APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

ROWLANDSON, APPELLANT,

v.

CHAMPION AND ANOTHER, RESPONDENTS.*

1893.
August 16.
September 7.

Insolvent Act—11 and 12 Vic., cap. 21, s. 7—Uncertificated insolvent—After acquired landed property—Mortgage by insolvent—Rights of Official Assignee.

The Official Assignee applied under Insolvent Act, s. 36, for the delivery up to him of a house and furniture of which the occupants were in possession under a mortgage from an insolvent, dated December 1891. It appeared that the insolvent had been adjudicated in 1888 and had received her personal discharge in 1890 and had obtained the house in question under a deed of gift in April 1891, and had died intestate in May 1892, having never obtained a discharge under section 59. The mortgagees took their mortgage with notice of the insolvency of the mortgagor. The Official Assignee did not become aware that the insolvent had acquired the property in question till September 1892 when he intervened and claimed the property free from the mortgage:

Held, that the Official Assignee was entitled to the mortgaged property free from the mortgage.

APPEAL against the judgment of COLLINS, C.J., as Commissioner of the Insolvent Court, in insolvent case No. 21 of 1888.

Application by the Official Assignee under Insolvent Act, s. 26, that a certain house and the furniture therein be delivered up to him as constituting part of the estate of an insolvent who had died without obtaining a final discharge. The house had been conveyed to the insolvent after she had obtained her personal discharge and was now in the possession of mortgagees under a mortgage from her which comprised also the furniture in the house.

Mr. *K. Brown* for Official Assignee.

Mr. *R. F. Grant* for the mortgagees.

COLLINS, C.J.—This was an application by Mr. Kenworthy Brown on behalf of the Official Assignee under section 26 of 11 Vic., cap. 21, for an order directing Messrs. Champion and Short, Attorneys of the High Court, to deliver over to the Official Assignee certain property alleged to be the property of one

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* Original Side Appeal No. 35 of 1892.

ROWLANDSON v. CHAMPION.

Annie Smith, an insolvent debtor. The facts of the case are as follows :—

Annie Smith, in February 1888, filed a petition in the Insolvent Court and was duly adjudged an insolvent. She received a personal discharge in February 1890, but no final discharge was granted. No assets were realized under the estate by the Official Assignee.

On the 3rd day of April 1891 one McLintock, by a deed of gift, conveyed to Annie Smith a certain house and land situated in the district of Chingleput and called River Ville. The deed of gift to Annie Smith was duly registered. Annie Smith was also possessed of certain articles of furniture in and about the said house. In December 1891 Annie Smith executed a deed of mortgage to Messrs. Champion and Short, Solicitors of Madras, mortgaging the said house and land and furniture for the sum of Rs. 3,500. The mortgage deed contained a power to sell "the said mortgaged property upon giving to the said mortgagor, her heirs, executors, administrators or assigns, or leaving "on the said premises a notice in writing to pay off the said "mortgage, and if default shall have been made in such payment "for three calendar months after such notice.". It is stated that Annie Smith died on the 31st day of May 1892 intestate. The Administrator-General was cited to appear on this application, but took no part in the argument, and makes no claim to the property, and no administration appears to have been taken out to the estate of the said Annie Smith. It appears that Messrs. Champion and Short on the 1st June 1892 took possession of the said house, premises and furniture, and have, since June, let the house for short periods to tenants. There is no evidence before me under what authority they so took possession, or that they have given at any time to the said Annie Smith, her heirs, executors, administrators or assigns, or left on the premises the notice in writing referred to in the mortgage deed.

Mr. Kenworthy Brown contends that as Annie Smith had not received her final discharge from the Insolvent Court, any property that she might have acquired subsequent to her insolvency by section 7 of 11 Vic., cap. 21, vested in the Official Assignee absolutely, and any mortgage or other encumbrance on such property executed by the said Annie Smith was void against the Official Assignee. It is further contended that Messrs.

Champion and Short were aware of Annie Smith's insolvency and knew that she had not obtained her final discharge. In support of the former proposition *Kerakoose* v. *Brooks*(1) is relied on. Mr. Robert Grant for Messrs. Champion and Short submits that a summary order under section 26 of the Act should not be made, but that the Official Assignee should be referred to a regular suit (*Umbica Nundun Biswas in re*(2)), and he contends that after-acquired property of an insolvent may be dealt with by such insolvent until the Official Assignee intervenes, and if such transaction be *boná fide* and for value, the Official Assignee is bound by such transaction, and he cites *Kristocomul Mitter* v. *Suresh Chunder Deb*(3), *Fatima Bibi* v. *Fatima Bibi*(4), *Herbert* v. *Sayer*(5), *Cohen* v. *Mitchell*(6).

I find the following facts to be proved:—that Annie Smith was duly adjudicated an insolvent in 1888 and had not received her final discharge from the Insolvent Court. That on the 3rd day of April 1891 an absolute deed of gift of the property in question was made to Annie Smith. That in December 1891 a mortgage of the property in question was executed by Annie Smith to Messrs. Champion and Short, that such mortgage was executed *boná fide* and for valuable consideration. That Messrs. Champion and Short were aware that Annie Smith had been adjudicated an insolvent and had reasonable means of knowing that she had not obtained her final discharge from such Court. That the Official Assignee did not intervene in any manner until 8th September 1892.

Upon these facts the question arises what are the respective rights of the Official Assignee and the mortgagees to the property in question. I agree with the observation of *Garth*, C.J., in *Umbica Nundun Biswas in re*(2) that a case in which difficult questions of law and fact are involved, should not be summarily decided by an Insolvency Commissioner under section 26 of the Insolvent Act, but the questions should be decided in a regular suit. It appears to me, however, that in this case the facts are simple, and the question of law is one that an Insolvent Commissioner should decide, more especially as his decision is subject to an appeal to a Division Bench.

(1) 8 M.I.A., 339. (2) I.L.R., 3 Calc., 434. (3) I.L.R., 8 Calc., 556.
(4) I.L.R., 16 Bom., 452. (5) 5 Q.B., 965. (6) L.R., 25 Q.B.D., 262.

ROWLANDSON v. CHAMPION.

Kerakoose v. *Brooks*(1) is not in point; the only question there decided was that an insolvent's after-acquired property was, under the circumstances of that case, subject to the lien of the person who had advanced to the insolvent money to purchase that property; and the judgment of Lord *Kingsdown* as to the rights of an Official Assignee to after-acquired property of insolvents cannot be said to be exhaustive on the subject, I agree with *Wilson*, J., that that case is, however, clear authority that the Indian statute, 11 Vic., cap. 21, is to be construed on the same principles as those contained in the various English decisions as to the rights and claims of the Official Assignee to insolvent's after-acquired property—*Kristocomul Mitter* v. *Suresh Chunder Deb*(2).

The cases reported in the Indian Law Reports on this subject are few, and the only cases referred to at the Bar are decisions of single Judges. In *Kristocomul Mitter* v. *Suresh Chunder Deb*(2) *Wilson*, J., held that, subject to the right and claim of the Official Assignee, and so long as he does not interfere, an insolvent who has not obtained his final discharge has power, with respect to after-acquired property, to do all acts which he could have done before his insolvency, and in *Fatima Bibi* v. *Fatima Bibi*(3) *Farran*, J., does not dissent from the Calcutta case. It will be necessary to examine the English decisions on this question. It has always, since 5 Geo. II, cap. 30, been held that after-acquired property passes to the Assignee in bankruptcy, and that no new assignment was necessary (*Kitchen* v. *Bartsch*(4)), yet it has also always been held that after-acquired property continued in the bankrupt until the Assignees interfered to claim it, and a bankrupt could, for valuable consideration, part with his after-acquired property so as to give a good title to his alienee, see *Drayton* v. *Dale*(5). The case relied on by the counsel for the Official Assignee (*Meggy* v. *Imperial Discount Company*(6)) is the decision of a single Judge sitting at *nisi prius*, and that case in the opinion of Lord *Esher*, M.R., does not touch the point in question. In *Cohen* v. *Mitchell* the Court of Appeal reviewed the principal authorities on the respective rights of an Official Assignee and bankrupt over after-acquired property, and decided that until

(1) 8 M.I.A., 339. (2) I.L.R., 8 Calc., 556. (3) I.L.R., 16 Bom., 452.
(4) 7 East, 53. (5) 2 B. & C., 293. (6) L.R., 3 Q.B.D., 711.

the Trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *boná fide* and for value in respect of his after-acquired property, whether with or without knowledge of his bankruptcy, are valid against the trustee.

I hold, therefore, that the English decisions are applicable to cases arising under 11 Vic., cap. 21 (see *Kerakoose* v. *Brooks*(1)), and I agree with the judgment of the Master of the Rolls and the Lords Justices in *Cohen* v. *Mitchell*(2). I, therefore, order that Messrs. Champion and Short do deliver up to the Official Assignee as being part of the estate and effects of the insolvent Annie Smith, upon payment to them of their mortgage debt amounting to Rs. 3,500 and interest to the 8th September 1892 amounting to Rs. 301-12-10 and a further sum of Rs. 37 agreed to be paid by the Official Assignee, the hereditaments and premises and other property mentioned in the mortgage deed of the 17th December 1891, and I do further order that Messrs. Champion and Short pay to the said Official Assignee the sum of Rs. 103-8-0, rents and profits of the said premises received by them up to the 8th September 1892.

I make no order at present as to costs.

The Official Assignee preferred this appeal.

Mr. *K. Brown* for appellant.

Mr. *R. F. Grant* for respondents.

BEST, J.—The question for decision in this appeal is whether the mortgage of a house and land made by an adjudicated insolvent with regard to whose property a vesting order had been passed under section 7 of the Insolvent Act, 11 and 12 Vic., cap. 21, prior to the acquisition of the property by the insolvent, is binding on the Official Assignee so that the latter can only get possession of the property (under section 26 of the Act) on paying to the mortgagees the mortgage amount with interest.

The findings are that one Annie Smith was duly adjudicated an insolvent in 1888 and had not received a final discharge (under section 57 of the Act) up to the time of her death (which is said to have taken place in or about May 1892); that on the 3rd April 1891 she acquired the property in question under an absolute deed of gift; that in December 1891 she mortgaged the

(1) 8 M.I.A., 339. (2) L.R., 25 Q.B.D., 262.

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same to the respondents; that such mortgage was executed *bonâ fide* and for valuable consideration; but that the respondents were aware that their mortgagor had been adjudicated an insolvent, and had reasonable means of knowing that she had not obtained her final discharge.

The learned Commissioner of the Insolvent Court has, on the above findings, held the mortgage to be valid as against the Official Assignee. He has so held on the authority of the English Court of Appeal in *Cohen* v. *Mitchell*(1), in which the following proposition was laid down and adopted, viz., "Until the "trustee intervenes, all transactions by a bankrupt after his bank-"ruptcy with any person dealing with him *bonâ fide* and for value "in respect of his after-acquired property, whether with or without "knowledge of the bankruptcy, are valid against the trustee." Our attention has, however, been called by appellant's counsel to a more recent English case *in re New Land Development Association and Gray*(2), in which the Court of Appeal concurred with *Chitty*, J., in thinking the proposition laid down in *Cohen* v. *Mitchell*(1) to be inapplicable to real estate. However this may be, the proposition as laid down in *Cohen* v. *Mitchell*(1) is admittedly in terms "wider than appears to have been laid down "before." *See per* Lord *Esher*, M.R. In fact in *Herbert* v. *Sayer* (3), which is cited in support of the above proposition, it was merely held that the bankrupt "acquires property, and "contracts for the assignees, who may, whenever they please, "disaffirm his act; but until they do so, his acts are all valid."

As observed by *Fry*, L.J., in the proposition as laid down in *Cohen* v. *Mitchell*(1) the word 'intervene' is substituted for the words 'disaffirm his acts' in the rule as stated in *Herbert* v. *Sayer*(3), the object of the alteration being admittedly to deprive the trustee who intervenes of the "power retrospec-"tively to disaffirm what has otherwise been validly done by the "bankrupt."

The facts of *Cohen* v. *Mitchell*(1) were as follows:—One Arthur Cohen became bankrupt, and subsequently, and before he obtained his discharge, carried on business in buying and selling agricultural machines, and, to enable him to do so, obtained advances of several sums of money from Hyam Cohen. One

(1) L.R., 25 Q.B.D., 262. (2) [1892], L.R., 2 Ch., 138. (3) 5 Q.B., 965.

Foale seized some of the machines, and the bankrupt brought an action against him for a wrongful conversion of the machines so seized. The bankrupt, having no money with which to carry on the action, assigned the cause of action to Hyam Cohen in consideration of the money already due to him and the further sum necessary to carry on the action. The action resulted in a verdict for the plaintiff. The trustee in bankruptcy of Arthur Cohen then intervened and demanded the money of Foale as part of the property of the bankrupt. Hyam Cohen also claimed the amount under an assignment. Foale consequently interpleaded and paid the money into Court, whereupon the issue was tried between Hyam Cohen as plaintiff and the trustee as defendant. It was with reference to these circumstances that the Court of Appeal laid down the proposition quoted above "in terms wider than it "had been laid down before" in order to preclude the trustee from disaffirming retrospectively what had "otherwise been validly "done by the bankrupt."

It was held by the Privy Council in *Kernkoose* v. *Brooks*(1) with reference to the property acquired by an insolvent subsequent to his adjudication as an insolvent and prior to his final discharge that the assignee's right under 11 & 12 Vic., cap. 21, is subject to the following two qualifications: (i) property acquired subject to liens and obligations remains subject to those charges and equities even when taken by the assignee; and (ii) if the insolvent carries on trade with the assent of the assignee, the property acquired in such trade will be subject to the charge of the creditors in that trade in priority to the claim of the Official Assignee.

The second of these qualifications requires that the trade shall have been carried on "with the assent of the assignee." It was the want of this assent, I imagine, in *Cohen* v. *Mitchell*(2) that necessitated the adoption of the proposition there laid down, the object being to prevent an "otherwise valid" claim being defeated, and as remarked by *Chitty*, J., in the more recent case "it is a "fair observation to make on all *dicta* of this kind that they are "enunciated with reference to the particular question then before "the Court." The reason for the rule as recognized in *Herbert* v. *Sayer*(3) is stated by the Lord Chief Justice of the Common Pleas

(1) 8 M.I.A., 339. (2) L.R., 25 Q.B.D., 262. (3) 5 Q.B., 965.

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to be that "otherwise there would be no protection to persons "dealing with an uncertificated bankrupt; not only would they "acquire no title by purchases from him, but payments for such "purchases and for all other debts due to the uncertificated bank- "rupt would be invalidated."

The question for decision in *Herbert* v. *Sayer*(1) was merely as to the right of the bankrupt to maintain a suit as indorsee of a bill of exchange, and all that was then decided was that he had such right "except as against the assignees"; and this is all that was decided in *Fowler* v. *Down*(2) and the other cases cited in *Herbert* v. *Sayer*(1). So also in *Drayton* v. *Dale* referred to by the learned Commissioner and in *Fatima Bibi* v. *Fatima Bibi*(3). As remarked by *Kay*, L.J., in the recent case of *in re New Land Development Association and Gray*(4)—the rule was only applied in *Cohen* v. *Mitchell*(5) for the purpose of protecting persons who had been "trading with the bankrupt and dealing with personal "estate."

The only case brought to our notice in which the rule has been applied to real estate is *Kristocomul Mitter* v. *Suresh Chunder Deb*(6), in which *Wilson*, J., upheld as against a subsequent purchaser from the Official Assignee the claim of a prior purchaser from an undischarged insolvent, of the latter's share in family property which presumably was or at least included real property. This decision purports to proceed on the authority of *Herbert* v. *Sayer*(1), but, as already observed, the only question in that case was the right of the bankrupt to maintain a suit in the absence of the trustee. It was, however, expressly held in *Herbert* v. *Sayer*(1) that all acquisitions and contracts made by an adjudicated bankrupt were made for the trustee and subject to disaffirmance by the trustee.

On a consideration of the various cases that we have been referred to, the conclusion at which I arrive is that in order to be binding on the Official Assignee a charge on after-acquired property created by an adjudicated insolvent, who has not obtained his final discharge, must come within the scope of one or other of the two qualifications stated in *Kerakoose* v. *Brooks*(7), and that

(1) 5 Q.B., 965.
(2) 1 Bos. & Pul., 44.
(3) I.L.R., 16 Bom., 452.
(4) [1892] L.R., 2 Ch., 138.
(5) L.R., 25 Q.B.D., 262.
(6) I.L.R., 8 Calc., 556.
(7) 8 M.I.A., 339.

Cohen v. *Mitchell*(1) is merely authority for the proposition that when an insolvent is allowed to carry on trade or other business, the Official Assignee's assent thereto (required under the second of the two qualifications mentioned in *Kerakoose* v. *Brooks*(2) will be presumed up to such time as he may intervene.

As the mortgage to the respondents in the present case does not come within either of these qualifications, I would allow this appeal and set aside so much of the order of the learned Commissioner of the Insolvent Court as directs the Official Assignee to pay to the respondents the mortgage amount and interest thereon.

Respondents must pay the Official Assignee's costs both in this Court and in the Court below.

MUTTUSAMI AYYAR, J.—I come to the same conclusion, though not upon the same ground. The facts of the case are shortly these:—In February 1888 Annie Smith was declared an insolvent and a vesting order was made under 11 & 12 Vic., cap. 21, s. 7. In April 1891 she obtained under a deed of gift a house and land called River Ville and she was also possessed of certain articles of furniture in and about the house. In December 1891 she mortgaged the said property to Messrs. Champion and Short for a sum of Rs. 3,500 with a power of sale. In May 1892 Annie Smith died intestate, and she had never obtained her final discharge under section 59 of the Insolvency Act. In June 1892 Messrs. Champion and Short took possession of the house, land and furniture, and they have since let the house from time to time to tenants for short periods. The learned Commissioner has found that the mortgagees were aware that Annie Smith had been adjudicated an insolvent and had reasonable means of knowing that she had not obtained her final discharge. The Official Assignee stated in his petition that on the 7th September 1892 he saw a notice in the *Madras Times* whereby the house in question was advertised for sale as the property of the late Mrs. Annie Smith. On the 8th September 1892 he intervened and claimed the property free of the mortgage. The question arising for determination upon these facts was whether the mortgage was binding on the Official Assignee, and the learned Commissioner determined it in the affirmative, the ground of decision

(1) L.R., 25 Q.B.D., 262. (2) 8 M.I.A., 339.

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being that the decisions on a similar question arising under the English Bankruptcy Acts are applicable to cases arising under 11 & 12 Vic., cap. 21, that according to those decisions the after-acquired property continued in the insolvent until the Assignee interfered to claim it, and that meanwhile the insolvent could, for valuable consideration, part with it so as to give a good title to his alienee. Hence this appeal.

For the appellant it is contended (i) that the English decisions relied on by the learned Commissioner do not apply to cases arising under the Indian Insolvency Act; (ii) that assuming that they are applicable, the decision under appeal is at variance with the case of *re New Land Development Association and Gray*(1), and (iii) that according to the true construction of 11 & 12 Vic., cap. 21, s. 7, and to the decision of the Privy Council in *Kerakoose* v. *Brooks*(2) property acquired by the insolvent subsequent to the vesting order and prior to his final discharge vests at once in the Official Assignee, whether he intervenes or not, and that it is not competent to the insolvent to mortgage or otherwise alienate it.

The main question for decision is, what is the true interpretation of 11 & 12 Vic., cap. 21, s. 7, as regards the mode of vesting in the Official Assignee of property acquired by the insolvent subsequent to the vesting order and prior to his final discharge. The language of the section throws no light on the point beyond the fact that the word 'vest' is used both with reference to property already in existence and to after-acquired property. There is no doubt that property which is in existence when the insolvent files his petition vests at once in the Official Assignee, and no one but the Assignee is since competent to alienate it. In the case of subsequently-acquired property however there is this peculiarity. The insolvent being the acquirer, it must vest in him at least for an instant and then vest in the Official Assignee. The exact point for consideration is, as stated by the learned Chief Justice of the Common Pleas, this:—"Is it the "intention of the Legislature that such property should vest in "the insolvent as acquirer but for an instant and then vest in the "Official Assignee; or is it the intention that the Official Assignee "should have the beneficial interest and the insolvent should "acquire such property for his benefit in the capacity of an agent

(1) [1892] L.R., 2 Ch., 138. (2) 8 M.I.A., 339.

"so as to be competent to deal with it subject to the intervention "of the Official Assignee?"

The latter is declared to be the real intention of the Legislature in cases decided under the English Bankruptcy Acts. *Herbert* v. *Sayer*(1) and *Cohen* v. *Mitchell*(2) are the leading cases on the subject. The reasons for adopting the latter intention as the real intention are lucidly explained in the first-mentioned case by the learned Chief Justice of the Court of Common Pleas in the following terms:—"The effect of the statutory enactments "may be either to transfer immediately such property or con-"tracts from the bankrupt to the asignees, vesting the property "in the bankrupt for an instant only, or to give the assignees "the beneficial interest and to make the bankrupt acquire property "or contract for their benefit only in the nature of an agent. "The cases accord with the latter construction of the statute, "and it is most consistent with convenience; for, otherwise, "there would be no protection to persons dealing with an uncerti-"ficated bankrupt. Not only would they acquire no title by "purchases from him, but payments for such purchases, and for "all debts due to the uncertificated bankrupt would be invalidated. "The Legislature, by several statutes, have protected all such "payments by and to, and all dealings and transactions with, "the bankrupt *bonâ fide* made or entered into without notice of "the act of bankruptcy before the fiat; but there is no provision by "the statute law for such payments, dealings or transactions, after "the fiat; and the only way by which they can be rendered valid "and great confusion, inconvenience and hardship prevented, is "by adopting the latter construction, and holding that the bank-"rupt acquires the property, and contracts, for the asignees, who "may, whenever they please, disaffirm his act, but until, they do "so, his acts are all valid." It is thus clear that the English cases deal with the question as one of reasonable construction, and it appears to me that the whole of the reasoning is applicable under the Indian Insolvency Act. I see no substantial difference on the point now before us between the Indian Insolvency Act and the English Bankruptcy Acts, viz., 6 Geo. IV, cap. 16, ss. 63 and 127, 1 & 2 Will. IV, cap. 56, s. 25, and the Bankruptcy Act, 1883, ss. 44, 58 and 118. The provisions as to vesting are similar.

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(1) Q.B. 965. (2) L.R., 25 Q.B.D., 262.

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I agree with the learned Chief Justice that they are applicable under 11 & 12 Vic., cap. 21, especially as the question is one of reasonable construction to be put on similar provisions. I also agree in the opinion that the decision of the Privy Council in *Kerakoose* v. *Brooks*(1) is not an authority against their applicability, and that, on the other hand, it is a clear authority in favour of their applicability. In that case, the uncertificated Insolvent borrowed money for the purpose of purchasing goods to carry on a business; and in order to secure the advances, gave a bond and agreed in writing to execute a mortgage of the goods so purchased to the lender to secure repayment. He afterwards executed an assignment of the goods for that purpose. The business was carried on with the knowledge of, and without any objection by, the Official Assignee. The lender had never possession of the goods assigned to him by the insolvent and the same remained in possession of the insolvent until his death. The Privy Council held that the insolvent's after-acquired property was subject to the lien of the lender and that such lien was paramount to any claim of the Official Assignee under the insolvency. In their judgment the Lords of the Privy Council said :—"The Assignee's "right to the subsequently-acquired property is subject to two "qualifications. In the first place, if the insolvent has acquired "property subject to liens and obligations, then any property "taken by the assignee under that state of things is taken subject "to those charges and equities which affect the property in the "hands of the insolvent. The second qualification is this, that if "the insolvent carries on trade at a subsequent period with the "assent of the assignee of the estate under the Act, in the first "instance the property which is acquired in the subsequent trade "will be subject in equity to the charge of the creditors in that "trade, in priority to the claim of the assignee under the first "insolvency." These qualifications are enunciated with reference to the particular facts of the case, and I agree in the opinion of the learned Commissioner that they are not exhaustive.

The substantial question is whether according to the recent case of the *New Land Development Association and Gray*(2), the rule laid down in *Herbert* v. *Sayer*(3) and *Cohen* v. *Mitchell*(4)

(1) 8 M-I.A., 339.
(2) [1892], L.R., 2 Ch. D., 138.
(3) 5 Q.B., 965.
(4) L.R, 25 Q.B.D., 262.

s applicable to immovable or real property and is not limited in its scope to movable property.

This case was decided in April 1892 and does not appear to have been cited before the learned Commissioner. The facts of that case were that a testatrix devised her real estate to her nephews, William Shurley and Joseph Shurley, as tenants in common. The nephews purported to convey the estate to a land company, who, in May 1891, entered into a contract for its sale to a purchaser. The purchaser discovered before completion that in 1888 William Shurley had been adjudicated bankrupt and that he was still undischarged. The trustee in bankruptcy then intervened and claimed to be entitled to a moiety of the estate. The question for decision was whether an undischarged bankrupt could, even before the intervention of the trustee in bankruptcy, convey real estate acquired after the bankruptcy, to a *bonâ fide* purchaser for value, so as to give a good title to the purchaser as against the trustee. Whether the rule laid down in *Cohen* v. *Mitchell*(1) was not limited to goods was considered by *Chitty*, J., and by the Lords Justices on appeal. They all held that it was so limited. *Chitty*, J., referring to the argument that after-acquired real estate vests in the bankrupt and remains vested in him till the trustee intervenes and claims it, said :—"I see no justification "in the statute or the authorities for holding that the legal estate "will first vest in the bankrupt and then shift to the trustee when "he intervenes."

On appeal the Lords Justices expressed the same opinion. Lord Justice *Kay* considered that "where a bankrupt is carrying "on business and dealing with personal property, such dealing will "to some extent consume it. And if the trustee looks on and does "not intervene, then the consumption of the property goes on "as a consequence of the carrying on of the business by the bank-"rupt." He thought that it had nothing to do with real estate. Lord Justice *Lindley* said, "there is some sense in the doctrine as "to personal estate. But I have never heard it suggested by any-"body that it had the slightest application to real estate which "passes by conveyance and not by delivery." This case clearly limits the rule in *Herbert* v. *Sayer*(2) and *Cohen* v. *Mitchell*(1) to personal estate. Though there was also another ground on which

(1) L.R., 25 Q.B.D., 262. (2) 5 Q.B., 965.

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the decision was supported, I feel myself bound to adopt the proposition laid down in that case by the Court of Appeal, even assuming that it was in the nature of a *dictum*.

The property in the case before us being what is known to English law as real property, I concur in the order proposed by my learned colleague.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

1893. July 25, 26, 27. Aug. 8.

KOOLAPPA NAIK (PLAINTIFF), APPELLANT,

v.

KOOLAPPA NAIK AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation—adverse possession—Hindu Law.

The holder of an impartible zamindari died in 1822, leaving two widows and a daughter. The widows entered on the estate and having sucessfully resisted a suit for ejectment brought by the rightful heir (the present plaintiff's great grandfather) in 1824, they and the survivor of them retained possession till 1870, when the last surviving widow died, and the daughter entered. She or the Court of Wards, on her behalf, retained possession till her death, in 1882, when the first defendant came in as the nearest then surviving sapinda of the last male holder. The plaintiff, who was the son of the elder undivided brother (deceased) of the first defendant, now sued in 1891 to recover the zamindari from him :

Held, that the suit was barred by limitation.

APPEAL against the decree of T. Narayanasami Ayyar, Subordinate Judge of Madura, West, in original suit No. 26 of 1891.

Suit for possession of an estate.

The facts of the case are stated sufficiently for the purposes of this report in the judgment of the High Court.

The plaintiff preferred this appeal.

Bhashyam Ayyangar and *Desika Chariar* for appellant.

Subramaniya Ayyar for respondents Nos. 1, 4, 5 and 6.

Rajagopala Ayyar for respondents Nos. 2 and 3.

JUDGMENT.—The question in this appeal is whether the suit is barred by limitation. Vijayagopal, the last undisputed male

* Appeal No. 61 of 1892.