

## APPELLALE CIVIL.

*Before Mr. Justice Morris\* and Mr. Justice Prinsep.*

JUGGUTJEEBUN GOOPTOO (JUDGMENT-DEBTOR) v. HARO-  
COOMAR PAL (DECREE-HOLDER).\*

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March 8.

*Insolvent—Refusal to grant Application to be declared Insolvent—Right of Appeal—Code of Civil Procedure (Act X. of 1877), ss. 351, 588, cl. 17.*

There is no appeal from an order made under s. 351 of the Code of Civil Procedure refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.

In this case the judgment-debtor applied to the Court of first instance to be declared an insolvent, under s. 351 of the Code of Civil Procedure. The Court refused this application, and the judgment-debtor thereupon appealed to the High Court.

Baboo *Annoda Persaud Banerjee*, for the respondent, took a preliminary objection against the hearing of this appeal, on the ground that the law permitted no such appeal.

Baboo *Tarak Nath Palit* for the appellant.

The judgment of the Court was delivered by

MORRIS, J. (PRINSEP, J., concurring).—A preliminary objection is taken by the decree-holder, respondent, that no appeal lies in this case, because the order appealed against is not an order passed under s. 351, declaring the judgment-debtor, appellant, to be an insolvent. It is an order disallowing his application to be declared an insolvent. Looking at the strict terms of s. 351, it seems to us an order under that section can only be such an order as that section in its latter paragraph prescribes,—namely, an order declaring the applicant under s. 344 to be an insolvent, and also appointing a receiver of

\* Appeal, No. 280 of 1879, from an order of M. H. Muspratt, Esq., Civil and Sessions Judge of Sylhet, dated the 11th September 1879.

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his property, or in lieu of appointing a receiver discharging the insolvent. This view is supported by the terms of s. 354, which says—"that every order under s. 351 shall be published in the local Official Gazette, and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to s. 266), whether set forth in his application or not." From the words it is clear that it was never intended that every order disallowing an application to be considered an insolvent should be published in the Gazette.

The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, appears to be on behalf of the judgment-creditor only. The amending Code, like the former Act VIII of 1859, allows no appeal to the judgment-debtor whose application to be considered an insolvent and to be discharged as such is disallowed.

The appeal is dismissed with costs.

*Appeal dismissed.*

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.*

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SUPUT SINGH AND OTHERS (DEFENDANTS) v. IMRIT TEWARI AND OTHERS (PLAINTIFFS).\*

*Joint Liability—Contribution—Joint Tortfeasors.*

The question as to whether as between persons against whom a joint decree has been passed there is any right of contribution at all, depends upon the question whether the defendants in the former suit were wrong-doers in the sense that they knew, or ought to have known, that they were doing an illegal or wrongful act. In that case no suit for contribution will lie. If the defendants in the former suit were not guilty of wrong in that sense, but acted under a *bonâ fide* claim of right, and had reason to suppose that they had a right to do what they did, then they may have a right of contribution *inter se*; and in such case the Court should enquire what share they each took in

\* Appeal from Appellate Decree, No. 2438 of 1878, against the decree of Baboo Roy Matadin Bahadur, Subordinate Judge of Gya, dated the 31st August 1878, affirming the decree of Baboo Sheo Sarun Lal, First Sudder Munsif of that district, dated the 22nd March 1878.