

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Bakerwell.

1917,
February, 6
and 23.

S. K. MOHIDEEN KHADIRSHAW MARAIKAR (FIRST
RESPONDENT), APPELLANT,

v.

THE OFFICIAL RECEIVER, TINNEVELLY, AND ANOTHER
(PETITIONER AND SECOND RESPONDENT), RESPONDENTS.*

Provincial Insolvency Act (III of 1907), ss. 24, 26, 36 and 52—Rules—Official Receiver—Delegation of powers—Framing of schedule by Receiver—Enquiry, nature of—Order of Receiver, if judicial or final—Entry of name of a creditor in schedule—Subsequent application by Receiver to Court to expunge name—Power of Court, to entertain application.

An Official Receiver under the Provincial Insolvency Act in framing a schedule of creditors does not decide judicially or finally upon contested claims.

• Where, therefore, an Official Receiver passed an order upon the claim of a creditor of an insolvent to rank as a secured creditor under a mortgage which was disputed by another creditor, the action of the Receiver amounted only to an entry of the name of the creditor in the schedule framed under section 24 of the Act, and did not preclude the Court from entertaining an application by the Receiver under sections 26 and 36 of the Act to expunge the name of the creditor from the schedule.

APPEAL against the Order of A. EDGINGTON, the District Judge of Tinnevelly, in Original Petition No. 395 of 1915.

The appellant claimed to be a mortgagee under a mortgage bond executed by the second respondent on the 17th December 1912. The latter filed an application in the District Court of Tinnevelly under the Provincial Insolvency Act (III of 1907) to be declared an insolvent. The application was made on the 22nd October 1913, and, in the schedule submitted with the petition, the insolvent included the appellant as a secured creditor for Rs. 2,000. The claim of the appellant was disputed by another creditor of the insolvent on the ground that the mortgage was a sham transaction unsupported by consideration and was executed in fraud of the creditors of the insolvent. The Official Receiver made an enquiry and, after taking evidence adduced before him by both sides, passed an order, dated 4th November 1914, upholding the claim of the appellant to rank as

* Appeal against Order No. 58 of 1916.

a secured creditor of the insolvent. The name of appellant was accordingly included in the schedule of creditors framed under section 24 of the Act. The first respondent (who was the successor in office of the former Official Receiver who had made the previous order) moved the District Court, by a petition, dated 23rd April 1915, stating that the deed of mortgage executed to the appellant by the insolvent was a fraudulent and sham transaction unsupported by consideration, and praying that the name of the appellant and his debt should be expunged from the schedule of creditors. The District Judge held an inquiry and decided that the appellant's mortgage bond was a fraudulent transaction and declared that the document was void against the Receiver. The creditor preferred this appeal to the High Court, contending that the order of the Official Receiver was final and conclusive and that the mortgage bond in his favour was a bonâ fide transaction supported by consideration.

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C. V. Anantakrishna Ayyar and *K. R. Rangaswami Ayyangar* for the appellant.

M. D. Devadas for the respondents.

JUDGMENT.—The first question in this case relates to an order passed by an Official Receiver upon the claim of a creditor of an insolvent to rank as a secured creditor under an hypothecation bond which was disputed by another creditor. The Official Receiver received oral and documentary evidence and held that the bond was supported by consideration and was not fraudulent. His successor in office seeks to impeach the transaction notwithstanding this decision.

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JJ.

By virtue of section 52 of the Provincial Insolvency Act, 1907, and rules of this Court made thereunder, an Official Receiver has power (b) to frame schedules and to admit or reject proofs of creditors, and (f) to hear and determine any unopposed or ex parte application. Section 24 (1) directs the Court to frame a schedule of creditors and the debts proved by them, and section 25 prescribes the ordinary procedure for proof of debts. Under these provisions all persons alleging themselves to be creditors are required to produce evidence of the amount and particulars of their debts, which may be upon affidavit containing certain particulars, and the Court by order determines the persons who have proved themselves to be creditors and the amount of their debts, and then frames the schedule.

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Section 24 (3) then provides for an application by a creditor after the schedule has been framed that his name may be entered therein and section 26 provides that the Court may expunge an entry in the schedule or reduce the amount of a debt upon the application of a receiver or, in certain cases, of a creditor or the debtor; and both provisions contemplate a judicial inquiry. Having regard to these express provisions for a judicial inquiry upon the rectification of the schedule when framed, and to the absence of any such provision in relation to the framing of the schedule in the first instance, we think that the latter operation is intended, at least in general, to be an *ex parte* determination by the Court upon the evidence furnished by the alleged creditors. If this construction be correct and the sections and rules already mentioned be read together, it is clear that the power delegated to the Official Receiver is to frame the schedule after an *ex parte* examination of the evidence tendered by the alleged creditors and that he does not decide judicially or finally upon contested claims.

For these reasons we are of opinion that the action of the Official Receiver amounted only to an entry of the appellant in the schedule of creditors under section 24, and does not preclude the Court from entertaining an application under sections 26 and 36.

[Their Lordships then dealt with the evidence and, holding that the appellant's mortgage bond was a *bonâ fide* transaction supported by consideration, allowed the appeal with costs.]

K.E.
