

Appellate Court that plaintiff is at liberty to prove the execution of the suit note by defendant's authority and that the case must be remanded in order that he may have an opportunity to do so. The appeal against order is dismissed with costs.

BALAYYA  
v.  
SUBBAYYA.  
—  
OLDFIELD, J.

N.R.

---

## APPELLATE CIVIL.

*Before Sir Charles Arno'd White, Kt., Chief Justice, and Mr. Justice Sankaran Nair.*

K. HAJEE ABDUL LATHEEF SAHIB AND ANOTHER  
(PLAINTIFFS), APPELLANTS,

1912,  
November 15.

v.

THE OFFICIAL ASSIGNEE OF MADRAS (DEFENDANT),  
RESPONDENT.\*

*Insolvency proceedings—Order disallowing a claim to goods seized by the Official Assignee after adjudication—Suit to set aside the order, maintainability of.*

No suit lies to set aside an order made by the Insolvent Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication.

Followed in *The Official Assignee of Madras v. Mangayarkarasu Ammal*. †

APPEAL against the judgment of WALLIS, J., in Civil Suit No. 206 of 1911.

The Official Assignee of Madras attached and took possession of certain goods in the custody of the plaintiffs alleging that the sale of such goods to them by the insolvent was a collusive and fraudulent transaction. The plaintiffs moved before WALLIS, J.,

---

\* Original Side Appeal No. 4 of 1912.

† *Appeal Against Order No. 103 of 1917.*

*Sir John Wallis, Kt., Chief Justice, and Mr. Justice Kumaraswami Sastriyar.*

1917,  
August 9.

JUDGMENT.—The point raised in this appeal was decided by one of us (the CHIEF JUSTICE) in Original Suit No. 206 of 1911 on the file of the High Court on the Original Side and the decree was affirmed in Appeal in *Abdul Latheef v. The Official Assignee of Madras*(1). Following that decision, we allow the appeal and reverse the order and restore the decree of the Munsif with costs throughout.

ABDUL  
LATHEEF  
v.  
THE  
OFFICIAL  
ASSIGNEE  
OF MADRAS.

sitting in the Insolvent Court for a declaration that the property so seized was their property and not the property of the insolvents. Their application was dismissed on the merits on the 16th August, 1910. They thereupon filed a suit on the Original Side to set aside the order. The suit was dismissed by the following JUDGMENT :—

WALLIS, J.

WALLIS, J.—“The order was made by the Insolvency Court exercising jurisdiction under section 7 which corresponds to section 102 of the Bankruptcy Act. No case has been cited in which it was ever attempted to set aside an order under the English section by a suit. No right to set aside the order by suit is given as in the case of claims under the Civil Procedure Code. The proper remedy in my opinion is by way of appeal and this is the remedy resorted to in the English cases. I hold that the plaint discloses no cause of action and dismiss it-with costs.”

The plaintiffs preferred this appeal.

*A. Krishnaswami Ayyar* for *C. P. Ramaswami Ayyar* for the appellants.

WHITE, C.J.,  
AND  
SANKARAN  
NAIR, J.

*M. D. Davadoss* and *M. K. Ramaswami* for the respondent.

JUDGMENT.—The appellants made an application in the insolvency of *A. S. Mahomed Osman Sahib & Co.* and asked for a declaration that certain goods which had been seized by the Official Assignee after adjudication, were their property and not the property of the insolvents. This application was dismissed on the merits. The appellants then brought a suit against the Official Assignee for the declaration which he had asked for in his application in the insolvency. No authority has been cited in support of the contention that such a suit will lie. In our opinion it will not.

We see no reason for interfering with WALLIS, J.'s order refusing leave to amend the plaint.

The appeal is dismissed with taxed costs.

S.V.