

## APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice  
Venkatassubba Rao.

THE OFFICIAL RECEIVER, TANJORE, APPELLANT,

1922,  
December  
22.

v.

NATARAJA SASTRIAL AND FOUR OTHERS (SPECIAL RECEIVER,  
RESPONDENTS AND PETITIONER), RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), ss. 5, 57, 75—Appointment of Official Receiver—Court's power to review order and remove him and appoint Special Receiver—Official Receiver's right to appeal as an "aggrieved person" under section 75.*

A Court acting under the Provincial Insolvency Act (V of 1920) has power to review its order and can remove for sufficient cause the Official Receiver already appointed by it to administer an insolvent's estate and appoint a Special Receiver. The Official Receiver so removed has, under section 75 of the Act, a right of appeal as "a person aggrieved" by the order. *Ex parte Sidebotham, In re Sidebotham*, (1880) 14 Ch.D., 458, and *Official Assignee of Madras v. Ramachandra Iyer* (1910) I.L.R., 33 Mad., 134, applied.

In the absence of any exceptional reasons such as personal disqualifications affecting the Official Receiver, he alone should be appointed Receiver in case of every insolvency within his jurisdiction.

APPEALS against the orders of C. V. VISWANATHA SASTRI, District Judge of East Tanjore at Negapatam, in Insolvency Petition No. 3 of 1921.

The facts are given in the judgment of SPENCER, J.

*T. V. Muttukrishna Ayyar* (with *A. V. Viswanatha Sastri* and *T. V. Ramanatha Ayyar*) for respondents took a preliminary objection that an Official Receiver had a right of appeal as an "aggrieved person" under section

\* Civil Miscellaneous Appeals Nos. 307 and 308 of 1922.

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75 of the Provincial Insolvency Act only as representing the general body of creditors and not for redressing wrongs personal to himself as in the present case. *Ex parte Sidebotham, In re Sidebotham*(1), *Radha Mohan v. Ghosi Ram*(2).

*T. M. Krishnaswami Ayyar* for appellant.—The Official Receiver is an “aggrieved person.” As soon as the adjudication order was passed and he was appointed as the Receiver, the estate of the insolvent vested in him by law and he had a legal right to administer the same. Now the Judge’s order had wrongfully deprived him of that right. Section 75 expressly includes the Receiver as a person who might be “aggrieved.” See *Ex parte Official Receiver, In re Reed Bowen & Co.*(3), *Official Assignee of Madras v. Ramachandra Iyer*(4) and *Ex parte Sidebotham, In re Sidebotham*(1).

On the merits :—In this case the Official Receiver was appointed the Receiver at the time of the adjudication order. The Court has no power to review its own order and appoint another. There is no power of review under the Provincial Insolvency Act. Further, an Official Receiver once appointed cannot be removed afterwards. He is appointed by the Local Government. As soon as an adjudication order is made, the property vests in him, for the Official Receiver is the Receiver for all insolvencies arising within his jurisdiction, unless the Court otherwise directs under section 57, clause (2). The only moment when the Official Receiver can be superseded is when the adjudication order is made and a Special Receiver is appointed under section 57, clause (2). Rule 12 of the Insolvency rules expressly negatives any power in the Court to remove an Official

(1) (1880) 14 Ch. D., 478.  
(3) (1887) 19 Q. B. D., 174.

(2) (1917) 41 I. C., 96.  
(4) (1910) I. L. R., 33 Mad., 134.

Receiver after the estate had once vested in him. The proviso to rule 11 only refers to cases where the adjudication order is passed by the Official Receiver himself. Even assuming that such power of removal exists in the Court, it can only be exercised for "sufficient reasons," i.e., personal reasons affecting the Official Receiver. Here the District Judge puts it only on convenience which is not sufficient.

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*T. V. Muttukrishna Ayar* for respondents.—The Insolvency Court has power of review; see section 5 of the Act. Its provisions are general; a power of review is inherent in every Court; otherwise a wrong committed can never be rectified. Section 57, clause (2) does not refer to any particular point of time. It cannot mean that the Court has at no other time a power of removal. Otherwise the Official Receiver cannot be removed even for misconduct. The Court has general superintendence over the Receiver's administration. Rule 11 recognizes such power. Rule 12 is ultra vires if it negatives a power of removal at all times. A power of appointment includes a power of removal. See section 16 of the General Clauses Act. See also *Srimati Mathuria Debya v. Shibdayal Singh Hajari*(1). In this case the District Judge has exercised his discretion which should not be lightly interfered with. All the creditors and even the insolvent's vakil supported the appointment of the Special Receiver.

### JUDGMENT.

SPENCER, J.—The appellant is the Official Receiver SPENCER, J. of the Tanjore district. He appeals against the order of the District Judge of East Tanjore appointing a Special Receiver in Insolvency Petition No. 3 of 1921 instead of the Official Receiver, in whom the insolvent's

(1) (1909) 14 C.W.N., 252.

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property would ordinarily vest under section 57 of Act V of 1920. It appears that when the adjudication of insolvency was made, the District Judge vested the property in the Official Receiver on the 26th July 1922. The next day, at the instance of the vakil for some of the insolvents, the District Judge reconsidered his order and substituted "Special Receiver" for "the Official Receiver" in his order. Section 57, clause (2) permits the Court to make such an order for special reasons. The Official Receiver moved the Court to reconsider this second order, but the District Judge declined to do so on the 15th August 1922.

In these appeals a number of points have been raised on either side. It is contended that the Official Receiver is not entitled to appeal under section 75 and that, even if he is so entitled, the Court has given good reasons for appointing a Special Receiver in the present case, and that we should not interfere with the District Judge's discretion. On the other hand, the appellant contends that the Court having passed a final order on the 26th of July had no power under the Provincial Insolvency Act to review that order; secondly, that the rules framed under the Madras Provincial Insolvency Act, which have the effect of law by virtue of section 79, clause (3), give no power to a Court to remove an Official Receiver once appointed (vide rule 12); and, lastly, that the reasons given by the District Judge for appointing a Special Receiver are not sufficient reasons for making an exception to the general rule.

On the first point it is clear from section 75 that the Official Receiver is one of the persons who has a right of appeal if he is aggrieved by the order of a Court acting in its insolvency jurisdiction. *Official Assignee of Madras v. Ramachandra Iyer*<sup>(1)</sup> affords an instance

(1) (1910) I.L.R., 33 Mad., 134.

where the Official Assignee, who stands in a similar position to the Official Receivers in the mufassal, was regarded as a person "aggrieved" and was permitted to appeal. That case proceeded largely on the authority of an English case *Ex parte Sidebotham, In re Sidebotham*(1). It appears from the notes at page 459 that the question of the removal of the trustee was one of the matters that came up for consideration, and the learned Judges declared that a trustee in bankruptcy would be entitled to appeal from an order of the Court if he thought it unjust and that he would be a person "aggrieved" if a decision had been pronounced which had wrongfully refused him something to which he was entitled. I hold therefore that the appellant has a right of appeal.

Although the Provincial Insolvency Act does not contain any provision for reviewing orders already passed, section 5 provides that the Court—

"shall have the same powers and shall follow the same procedure as it has and follows in the exercise of its original civil jurisdiction."

I am therefore not prepared to hold that the District Judge acted illegally in altering his order after it had been passed.

Next the provision in rule 12 that "the Court may remove or discharge any Receiver or interim Receiver other than an Official Receiver" appears to have been so worded in consideration of the fact that under section 57 of the Act the power of appointing Official Receivers is vested in the Local Government and, therefore, no Court has the power to remove an Official Receiver from his office. Where the appointment of an Official Receiver to take charge of a particular insolvency is concerned, the proviso to rule 11 allows the parties to

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(1) (1880) 14 Ch.D., 458.

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apply to the Court to set aside the appointment of the Official Receiver and to ask that a Special Receiver may be appointed in his place. Even if that proviso was intended to apply particularly to cases where orders of adjudication have been made by the Official Receiver himself, unless the contrary appears, we may assume that Courts have power to make such orders from time to time as are necessary for dealing with the insolvent's estate. Under section 16 of the General Clauses Act whenever a power to make an appointment is conferred, the authority having such power must be deemed to have power also to remove any person appointed by it in exercise of that power. I therefore hold that the District Judge was legally empowered to set aside his own order appointing the Official Receiver if there were special reasons for doing so.

The reasons given in the District Judge's order are that it was better in the interest of all parties concerned that a Special Receiver residing in Negapatam should be appointed to deal with the insolvent's property. The Official Receiver was an interim Receiver before the adjudication and there is nothing to show that any personal reason existed for his being superseded. The property of the insolvents is not situate at Negapatam where the Special Receiver lives but in a village which is accessible from Tanjore as well as from Negapatam; and during the management of the interim Receiver he was leasing out the lands and doing much other necessary acts for the management of the insolvent's estate. The remuneration of Official Receivers who are paid a fixed salary by Government depends partly upon the receipts obtained by them in administering various estates in their district; and those receipts will be diminished if Special Receivers are appointed superseding the authority of the Official Receiver. The reasons

given by the District Judge and those appearing in the affidavits of the creditors are not sufficient in my opinion to outweigh the general importance of keeping all insolvencies within the control of the Official Receiver, unless very exceptional reasons, such as reasons connected with the personality of the Receiver, are put forward to deprive him of that control.

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The District Judge's order must be vacated and in lieu thereof the Official Receiver will be directed to take charge of the insolvent's estate. The appellant's costs in Civil Miscellaneous Appeal No. 307 of 1922 in this Court will be defrayed out of the insolvent's estate. There will be no order as to costs in Civil Miscellaneous Appeal No. 308 of 1922. The first respondent will bear his own costs in Civil Miscellaneous Appeal No. 307 of 1922 in this Court.

VENKATASUBBA RAO, J.—The first question to be decided is whether the Official Receiver is entitled to appeal against the orders passed. Is he “a person aggrieved” under section 75 of the Act? On the 26th July 1922 an order of adjudication was made and the Official Receiver was appointed Receiver of the property of the insolvents. On the following day the District Judge varied his order of the 26th and appointed a Special Receiver, thereby rescinding the appointment of the Official Receiver. The latter applied for the setting aside of the order made on the 27th July, and on the 15th August the District Judge passed an order refusing to reconsider his decision. The Official Receiver has filed two appeals, one against the order of the 27th of July and the other against that of the 15th August.

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Various cases were cited in the argument bearing on the interpretation of the words “a person aggrieved.” But I think it is sufficient to refer to two of them. In

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*Ex parte Sidebotham, In re Sidebotham*(1) JAMES, L.J., observed that if the Court acted on a report by the Comptroller in bankruptcy that the trustee had been guilty of a misfeasance or neglect by which the estate had sustained a loss which the trustee ought to make good, the trustee would be entitled to appeal from the order of the Court, if he thought it unjust. This observation is no doubt obiter but is entitled to great weight. The Lord Justice said, "A person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Lord ESHER, M.R., in *Ex parte Official Receiver, In re Reed Bowen & Co.*(2) referring to the definition given by JAMES, L.J., observed that the words used were "legal grievance" and not "pecuniary grievance or grievance to person or property," and further added that "a person aggrieved" must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand.

I think the Official Receiver suffered a legal grievance and he was "wrongfully deprived of something." He was removed from office and his application to reconsider the order was refused. He was entitled to say that his appointment should not have been set aside; he had a right to ask that he should be restored to office. He was aggrieved by the orders made against him.

This leads me to the consideration of the second question: can the Court remove an Official Receiver who has been appointed Receiver of an insolvent's estate

(1) (1880) 14 Ch.D., 458.

(2) (1887) 19 Q.B.D., 174.



from his office of such Receiver of that estate? The answer would depend upon the construction of section 57, clause (2).

Section 56, clause (1) and clauses (1) and (2) of section 57 run thus:—

Section 56, clause (1).—The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a Receiver for the property of the insolvent and such property shall thereupon vest in such a Receiver.

Section 57, clause (1).—The Local Government may appoint such persons as it thinks fit to be called Official Receivers under this Act within such local limits as it may prescribe.

Section 57, clause (2).—Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the Receiver for the purpose of every order appointing a Receiver or an interim Receiver issued by any such Court, unless the Court for special reasons otherwise directs.

It will be seen that an Official Receiver becomes in virtue of his holding that office, a Receiver of the property of the insolvent, if a Receiver for the property is appointed. The Court however for special reasons may otherwise direct. In my opinion the words "otherwise direct" refer not only to the point of time when the appointment of a Receiver under section 56 is made, but also the period subsequent to the appointment. That is to say, the Court may not only at the initial stage appoint a Special Receiver for valid reasons, but it may, if good grounds are shown, remove the Official Receiver appointed originally at any time whatsoever. This construction will avoid an absurdity, viz., that the Official Receiver once appointed can never be removed by the Court even though he may be guilty of misappropriation or fraud or is shown to have an interest adverse to that of the creditors of the insolvent. I am therefore of the opinion that under section 57,

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clause (2), the Court has the power to remove the Official Receiver from his office of Receiver for the property of an insolvent.

It has been argued that rule 12 of the Insolvency Rules negatives this power. I must say that there is considerable force in this argument. If this be the effect of rule 12, I am prepared to hold that it is ultra vires.

It has next been pointed out that rule 11 specifically provides for the setting aside of the appointment of the Official Receiver and for the appointment of a Special Receiver. If this be the right construction, rule 11 would be inconsistent with rule 12. I am inclined to think that the proviso refers only to the case specified in clauses (4) and (5), i.e., to the Official Receiver appointed for the property of the insolvent "in cases where the Official Receiver is empowered to make orders of adjudication." The decision of the question however does not depend on a construction of these rules but I would take this opportunity to suggest that a revision of rules 11 and 12 may be made.

The third point relates to the merits of the appeal. The Official Receiver was removed on the ground that his headquarters was at Tanjore, that there was a single Receiver appointed by the Government for the two districts, the East and West Tanjore, and that, therefore, a person in the locality should be preferred. The Government has appointed one Official Receiver for the area comprised within the two districts and if the reasons given by the District Judge should be held sufficient to appoint a Special Receiver, the reason would exist in every case and the Official Receiver could never be appointed Receiver for any property within the jurisdiction of the District Judge of East Tanjore.

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I am utterly unable to regard this as a special reason under section 57 of the Act.

I therefore agree with the order proposed by my learned brother.

N.R.

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*Before Mr. Justice Phillips and Mr. Justice Devadoss.*

SUBRAMANIA AIYAR (RECEIVER, PLAINTIFF), APPELLANT,

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CHOKKALINGA MUDALIAR AND THREE OTHERS  
(DEFENDANTS 1 AND 3 TO 5), RESPONDENTS.\*

*Civil Procedure Code (V of 1908), Sec. 64 and O. XXI, r. 51*  
—Attachment of promissory note in the hands of private person, not by actual seizure but by prohibitory order—Endorsee of note with knowledge of order—Sections 8 and 9 of Negotiable Instruments Act (XVI of 1881)—Endorsee neither “holder” nor “holder in due course.”

The proper method of attaching a promissory note in the hands of a private person is by its actual seizure as provided by Order XXI, rule 51, Civil Procedure Code, and not by the issue of a mere prohibitory order. Hence section 64, Civil Procedure Code, does not apply to such attachment. But where a prohibitory order has been made restraining the payee of a promissory note from receiving payment for it or in any way dealing with it, an endorsee from him with knowledge of such order is neither a “holder in due course” nor a “holder” within sections 9 and 8 of the Negotiable Instruments Act and he is therefore not entitled to sue on the note.

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\* Second Appeals Nos. 180 and 181 of 1922