APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Srinivasa Ayyangar.

A. R. P. NARAYANAN CHETTIAR AND SEVEN OTHERS (PLAINTIFFS AND SIXTH DEFENDANT), APPELLANTS,

1916. August 14 and 16.

v.

K. P. V. R. VEERAPPA CHETTIAR AND FOUR OTHERS (DEFENDANTS NOS. 1 TO 5), RESPONDENTS.*

Bankruptcy—Straits Settlements Bankruptcy Ordinance—Debt contracted by a Hindu in Singapore—Adjudication of bankruptcy and discharge by the Singapore Court operating to discharge debt—Non-maintainability of a suit in India for the balance of the debt against the bankrupt or his undivided son—Liability of an undivided Hindu son, not a joint liability.

A Hindu who was domiciled in India but who carried on trade in Singapore was adjudicated a bankrupt by the Supreme Court at Singapore for debts incurred at Singapore and he eventually obtained at Singapore an order of discharge under the Straits Settlements Bankruptcy Ordinance. The plaintiff who, as one of the creditors, proved his debt and received two of the dividends due to him, was a party to the order of discharge. Under the above Ordinance a discharge operated as an extinguishment of the debt :

Held, that the extinguishment of the debt by the Bankruptcy Laws of Singapore operated as a discharge of it everywhere and the creditor had no right to sue in India the debtor and his undivided sons for the balance of the debt as if it was still subsisting.

Under the Hindu Law a Hindu son is not "jointly bound" with his father to pay the debts contracted by the father. Hence the said Ordinance under which a discharge of a bankrupt does not discharge a person "jointly bound" with him does not affect the undivided son.

Two brothers, namely, the first and third defendants in the suit, who were domiciled in India and who carried on trade in Singapore owed nearly 14,000 dollars to the firm of the plaintiffs and sixth defendant as a result of money dealings carried on at Singapore between the two parties. The two brothers were on their petition adjudicated bankrupts under the Straits Settlements Bankruptcy Ordinance by the Supreme Court at Singapore and were finally discharged on 8th August 1913.

* Appeal No. 41 of 1915.

NARAYANAN v. VEERAPPA.

bankruptcy proceedings, received two dividends in respect of their claim and were parties to the final order of discharge. Afterwards the plaintiffs brought this suit in the year 1913 against these two brothers defendants Nos. 1 and 3 and their sons defendants Nos. 2, 4 and 5, in the temporary Subordinate Judge's Court of Sivaganga in this Presidency for realizing about Rs. 32,000, stating it to be the unrealized balance of their debt and alleging that the defendants had properties in India and that the bankruptcy proceedings of Singapore did not affect these properties. Defendants Nos. 1 to 5 raised the plea that the plaintiffs' claim was included in the schedule of debts and that the discharge by the Supreme Court of Singapore operated as a discharge of the debt everywhere, by virtue of clauses (3) and (4) of section 30 of the Ordinance. They also pleaded that the receiving order made by the Singapore Court vested in the Official Assignee of that Court the moveable and immoveable properties situated in India also and that the same cannot, therefore, be proceeded against for the suit debt. Defendants Nos. 2, 4 and 5, the sons of defendants Nos. 1 and 3, pleaded in addition that they were not liable as sons to pay the suit debt as the discharge operated also in their favour as an extinguishment of the debt. The sixth defendant remained *ex parte*. A preliminary issue was raised as follows: "Whether this suit was not maintainable owing to the result of insolvency proceedings at Singapore referred to in the pleadings." The Subordinate Judge found this issue against the plaintiffs. He also held that the sons were not bound to pay the father's debts and that they were not *jointly* bound with their fathers to pay the suit debt within the meaning of clause (5) of section

---

Clause (3) of section 30 of the Straits Settlements Bankruptcy Ordinance, 1888: "An order of discharge shall release the bankrupt from all other debts provable in bankruptcy."

Clause (4): "An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein and in any proceeding that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge and may give this Ordinance and the special matter in evidence."

Clause (5): An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him or any person who was surety or in the nature of a surety for him."

30 of the Ordinance. The suit was accordingly dismissed and the plaintiffs preferred this appeal.

A. Krishnaswami Ayyar for the appellants.

C. P. Ramaswami Ayyar and *P. S. Vaidyanatha Ayyar* for the respondents.

AYLING AND SRINIVASA AYYANGAR, JJ.

JUDGMENT.—The facts are fully stated in the judgment of the Lower Court and it is unnecessary to restate them. Two points are taken for the appellant in the appeal—

First it is contended that the discharge of the bankrupts under Straits Settlements Bankruptcy Ordinance by the Singapore Court does not operate as a discharge from the debts in this country. It is conceded that the discharge operates as an extinguishment of the debt and not merely as a bar of the remedy so far as Singapore is concerned. The plaintiffs and the defendants are trading at Singapore. The debts were contracted there and were payable there. The plaintiffs proved their debts under the bankruptcy, received dividends and were really parties to the order of discharge. In these circumstances a release of the debt under the Bankruptcy Law of Singapore is a discharge of it everywhere. The fact that the parties have their domicile in this country and the defendants have some property here is immaterial. The rule is, we think, accurately stated in rule 115 of Mr. Dicey's book on the Conflict of Laws.

The next point is equally baseless and it is this : The first defendant and his brother the third defendant were adjudicated bankrupts. The second defendant is the son of the first and defendants Nos. 4 and 5 are the sons of the third. All the five are members of a joint Hindu family and they have some family property here. The contention is that the effect of the discharge is only to release the father from liability but that does not affect the Hindu Law liability of the sons to pay the debts of the father and that the creditor is entitled to sue the sons and recover the debt from out of their shares of the joint family property. This, it is said, follows from clause (4) of section 30 of the Bankruptcy Ordinance which like section 28 of the English Bankruptcy Statute declares the effect of an order of discharge. The material portion of the clause is as follows : "An order of discharge shall not release any person who at the date of the receiving order *was jointly bound* or had made any joint contract with him." The question is whether a Hindu son is *jointly bound*

NARAYANAN v. VEERAPPA.

AYLING AND SRINIVASA AYYANGAR, JJ.

with his father to pay the debts within the meaning of the section. We think not. The liability of a Hindu son to pay the debts of his father not being illegal or immoral (Avyavaharika) has been developed by judicial decisions from his pious obligation to save the father from sin, as laid down by the Hindu Law Texts. This liability as now developed is certainly not a joint liability, nor a joint and several liability as ordinarily understood in English Law; in fact it is difficult to bring it under any particular legal category of the English Law. In *Ramasami Nadan* v. *Ulaganatha Goundan*(1), which for the first time settled that the son could also be joined with the father in a suit to recover the father's debt, Sir V. BHASHYAM AYYANGAR, in his interesting argument, repeatedly admitted that the son was not jointly liable with the father. In his judgment in the Full Bench case *Periasami Mudaliar* v. *Seetharama Chettiar*(2), BHASHYAM AYYANGAR, J., treats it as settled law that the son could not be sued alone, during his father's lifetime, for recovery of a debt due by the father, though the father can be sued alone without the son. It is also settled that after the father's death a suit can be instituted on the original cause of action though judgment had been recovered against the father. These positions show clearly that a Hindu son is not jointly bound with his father.

The joinder of the son with the father in a suit to enforce payment of the father's debt is for the purpose of enabling the Court to exercise the power which the father had of selling family property including his son's share, to pay his own private debts provided they were not illegal or immoral, and to prevent the son from questioning the nature of the debt, in execution, in the event of the decree against the father being executed by attachment and sale of the family property including the son's share. There were also processual difficulties which have been removed by the present Code in case the father died before the execution of the decree and the son was not a party to the decree.

The matter may also be viewed in another way. The effect of the discharge was undoubtedly to release the defendants Nos. 1 and 3, and no suit could have been instituted against

(1) (1898) I.L.R., 22 Mad., 49. (2) (1903) I.L.R., 27 Mad., 243 (F.B.).

them. If, as already stated, no suit can be instituted against the sons alone, at any rate so long as the father is alive and the family undivided even though the father's liability is subsisting, the present suit against the sons alone must *a fortiori* be bad. This, we think, is the necessary result of the extinction of the liability of the father, for it is only so long as the liability of the father subsists that the pious obligation of the son lasts.

It was argued with some force that the power of the father to sell the shares of his sons for the payment of his debts is not a power which can vest in the assignee under a bankruptcy and it is hard on the creditors that they should be deprived of all remedy to make the shares of the sons available for the payment of the debts. Whether such a power would vest in the assignee or trustee in bankruptcy if the adjudication had been made by the forum of the domicil, it is unnecessary to consider, as that would depend on the language of the particular statute: see *Nunna Setti* v. *Chidara Boyina*(1). It is, however, clear that the adjudication and assignment of the bankrupt's property under the Straits Settlements Ordinance in this case does not operate as an assignment of immoveables, or even of moveables in India. This is really no hardship, for presumably the Singapore creditors looked to the assets there for payment. The appeal therefore fails and must be dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Krishnan.

V. C. T. N. CHIDAMBARAM CHETTIAR (PLAINTIFF),

v.

AYYASAWMI THEVAN (DEFENDANT).*

1916. August 22 and 23.

Paper Currency Act (Indian Act II of 1910), sec. 26—Promissory note payable to a person or order or bearer, legality of—Right of suit on the note.

A promissory note payable to a person or order or bearer is illegal and void under section 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note.

(1) (1902) I.L.R., 26 Mad., 214.

* Referred Case No. 3 of 1916.