Act and the fees prescribed thereby are accordingly covered by s. 3 of the Court-fees Act.

With regard to s. 115 of the Presidency-towns Insolvency Act, I have come to a conclusion adverse to the contention of the Official Assignee.

The only Indian authority cited *The Official Assignee of Madras v. S.R.M.M.R.M. Ramaswamy Chetty* (1) has little, if any, bearing on the matter. There, it was held, that an attorney acting for the Official Assignee was entitled to obtain without payment of any fee a copy of an order against which the Official Assignee desired to appeal. The reason for the decision was that the issuing of the copy was the issuing of an order under s. 115(2) of the Act.

To turn to sub-s. (1) of s. 115 of the Act, I agree with the Official Assignee that a copy of the note of the insolvent's examination under s. 27 is a copy of proceedings before the Court: *In re Beall* (2).

No light is thrown on the matter by s. 148 of the (English) Bankruptcy Act of 1914, as fees prescribed by the bankruptcy statutes are expressly excluded from its operation. I do not, however, consider that s. 125 of the Insolvency Act gives the Court power to prescribe a fee in respect of a matter covered by s. 115. The purpose of s. 115 is clearly to save as much as possible of the insolvent's estate for distribution amongst the creditors. It would, however, be, in my opinion, erroneous to give it the

(1) (1920) I. L. R. 43 Mad. 747.

(2) [1894] 2 Q. B. 135.

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wide application for which the Official Assignee contends. If he is right, not only the Official Assignee but all other persons as well are entitled to obtain an unlimited number of copies of insolvency proceedings—it may be—for purposes, in no way connected with the insolvency concerned. This cannot, in my opinion, have been the intention of the legislature. I think that by copy is meant a copy necessary under the provisions of some law, or, rule having the force of law, for some step in the administration of the insolvent's estate. For example, it may be necessary to prove the order of adjudication in a civil Court by the production of a certified copy. This test is not satisfied in the present case. It is not even clear that the Official Assignee after he has perused the notes will use them for the purposes of his application. It is possible that the notes will convince him that it is not worth while proceeding further. However, even if it is assumed that in this particular case the notes will show that the insolvent has made admissions which will help the Official Assignee to set aside the deed, and that a certified copy of the notes is the most convenient way of proving the admissions, it is still true that production of a copy is not the only possible method of proof. The admissions may be proved by the affidavit of a person who was present when they were made, or by the production of notes taken by some one, who has inspected the original record. I therefore decide that the Official Assignee is only entitled to these copies on payment of the prescribed fee.

I think, however, that having regard to the vagueness of the language used in s. 115 (1) his contentions were not unreasonable.

Accordingly, I make no order as to costs except that he may have his costs out of the insolvent's estate.

Attorney for Official Assignee: *S. N. Choudhury.*

Attorney for Province of Bengal: *H. P. Sutcliffe.*

P. K. D.