

a document which on the face of it was a sale-deed for Rs. 60,000, sought to have it cancelled on various grounds and in the alternative claimed the Rs. 60,000. The defendants alleged that the transaction was in fact a gift and not a sale as it purported to be. This Court held that the defendants were precluded by the provisions of section 92 of the Evidence Act from proving that the transaction was different from that which it purported to be and that it was in reality a gift. Their Lordships of the Privy Council reversed this decision and held that oral evidence could be given by the defendants to prove the real nature of the transaction. Apparently their Lordships were of opinion that the case would come within the first proviso to section 92. I am unable to distinguish the present case from the principle of the ruling above mentioned. In view of that ruling I must hold that the appellant is entitled to produce oral evidence to prove her allegations. As the court below did not permit her to produce such evidence the case must be remanded to that court.

BY THE COURT.—The order of the Court is that the appeal be allowed, the decree of the court below be set aside and the case be remanded to the court below with directions to re-admit it under its original number in the register and dispose of it according to law, after allowing the parties to adduce such evidence as they may bring forward. The costs hitherto incurred will be costs in the cause.

Appeal decreed and cause remanded.

Before Mr. Justice Chamier and Mr. Justice Muhammad Rafiq.
**JAGANNATH AND OTHERS (APPLICANTS) v. LACHMAN DAS AND
 ANOTHER (OPPOSITE PARTIES)***

Act No. III of 1907 (Provisional Insolvency Act), section 36—Insolvent—Question of bona fides of transfer by insolvent—District Judge not competent to refer to subordinate court.

Held that a court exercising insolvency jurisdiction under Act No. III of 1907 has no power to refer for inquiry to a subordinate court a question arising under section 36 of the Act as to whether a mortgage executed by an insolvent was *bona fide* or not.

In this case one Lachman Das was adjudicated an insolvent on the 6th of December, 1912. He had made a mortgage of his

*First Appeal No. 31 of 1914 from an order of H. Nelson Wright, District Judge of Bareilly, dated the 20th of June, 1913.

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property on the 11th of April, 1912, and the receiver appointed in the insolvency proceedings made a report to the District Judge suggesting that this mortgage should be annulled under section 36 of the Provincial Insolvency Act, 1907. On the 23rd of January, 1913, the District Judge asked a Munsif to hold an inquiry and report if the mortgage was made *bona fide* or not. The Munsif after taking evidence reported that the mortgage had been made *bona fide*. The District Judge accepted the Munsif's finding and directed that the mortgage must stand. Against the Judge's order some of the creditors appealed to the High Court.

Babu *Purushottam Das Tandan*, for the appellants.

Dr. *Satish Chandra Banerji*, for the respondents.

CHAMBER and MUHAMMAD RAFIQ., JJ.—Lachman Das was adjudicated insolvent on the 6th of December, 1912. He appears to have made a mortgage of his property on the 11th of April, 1912. The receiver appointed in the insolvency proceedings made a report to the District Judge suggesting that this mortgage should be annulled under section 36 of the Act. On the 23rd of January, 1913, the District Judge asked the Munsif of Pilibhit to hold an inquiry and report whether the mortgage was made *bona fide* or not. The Munsif after taking evidence reported that the mortgage had been made *bona fide*. The District Judge accepted his finding and held that the mortgage must stand. The Act makes no provision for the reference of such a matter to a subordinate court. The District Judge alone had jurisdiction in the matter and should himself decide upon such evidence as may be available whether or not action should be taken to have the mortgage set aside. The District Judge should give the receiver and the creditors an opportunity of being heard in the matter before he arrives at a decision. We set aside the present order that the mortgage is to stand. No order as to costs.

Appeal allowed.