

*Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.*

PHULCHAND AND OTHERS (DEFENDANTS) *v.* MILLER (PLAINTIFF).\*

*Statute 11 and 12 Vic., c. 21, s. 24—Insolvent—Voluntary transfer.*

On the 12th March, 1881, a firm, the partners of which were subsequently, within two months from that date, adjudicated insolvents under 11 and 12 Vic. c. 21, suspended payment. On the night of the previous day, the 11th March, one of the creditors of the firm, the impending bankruptcy of the firm having become known, urged the latter to make over a part of their stock-in-trade as security for the debt, and to this the insolvents consented. The only pressure which appeared to have been exercised was that, on the 11th March, security was demanded from the insolvents.

*Held* that there having been no pressure which could not be resisted, and no legal proceedings having existed against the insolvents, or which they could have feared, the transaction was a voluntary transfer, and therefore void under s. 24 of 11 and 12 Vic., c. 21.

THE suit out of which this appeal arose was brought by the plaintiff as the official assignee of the estate of a firm trading at Calcutta and Cawnpore. This firm, which carried on business at Cawnpore under the style of Paramsukh-Sheolal, was adjudicated insolvent on the 26th March, 1881. The defendants in the suit were Gansham Das and Keshab Deo, the proprietors of the firm of Gansham Das-Keshab Deo, Hardat, their gomashia, and Phulchand, the proprietor of the firm of Phulchand-Makhan Lal. It appeared that on the 11th March, 1881, it became known in Cawnpore that the firm of Paramsukh-Sheolal was insolvent. On the night of that day, about 11 p.m., the firm of Paramsukh-Sheolal agreed to deliver a portion of their stock in trade to the agent of the firm of Phulchand-Makhan Lal, in part payment of a debt due by the former firm to the latter. Carts were laden with piece-goods, and were about to leave the premises of Paramsukh-Sheolal, when the gomashia of the firm of Gansham Das-Keshab Deo asked for some of the stock also as security for a hundi held by them, and accepted by the firm of Paramsukh-Sheolal, and in respect of which it was uncertain whether it had been honoured. It was accordingly agreed that the firm of Gansham Das-Keshab Deo should retain the goods, making them over to the firm of Phulchand-Makhan Lal, in the event of the hundi having been honoured. On the following day,

\* Second Appeal No. 1477 of 1883, from a decree of A Sells, Esq., District Judge of Cawnpore, dated the 31st July, 1883, modifying a decree of Maulvi Fairid-din, Subordinate Judge of Cawnpore, dated the 31st March, 1883.

the 12th March, 1881, the firm of Paramsukh-Sheolal stopped payment. Two or three days later the goods were delivered to the firm of Phulchand-Makhan Lal, the hundi having been honoured.

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The plaintiff in this suit claimed to recover from the defendants the goods in question, or their value, and damages for their wrongful detention. The Court of first instance (Subordinate Judge of Cawnpore), for reasons which it is not material for the purposes of this report to state, dismissed the suit. The plaintiff appealed to the District Judge, who held that the plaintiff was entitled to recover the goods, as the transfer of them was void under s. 24, c. 21, 11 and 12 Vic. The District Judge observed as follows:—

“Of course the delivery was the result of pressure, but virtually it must still be regarded as being an absolutely voluntary delivery. Now this delivery was certainly made within two months before the bankrupts on petition under c. 21, 11 and 12 Vic., were adjudicated insolvents (26th March, 1881). Accordingly, if made by the bankrupts, when ‘in insolvent circumstances,’ it becomes void, as against the insolvent’s assignee, under s. 24 of that statute. Now I imagine that to meet the condition indicated by the term, ‘in insolvent circumstances,’ it is not necessary that a firm should actually have stopped payment and suspended business, but that it is simply required that they should be unable to meet the demands made upon them, and this must unquestionably have been the position of the bankrupts at the time this delivery was made, for it is said to have occurred about 10 or 11 p.m., on the last night of the existence of the business. It took place on the night of the 11th March, and the firm suspended payment on the 12th. It was not a delivery made in the ordinary course of business, but a delivery in part payment to one creditor in preference to the general body; and further, as an actual transfer it dated even after the firm had suspended business. When the goods were handed over to Gausham Das, it was not an out-and-out transfer; they were simply given as security, and the actual delivery to Phulchand-Makhan Lal did not take place till some days after. I am of opinion therefore that the transfer was unquestionably void, and within the meaning of s. 24 of the Insolvency Act even fraudulent.”

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The District Judge in the event gave the plaintiff a decree against the firm of Phulchand-Makhan Lal for Rs. 1,198, the value of the goods, and dismissed the suit as against the other defendants.

The defendants against whom the suit was decreed appealed to the High Court.

Munshi *Sukh Ram*, for the appellants.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*) and Mr. *E. C. H. Greenway*, for the respondent.

The Court (PETHERAM, C.J., and BRODHURST, J.) delivered the following judgment:—

PETHERAM, C.J.—We think that this appeal must be dismissed. The question is, whether a transaction between certain insolvents, or persons who shortly afterwards were adjudicated insolvents, and one of their creditors, is void. The answer to this question depends on what are the proper inferences to be drawn from the facts. The facts are, that on the 12th March the insolvents suspended payment. On the night of the previous day, the 11th March, the creditor, the impending bankruptcy of the insolvents having become known, urged the latter to make over a part of their stock-in-trade as security for the debt, and to this the insolvents consented. Now, was this a voluntary transfer? because if it were, it is void under s. 24 of 11 and 12 Vic., c. 21. All that appears is, that on the 11th March security was demanded from the insolvents. There was no pressure which could not be resisted. There were no legal proceedings against the insolvents existing, nor could they have feared any, as they must have known that on the following day they would stop payment. Under these circumstances, we are of opinion that the transfer was a voluntary one.

*Appeal dismissed.*

*Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.*

BANDHU NAIK (PLAINTIFF) v. LAKHI KUAR AND ANOTHER (DEFENDANTS).\*

*Transfer of suit—Civil Procedure Code, s. 25—Court to which suit is transferred deciding suit on evidence taken by Court from which suit is transferred.*

Where the trial of a suit was commenced by a Subordinate Judge, and then transferred by the District Judge to his own file under s. 25 of the Civil Procedure

\* First Appeal No. 114 of 1884, from a decree of G. J. Nicholls, Esq., Officiating District Judge of Azamgarh, dated the 27th June, 1884.

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