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conflicts with the illustrations which I have alluded to. Offences falling under section 323 and under section 147 of the Indian Penal Code need not be separable but distinct offences. In the present case the offence of causing hurt to Sakal Rai is distinct and apart from the offence under section 147. This view is in conformity with both Full Bench decisions arrived at before the explanation was added to section 35 of the Criminal Procedure Code and with one case of later date of this Court which is before me now, namely the case of *Anup Singh and others* (Criminal Revision No. 689 of 1911, decided on the 1st of February, 1912). Looking to the injuries inflicted I am not prepared to say that the sentences passed erred on the side of severity. The more salutary provision would probably have been to take action binding down the applicants to keep the peace, and in that case a substantive sentence might have been, without danger to the public, lighter. The application is dismissed.

Application dismissed.

APPELLATE CIVIL.

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March, 10.

Before Mr. Justice Piggott and Mr. Justice Walsh.

PITA RAM (DEFENDANT) v. JUJHAR SINGH (PLAINTIFF) AND SHANKAR SINGH (DEFENDANT).*

Civil Procedure Code (1908), *section* 11—*Res judicata—Act No. III of* 1907 *(Provincial Insolvency Act), sections* 22 *and* 46—*Insolvency Court—Application for recovery of property attached by court—Subsequent suit for same purpose.*

A person claiming as his own property attached by the Judge of an Insolvency Court as property of an insolvent may apply to the Insolvency Court under section 22 of the Provincial Insolvency Act, 1907, for a declaration of his title and for possession of the property claimed, or he may sue to recover the same in the ordinary way. But where such person has elected to pursue his remedy under section 22 of the Provincial Insolvency Act, and the claim has, after a full inquiry, been decided against him, and he has not appealed from the decision under section 43, he cannot afterwards file a separate suit with the same object. *Ram Kirpal* v. *Rup Kuari* (1), *Ex parte Swinbanks* (2) and *Ex parte Butters* (3) referred to.

*First Appeal No. 181 of 1915, from an order of Pratab Singh, Subordinate Judge of Jhansi, dated the 21st of September, 1915.

(1) (1883) I. L. R., 6 All., 269. (2) (1879) 11 Ch. D., 525.

(3) (1880) 14 Ch. D., 265.

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THE facts of this were as follows:—

The first defendant had obtained a decree against the second defendant in the year 1911, for the sum of Rs. 386-7-4. In the year 1913, the second defendant became insolvent within the jurisdiction of the Insolvency Court of the District Judge of Jhansi. No receiver was appointed, and the District Judge of Jhansi became empowered, under section 23 of the Provincial Insolvency Act, 1907, to exercise the powers of a receiver. Being set in motion by the first defendant, the decree-holder or judgement-creditor aforesaid, the District Judge as such receiver attached the property which is the subject-matter of this action, as being property of the insolvent, and it therefore vested in him as such receiver. The plaintiff, who alleged that the property was in fact his and that he was therefore "a person aggrieved," within the meaning of section 22 of the Provincial Insolvency Act, by such act of attachment, applied to the Insolvency Court for the restoration of the property to himself as the rightful owner, or in other words for an order under the said section reversing the act of attachment. After a full inquiry the District Judge dismissed this application, holding that the property was the property of the insolvent at the commencement of the insolvency proceedings. The plaintiff never appealed against this decision, as he was entitled to do, under section 46 of the Provincial Insolvency Act, but instead of this he filed a separate suit for the property in a Munsif's court. The Munsif dismissed the suit, holding that in view of the previous proceedings *in pari materiâ* it was not maintainable. The plaintiff appealed, and the District Judge remanded the case to the Munsif's court for a re-hearing. From this order of remand the plaintiff appealed to the High Court.

Munshi *Haribans Sahai*, for the appellant.

Babu *Sital Prasad Ghosh*, for the respondents.

PIGGOTT and WALSH, JJ.:—This appeal arises out of an action brought by the plaintiff in the court of the Munsif of Jhansi against two defendants for a declaration of title in respect of a varied assortment of property, including two houses, some crops, and a quantity of movable property, which he alleges to belong to him.

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The first defendant had obtained a decree against the second defendant in the same court in the year 1911, for the sum of Rs. 386-7-4. In the year 1910, the second defendant became insolvent within the jurisdiction of the Insolvency Court of the District Judge of Jhansi. No receiver was appointed, and the District Judge of Jhansi became empowered, under section 23 of the Provincial Insolvency Act, 1907, to exercise the powers of a receiver. Being set in motion by the first defendant, the decree-holder or judgement-creditor aforesaid, the District Judge, as such receiver, attached the property which is the subject-matter of this action as being property of the insolvent, and it therefore vested in him as such receiver. The plaintiff, who alleged that the property was in fact his and that he was therefore "a person aggrieved," within the meaning of section 22 of the Provincial Insolvency Act, by such act of attachment, applied to the Insolvency Court for the restoration of the property to himself as the rightful owner, or in the other words for an order under the said section reversing the act of attachment. Now it is to be observed that in accordance with the English Bankruptcy practice, a person in the position of the plaintiff in this action who is a stranger, so to speak, to the bankruptcy, and whose property has been seized wrongfully, according to his view of the case, by the receiver in bankruptcy, is not confined to the remedy given him by the Provincial Insolvency Act. He can, if he pleases, apply to the Insolvency Court, inasmuch as section 22 applies in express terms to his grievance. But he can, if he pleases, ignore the Insolvency Court and sue in a Civil Court for a return of his property in an ordinary action against a trespasser. In this particular case, the plaintiff would have been compelled to sue the District Judge, not in his capacity as such, but in his executive capacity as the receiver of the insolvent's property.

The application being made to the Insolvency Court, it was the duty of that court to entertain it and, after hearing the evidence tendered on behalf of the applicant on the one hand, and on behalf of the insolvent's estate on the other hand, to decide the issues raised both of fact and law, and to dispose of the matter by a formal order determining the rights of the parties to the subject matter of the application as in an ordinary suit.

No special regulations for procedure are contained either in the Act itself, or in the rules thereunder made by this Court, other than the provisions contained in section 47 of the Provincial Insolvency Act, which directs the Court, subject to the provisions of the Act, to follow the same procedure as it follows in the exercise of original civil jurisdiction. A proceeding which results from an application of the kind made by the present plaintiff in the Insolvency Act, and in which a question of title is raised by both sides, although it is not originated by a plaint, has otherwise all the attributes of a suit.

The evidence disclosed by the record of the hearing of the application in the court of the District Judge which is now in question shows that, after a full hearing, the court decided all the issues against the present plaintiff, and dismissed his application, holding that the property was the property of the insolvent at the commencement of the insolvency. From that decision the present plaintiff had a right of appeal under section 46 (3) of the Provincial Insolvency Act, with the leave either of the District Court or of the High Court.

The plaintiff in this suit did not in fact appeal. He fell back, however, upon his alternative remedy and instituted this suit in the court of the Munsif. The Munsif dismissed the suit upon the ground that the order of the District Judge was final unless reversed on appeal. An appeal being brought from this decision the Subordinate Judge remanded the case to the Munsif's court to be tried upon the merits. From such order this appeal is brought. The question for our determination is whether under such circumstances, when a claimant who alleges that his property has been wrongfully seized under the jurisdiction conferred upon the Insolvency Courts, and who has two alternative remedies for litigating his grievance, can be allowed, after having adopted one alternative and having failed upon the merits, to begin again and to raise the same issues in another court. So stated, the proposition would seem to admit of but one answer. The question, which is an important one, is, however, by no means free from difficulty. The case was well argued, and all the relevant authorities were brought out in review before us.

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We have come to the conclusion that the decision of the Munsif was right and that it can be justified on several grounds. In the first place, we think the decision of the Insolvency Court amounts to conclusive proof as to the title in respect of the specific things claimed by the applicant, not merely as against him, but absolutely, within the meaning of section 41 of the Evidence Act. The Insolvency Court and the receiver have powers of a very special character given them by the Insolvency Act. An adjudication has the effect of invalidating transactions of a certain character which are otherwise unimpeachable. It curtails and restricts many of the rights, and all the ordinary remedies, which persons who have had dealings with the insolvent would otherwise have enjoyed. It compels them to come in and prove for their debts or to lose them altogether. It discharges the insolvent from all outstanding liabilities by a division of his property. It imposes penalties upon conduct which in persons who are solvent is not punishable. It vests certain classes of property in the receiver which do not belong to the debtor at all. By advertisement of notices it calls upon persons who have claims to come in and range themselves amongst other creditors for the decision of their claims and the distribution of their shares. It determines the rights of persons claiming either under or against the debtor absolutely, without reference to the wish or action of the debtor himself, from the date of the adjudication. It extinguishes future liabilities and determines all existing ones. In the case of such applications as the one now under consideration it clearly determines, once for all, so far as relates to any property alleged to be the debtor's, the character of such property so as to bind the creditors and any one claiming through or under the debtor. No doubt it is difficult to see why a person with a good claim to property believed to be the debtor's, who is able to satisfy the court that he had no knowledge of the proceedings in the Insolvency Court, is to be debarred from asserting his claim in a Civil Court and to be bound by a decision of the Insolvency Court given in his absence. On the other hand, it is difficult to see what kind of decision in insolvency jurisdiction was contemplated by section 41 of the Evidence Act, if it was not such a decision as that given by the District Judge in the case now before us.

In a clear case of fraud relief could always be given in an action for damages.

It was urged before us that the decision of the District Judge was analogous to a decision in execution proceedings under order XXI, rule 58, and that being so the claimant had a right to bring a suit in a Civil Court by analogy to order XXI, rule 63. This appears to have been the main ground of the decision of the Subordinate Judge now under appeal. In our opinion this contention is based upon a fallacy. The two things may be analogous, but they are certainly not the same. The application to the Insolvency Court is not a summary proceeding in which a mere right to possession is in question. It is in the nature of a suit, arising out of an executive act, which raises the question of the title to the property of the debtor on the one hand, and of those claiming adversely to him on the other.

In the second place, we think that the action as framed is totally misconceived. It is brought for a declaration of title against a creditor who never claimed to have any title or interest whatever in the property, and also against the debtor, who by becoming insolvent has lost all he e ver had. Such a declaration would be a mere *brutum fulmen*. It could not bind the receiver, as he would be no party to it, and even if decreed against a receiver appointed by the court, we are of opinion that the Insolvency Court would be bound to ignore it. A suit brought for the purpose of obtaining a useless declaration of that kind really amounts to an abuse of the process of the court.

In the third place we are of opinion that upon general principles of law, apart from section 11 of the Civil Procedure Code, a litigant who has voluntarily elected to submit to the decision of one out of two alternative courts which are open to him, cannot turn round, after an adverse decision, and litigate the same matter in another court. The principle is the same as that laid down by the Privy Council in *Ram Kirpal* v. *Rup Kuari* (1), where it was held that on general principles, apart from *res judicata*, an interim judgement between the parties as to part of a proceeding is binding upon both in the same proceeding. Upon much the same principle the Court of Appeal in England has at least

(1) (1883) I. L. R., 6 All., 269.

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twice decided that a party who, like the plaintiff in the present case, has once come in and invited the decision of the Court of Bankruptcy upon the merits of a claim, cannot afterwards turn round and question its jurisdiction. (Vide, *Ex parte Swinbanks*, 11 Ch. D., 525 : *Ex parte Butters*, 14 Ch. D., 265.) When the merits of a dispute have once been finally determined it is the duty of the courts to make an end of the litigation.

Though it is not necessary for the decision of this case to determine the point, we are further of opinion that an application heard and determined in the way this application was disposed of is in fact a suit. It admittedly lacks some of the attributes of an ordinary suit. But the absence of the ordinary preliminaries required of a suit in a Civil Court by the provisions of the Civil Procedure Code is due to the special character of the Insolvency tribunal in which the present plaintiff elected to litigate his claim, and to the absence of any special rules corresponding to those which are found in the Code. There is no definition of the word "suit," probably because it is not possible to frame one which will satisfactorily survive every test. But on the other hand it is not difficult to decide in the vast majority of cases whether a proceeding is in fact a suit or whether it is merely a summary or subsidiary application. The authorities show that judicial bodies have varied in their method of treating the question. But every case must turn upon its own circumstances. In the case of *Abdulla Khan* v. *Kanhaya* (1) a decision in an execution proceeding was held to be a bar to a subsequent suit. In the case of *Venkata Chandrappa Nayanivaru* v. *Venkataramа Reddi* (2), when the proceeding was held not to have been a suit it was said:—"Suit is a very comprehensive term. It includes any proceeding in a court of justice by which a party pursues the remedy which the law gives him. If a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit." Applying this test, with which we see no reason to quarrel, to the proceeding now in question, we hold that it was a "suit" within the meaning of section 11 of the Civil Procedure Code and that that section affords an answer to the present suit.

(1) (1912) 14 Indian Cases, 751. (2) (1898) I. L. R., 22 Mad., 256.

On these grounds we allow the appeal, and, restoring the order of the Munsif, dismiss the action with costs here and below.

Appeal decreed.

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Before Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

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May, 15.

JAGRUP SAHU AND OTHERS (PETITIONERS) *v.* RAMANAND SAHU AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 *(Provincial Insolvency Act), section* 18—*Sale-deed executed benami by the insolvent—Receiver entitled to remove the so-called purchasers from possession of properties sold—Act No. IX of* 1908 *(Indian Limitation Act), schedule I, article* 91.

Where insolvents, in order to save their property from their creditors, had executed fictitious sale-deeds thereof in favour of relations, but never gave, and never intended to give, the so-called purchasers possession, it was *held* that such transaction was no bar to the receiver taking possession of the property comprised in the said sale-deeds as the property of the insolvents. *Petherpermal Chetty* v. *Muniandy Servai* (1) referred to.

THE facts of this case were as follows:—

In November, 1913, Ramanand and Naurangi Lal, two brothers, applied to be adjudicated insolvents. The order of adjudication was, however, not passed until the 25th of August, 1914, when a receiver applied to the court for possession of the property of the insolvents. In this he was resisted by certain persons who claimed to be purchasers of the insolvents' property under three sale-deeds, dated the 1st of July, 1911, the 13th of July, 1911, and the 3rd of August, 1911. The court went into the matter, examined the evidence adduced on both sides, and came to the conclusion that the sale-deeds were mere fictitious and nominal documents executed by the insolvents in favour of their relatives, not as real transactions, but merely as a blind to prevent their property being availed of by their creditors; that the insolvents themselves were in possession, and that the so-called purchasers had never got possession. The court accordingly ordered that the receiver should take possession of the property and deal with it as required by law. Against this order an appeal was preferred to the High Court by three of the alleged purchasers.

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* First Appeal No. 144 of 1916, from an order of E. Bennett, District Judge of Gorakhpur, dated the 3rd of July, 1916.

(1) (1908) I. L. R., 35 Calc., 551.