HANUMAYYA v. VENKATA-SUBBAYYA.

The District Judge dismissed the petition on the ground that no case had been established under section 503 of the Code of Civil Procedure, and the petitioner preferred this appeal.

*Pattabhirama Ayyar* and *Sriramulu Sastri* for appellants.

*Venkataramiah Chetti* for respondents.

JUDGMENT.—The reason assigned by the Judge for declining to appoint a receiver is that the acts complained of amount to misappropriation rather than waste, and that petitioners can hereafter institute a criminal prosecution. These are clearly not sufficient reasons. Section 503 of the Code of Civil Procedure authorises the appointment of a receiver for the preservation or better custody of property the subject of a suit. Whether property is wasted or misappropriated makes no difference for the purposes of this section. The future institution of a criminal prosecution will not enable a party to recover property that may have been misappropriated.

We cannot support the Judge's order.

It is therefore set aside and the case remanded for disposal according to law.

The costs hitherto incurred will abide and follow the result.

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## ORIGINAL CIVIL.

*Before Mr. Justice Shephard.*

1894. October 29.

*In re* ACKRILL.*

*Deceased insolvent debtor—After-acquired property—Whether it vests in his administrator or in the Official Assignee.*

The Official Assignee sold a policy of insurance on the life of an insolvent, who, after obtaining his personal discharge, died. The purchaser having bought the policy mainly for the benefit of the insolvent, paid most of the sum realised by him upon it to the Administrator-General who was about to take out letters of administration to the estate of the insolvent:

*Held*, that the Administrator-General was entitled to the proceeds of the policy in preference to the Official Assignee.

APPLICATION in insolvency. The Administrator-General and the Official Assignee appeared in person.

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* Insolvency Petition No. 75 of 1893.

JUDGMENT.—The facts giving rise to this application are as follows. Among the assets of the insolvent was a policy of insurance on his own life for Rs. 2,500, which was sold by the Official Assignee and realized Rs. 180. Shortly after the sale the insolvent, who had obtained his personal discharge, died, and the purchaser collected the amount due on the policy. It was then brought to the notice of the Administrator-General by the purchaser himself that he had not bought the policy entirely for his own benefit, but mainly for the benefit of the insolvent, and accordingly the money received on the policy *minus* the price paid for it and a small sum due by the insolvent to the purchaser was paid over to the Administrator-General. The question is whether the money rightly came to the hands of the Administrator-General or whether it is affected by the vesting order.

I think that the money must be treated as after-acquired property. By the sale the Official Assignee parted with all interest in the policy. Under the circumstances I think it is clear that the personal representative of the deceased insolvent is entitled to take and to administer the money as the assets of the deceased. This is taken for granted in the cases, and must necessarily be so, seeing that future-acquired property does not vest in the Official Assignee from the date of the filing of the petition. It is only by a proceeding subsequently taken during the lifetime of a discharged insolvent that it may be made available for the scheduled creditors when a judgment is entered up under section 86 of the Insolvency Act. See *Barton* v. *Tattersall*(1), *Ward* v. *Painter*(2). Accordingly if there is a second insolvency, property acquired by the debtor before the date of it, but after the vesting order in the first insolvency, is distributed in the first instance among the creditors in the second insolvency and can only be available to the prior creditors under a judgment in the first insolvency—*Curtis* v. *Sheffield*(3). On the death of the insolvent the Court of Chancery has, notwithstanding the insolvency, jurisdiction to administer his assets (see *per* North, J., in re *Smith*(4)), though at the same time in the administration the claim of the schedule-creditors may be admitted without obtaining an execution order under the judgment; see in re *Clagett's Estate*(5).

(1) Russ. & Mylne, 241. (2) 5 Mylne & Craig, 299. (3) 8 Sim, 176.
(4) L.R., 24 Ch. D., 672 at page 679. (5) L.R, 20 Ch. D., 637, 640.

ACKRILL *in re.*

The Insolvency Court has no jurisdiction over the legal representative of the deceased debtor—*Ex parte Welchman*(1). As compared with that case the present is an *a fortiori* case, as the provision there discussed (section 9 of the Act 5 & 6 Vic., c. 116) is not to be found in the Indian Act.

In my opinion the Administrator-General is entitled to take possession of and administer the moneys arising from the policy of insurance.

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## APPELLATE CIVIL.

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

1894. May 1.

GURUVAYYA AND OTHERS (PLAINTIFFS), APPELLANTS,

*v.*

VUDAYAPPA (DEFENDANT No. 2), RESPONDENT.*

*Code of Civil Procedure— Act XIV of 1882, ss. 244 and 258—Payment to decree-holder out of Court—Whether an order having been made under s. 258, a separate suit on the subject matter thereof lies.*

An order under s. 258 of the Code of Civil Procedure is appealable under s. 244; no separate suit lies, since the question is *res judicata* between the parties.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, confirming the decree of O. V. Nanjunda Aiya, District Munsif of Masulipatam, in original suit No. 283 of 1891.

In this case the first defendant held a decree against the plaintiff. In the execution proceedings of that decree the plaintiff put in a petition, pleading payment of Rs. 496, for which he held a receipt. The first defendant asserted that this receipt was fabricated. The District Munsif called for evidence and dismissed plaintiff's petition, because his witnesses were not in attendance. The plaintiff then filed a suit, upon his receipt, to recover Rs. 496 and Rs. 40 damages for first defendant's failure to certify the payment. The District Munsif held that the suit was barred by section 244 of the Code of Civil Procedure. Against this decision

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(1) L.R., 11 Ch. D., 48, 53.

* Second Appeal No. 1705 of 1893.