APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, and Mr. Justice Krishnan.

ABURUBAMMAL (DEFENDANT AND GARNISHEE), APPELLANT,

v.

THE OFFICIAL ASSIGNEE OF MADRAS (PLAINTIFF), RESPONDENT.*

1923, August 21st, 23rd and 27th.

Presidency Towns Insolvency Act (III of 1909), sec 52 (2) (c)—"True owner" and "Reputed owner," meaning of—Withdrawal of consent by "true owner" to continuance of possession of "reputed owner" by posting letter—Presumption of letter reaching its destination.

"True owner" in section 52 (2) (c) of the Presidency Towns Insolvency Act (III of 1909) includes a pledgee, and where the pledgee allows the pledgor temporary or conditional use of the thing pledged, the pledgor then becomes the "reputed owner" thereof within the meaning of the section. If before the commencement of the insolvency of the pledgor the pledgee puts an end to the right of the pledgor to use the thing pledged by demanding its return according to agreement, the thing pledged cannot thereafter be said to be in his possession with the consent of the true owner so as to vest in the Official Assignee. A letter proved to have been posted to the proper address of a person must be presumed to have reached him in the absence of evidence to the contrary.

APPEAL from the order, dated 11th September 1922, passed by Mr. Justice COUTTS TROTTER in the exercise of the insolvency jurisdiction of the High Court in Insolvency Petition No. 100 of 1922, in the matter of C. Cunniyappa Mudali, an insolvent.

The facts are given in the judgment.

K. Ramanath Shenai and *K. Sanjiva Kamath* for appellant.

R. N. Aiyengar for respondent.

* Original Side Appeal No. 111 of 1922.

ABURUBAM-MAL v. OFFICIAL ASSIGNEE.

SCHWABE, C.J.

JUDGMENT.

SCHWABE, C.J.—By an agreement in writing, dated the 2nd August 1921, the insolvent purported to give to the garnishee his motor-car as security for an advance by her to him of Rs. 3,000. It was a term of the agreement that the insolvent should have the right to use the car and should keep it in good order, and deliver it up on demand. He also agreed that, if he exercised any acts of ownership over the car, he should be criminally liable, a stipulation which can have no effect in law.

The other relevant facts are that the loan was also secured by a joint promissory note of the insolvent and another, renewed on 9th November 1921, to the end of January 1922, and that by a letter, dated 10th February 1922, from her Vakil, she demanded from the insolvent under threat of criminal proceedings that the car should be returned to her. The commencement of the insolvency was in May 1922.

On these facts it is contended by the Official Assignee that he is entitled to the car free from any charge in favour of the garnishee as being at the commencement of the insolvency, with the consent of the true owner, in the possession, order and disposition of the insolvent in his trade or business, and therefore under section 52 (2) (*c*) of the Presidency Towns Insolvency Act, the property of the insolvent, divisible amongst his creditors; and it has been so held by COUTTS TROTTER, J.

Now the legal owner of the property throughout was the insolvent, but the garnishee was the owner of an equitable interest in the property. It has been held on the true interpretation of section 52 and of the same words in the English Bankruptcy Acts, that the words

"true owner" include the owner of an equitable interest, and that there can also be a reputed owner of that interest and that reputed owner can be the insolvent himself, that is, the legal owner of the property. See *The Mercantile Bank of India, Ltd., Madras* v. *The Official Assignee, Madras*(1), following the judgment of BHASHYAM AYYANGAR, J., in *Puninthavelu Mudaliar* v. *Bhashyam Ayyangar*(2), and see the English cases set out in Williams on Bankruptcy, 12th Edition, at page 217. In *Colonial Bank* v. *Whinney*(3), it was held that where there was an equitable mortgage of shares by the deposit of the share-certificates and a blank transfer, the registered shareholder remaining the legal owner, the depositee got an equitable interest, and that another person could be the reputed owner of that equitable interest.

The result is that in this case the garnishee must be taken to be the true owner of the equitable interest in this car conferred by the agreement of 2nd August, referred to above; but the car being left in the possession of the insolvent with power to use it to all appearance as though it were his own he had become the reputed owner. But it is essential for the section to apply that he should at the commencement of the insolvency be the reputed owner with the consent of the true owner. Now the question is whether the true owner was at that time consenting or not to the reputation of ownership to the reputed owner and that is a question of fact. In this case the letter of 10th February 1922 is in very plain language:

"Under instructions from Mrs. Aburubammal I call upon you to forthwith return the car which has been given as security for the amount you have borrowed from her and which you have

(1) (1916) I.L.R., 39 Mad., 250. (2) (1902) I.L.R., 25 Mad., 406.
(3) (1886) 11 App. Cas., 426.

ABURUBAM-MAL v. OFFICIAL ASSIGNEE.

taken promising to return when demanded. You have not returned the car when demanded by her. Please take notice that, if the car is not sent at once, criminal proceedings will at once be instituted against you."

SCHWABE, C.J.

I should infer from the terms of that letter that there had been a previous demand made verbally by the garnishee herself. But, however that may be, there is in this letter a very definite demand for the return of the car. The evidence is that that letter was posted, and it is quite clear that it was so posted because a certificate from the Post office to that effect is produced before the Court. It is suggested by the learned Judge that it is possible that that letter was not delivered to the insolvent and that it is possible that, although not delivered, it did not come back to the Dead Letter Office, through what the learned Judge speaks of as the vagaries of the Madras post: but the insolvent was called as a witness and he did not deny the receipt of that letter, though it is true he was not asked whether he had received it or not; and I fail to see how the learned Judge was justified in coming to the conclusion on that evidence that it had not been received, because the presumption is that a letter which is proved to be posted and posted to the right address is in fact received by the recipient. Speaking entirely for myself, I have always looked upon, and shall always look upon with the gravest suspicion the evidence of a man who comes to Court and says that he has not received the really important letters in the case, because although it is possible, I should require something more before I should be ready to find that the ordinary course of events has been departed from in so convenient a way. I must therefore find that that letter was in fact received.

If it was received there can be no doubt in my mind that there was a determination of the consent of the true owner at that date. I should add that in my view

even if that letter was not received I should incline to the view that the consent was proved to have been determined by the instructions to the vakil to send that letter and the sending of that letter by him. It is possible that after that date the consent was in some way renewed and I confess that I should like to have a very much more clear explanation than I have got why nothing was done in the matter between February 10, and May. The garnishee gives evidence, and a considerable body of evidence, that she took most active steps thereafter to take possession of the motor car and to deal with it as her own, but that evidence is not believed and we are not in a position to do anything else than to accept the learned Judge's view, that it was not acceptable evidence. But he does not hold that after February 10, there was any act by her showing consent to further possession by the insolvent, nor do I think we ought so to find. If the insolvent had come into Court and stated, "I got that letter but after that date the lady came to see me and she said, 'very well, go on using the car while I find a purchaser'" or something of that kind, that would be sufficient to say that this letter was not a final and conclusive withdrawal of consent. But I can find nothing at all in the evidence to amount to anything of that kind. That being so, I think we must take that letter demanding the return of the car under threat of criminal proceedings if not complied with, as a sufficient determination of the garnishee's consent.

In these circumstances this appeal must be allowed. In the ordinary course an order would be made directing the return of the car by the Official Assignee to the garnishee, he of course, if so advised, being entitled to redeem it, as representing the insolvent, on payment of Rs. 3,000 and interest thereon at the promissory note

ABURUBAMMAL v. OFFICIAL ASSIGNEE.

SCHWABE, C.J.

rate and costs. We are, however, informed, that the Official Assignee has spent money on the car during the time in which it has been in his possession on repairs or improvements and that it is still worth less than Rs. 3,000. He is, therefore entitled to a first charge for what he has spent on the car. Probably the best course to adopt would be that he sells the car and deducts from the sale price the amount spent by him on repairs and hands over the balance to the garnishee who will be entitled to prove as an unsecured creditor for any balance due to her. If the garnishee desires the car it is open to her to pay the amount spent by the Official Assignee on repairs and improvements of the car and have the car. She must have her costs here and below. She must elect which course she will adopt within 14 days of the Official Assignee informing her of the amount of his expenditure. There will be liberty to apply.

KRISHNAN, J.

KRISHNAN, J.—It is clear from the authorities that have been noticed in the judgment of the learned Chief Justice that in section 52 (2) (*c*) the words "true owner" include the owner of an equitable charge like the one which the garnishee has over the motor car in this case. It is also clear that the person who is really the owner of the car can be a reputed owner of the equitable charge, and that section 52 (2) (*c*) will apply to such a case as that. But there is another term in the section which has to be considered before we can apply it to the facts of this case, and that is that the car should have been in the possession of the reputed owner, in this case the insolvent, with the consent and permission of the true owner, viz., the garnishee, at the date of the insolvency. By the letter of February 10, 1922, that has been referred to by the learned Chief Justice, it was clearly intended to put an end to the

consent which the garnishee had originally given to the insolvent keeping possession of his car, and that that letter was posted to the right address there can be no doubt, because there is the certificate of posting produced, and the presumption in law is that the letter reached the hands of the addressee, who is the insolvent in this case. The insolvent, when called as a witness did not deny the receipt of the letter, neither side having put the point to him, thus the presumption remains, and we must take it, that the letter reached the hands of the insolvent before the date of the insolvency. That of course determines the original consent that had been given by the garnishee, the true owner. I do not propose to express any opinion on the question whether, when such a withdrawal of consent is not communicated to the person from whom the consent is withdrawn, such withdrawal will be effective or not, for that is a more difficult question to decide and it does not require decision in this case. I am in agreement with the learned Chief Justice that the letter was actually received by the insolvent, and that being so, the one essential condition of the section that the reputed owner must at the commencement of the insolvency have had possession or disposition of the article in question with the consent and permission of the true owner fails. If section 52 (2) (*c*) does not apply, then it is quite clear that there is no other ground on which the Official Assignee can be allowed to take this car free from the charge created by the insolvent. I therefore agree to the order proposed by the learned Chief Justice in this case.

Attorney for respondent—*V. Varadaraja Mudaliyar.*

N.R.