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against whom the order was made without a remedy. I am clearly of opinion that the order of the learned Judge in the present case was not a "judgement" within the meaning of that expression in the Letters Patent.

It is next contended that this Bench is entitled to revoke the sanction granted by the learned Judge sitting alone under the provisions of clause (6) of section 195 of the Criminal Procedure Code. That section provides as follows :—"Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate." Clause (7)—"For the purposes of this section every court shall be deemed to be subordinate only to the court to which appeals from the court would ordinarily lie." In my opinion a single Judge of the High Court sitting alone cannot be said to be an authority subor linate to any other Bench of the High Court. A Judge sitting to transact work properly allotted to him is the High Court itself just as any other Bench. I do not think that the provisions of clause (7) help the appellant. Clause (7) clearly applies to the application for revocation of sanction being made to a court superior to the court which granted the sanction, nor do I think that it can be said that appeals "ordinarily lie from a single Judge to a Bench of Judges." I would allow the preliminary objection and dismiss the appeal.

BANERJI, J.—I concur and have nothing to add. I agree in the order proposed.

BY THE COURT.—We dismiss the appeal with costs. We fix the costs at Rs. 100. The stay order is discharged.

Appeal dismissed.

Before Mr. Justice Walsh and Mr. Justice Stuart.

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October, 24.

JHABBA LAL (APPLICANT) *v.* SHIB CHARAN DAS AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 (*Provincial Insolvency Act*), *sections*, 22, 46—"*Person aggrieved*"—*Right of appeal—Receiver—Necessary parties.*

Held that one creditor out of the general body of creditors of an insolvent has no *locus standi* in an application in the Insolvency court made against the estate of the insolvent, represented by the receiver, by a person claiming

*First Appeal No. 22 of 1916, from an order of L. Johnston, District Judge of Meerut, dated the 1st of December, 1915.

adversely to the insolvent's estate. He has, therefore, no right of appeal against the decision on such an application. Ex parte *Sidebotham* (1) and *Balli* v. *Nand Lal* (2) referred to. *Ketokey Churan Banerjee* v. *Sreemutty Sarat Kumari Debee* (3) distinguished.

THE facts of this case were as follows :—

One Jetha Mal was adjudicated insolvent, and the court nazir was appointed receiver. Thereafter the petitioning creditor, Jhabba Lal, applied to the Insolvency Court for the attachment of certain property as being the property of the insolvent. It did not appear that Jhabba Lal had ever moved the receiver to take steps for attaching the property. The court granted Jhabba Lal's application, and directed the receiver to attach the property, which was done. Two sons of the insolvent then came forward with an application, claiming that the property belonged to them and not to the insolvent and praying for the removal of the attachment. They made Jhabba Lal as well as the receiver parties. The court allowed the claim in respect of a part of the property. The claimants appealed as to the part disallowed and Jhabba Lal appealed as to the part allowed.

Mr. *M. L. Agarwala*, for the appellant, Jhabba Lal : —

Section 46 of the Provincial Insolvency Act gives a right of appeal to any person aggrieved by an order made by a court exercising insolvency jurisdiction. As being one of the creditors, the appellant is a person aggrieved by the decision of the lower court releasing part of the property from the attachment. The effect of that decision is that the property available to the creditors, and consequently the proportionate share of the appellant, is diminished and wrongful loss is caused to him. Apart from the question whether the appellant was or was not a proper party to the proceedings in the lower court the fact remains that he was brought before the court and made a party to the proceedings by the claimants themselves, and the lower court has passed against him a decision against which he has a material grievance. He is, therefore, "a person aggrieved" within the meaning of section 46. In the case of *Ketokey Churan Banerjee* v. *Sreemutty Sarat Kumari Debee* (1) the meaning of the same expression occurring in section 86 of the Presidency Towns Insolvency Act

(1) (1879) 14 Ch. D., 458. (2) (1916) 33 Indian Cases, 778.
(3) (1916) 20 C. W. N., 395.

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was considered; and in *Haji Jackeria Haji Ahmed* v. *R.D. Sethna* (1), which was a case under the analogous provisions of section 73 of the Indian Insolvent Act, 1848 (11 and 12 Vict., C. 21) the same question was considered. In the case of *Balli* v. *Nand Lal* (2), which arose out of facts similar to those of the present case, the *locus standi* of the creditor at whose instance the attachment had been made or his right to appeal as being a person aggrieved by the order releasing the attachment was not questioned at all.

Dr. *Surendra Nath Sen*, for the respondents, was not heard.

WALSH, J.—The question raised by this appeal is whether one creditor out of the general body of creditors has a *locus standi* in an application in the Insolvency Court made against the estate of the insolvent represented by the receiver, by a person claiming adversely to the insolvent's estate. In my opinion he has no *locus standi* and no right of appeal to this Court against a decision in such an application.

The question is of some practical importance, and inasmuch as there is no authority in this Court, it seems desirable to set out the grounds of our decision at some length. The appellant before us, Jhabba Lal, was petitioning creditor in an insolvency petition against Jetha Mal, the result of which petition was that Jetha Mal was adjudicated insolvent and the court nazir was appointed receiver.

About the 19th of July, 1915, the appellant applied to the Insolvency Court for the attachment of the property now in dispute as being the property of the insolvent. Whether he had any right to do so unless the receiver had declined to interfere is immaterial, but the Insolvency Court made an order on the 23rd of August, 1915, that the receiver should attach the property, and, on the 6th and 7th of September following, it was duly attached. We think, however, that unless the receiver has refused to move and so given a decision by which each of the general body of creditors has been aggrieved, there is no provision in the Act which enables a creditor to make such an application to the Insolvency Court, and that his proper course is to apply to the receiver to

(1) (1909) 12 Bom., L. R., 27.
(2) (1916) 33 Indian Cases, 773.

set him in motion. If the receiver declines to move, then the creditor can apply to the court under section 22 against the act or decision of the receiver. On the 11th of September, 1915, an application was made, out of which the present appeal arises. It was made by two persons, Shib Charan Das and Har Charan Das, a minor, by his next friend, sons of the insolvent. It was called an objection, and was in form an objection to the attachment and was a claim by these two persons, who were not creditors, and who were therefore strangers to the insolvency, that the property was theirs and not the property of the insolvent. That was clearly an application allowed by section 22. By the application the receiver was made a party to it. That was right, and indeed necessary. The court ought to insist upon the receiver being made a party to any proceeding under section 22.

The petitioning creditor, the present appellant, was also made a party. That was clearly wrong. From the moment of adjudication and the appointment of a receiver the property of the insolvent vests in the receiver. All questions which would otherwise arise between the insolvent and a person who is either a creditor or a stranger to the insolvency, must be decided between such person and the receiver as representing the estate.

Creditors have a right to prove for their own claims, a right to supply the receiver with information relating to claims which the insolvent's estate may have against other persons; and they have a right to bring the receiver's conduct and decisions before the court if he declines to act or neglects his duties, but they have no legal interest in the insolvent's estate and no title to represent it. If they want the receiver to litigate the question, they can supply him with funds or indemnify him against the costs in the event of failure, if he is unable to proceed for want of funds; but it would be contrary to the whole scheme of the Insolvency Act, if any one out of a large number of creditors was at liberty to start all kinds of questions and set the law in motion independently of the receiver. The proper course, if a creditor is desirous of supporting the receiver and securing a decision in his favour, is to attend the court to watch the proceedings, or obtain the permission of the court to intervene as *amicus curiae*.

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In this case I note that the present appellant was not only made a party, but the applicant or objector, as he called himself, asked for costs against him. His attendance therefore, to resist any order for costs being made against him, was necessary and proper, and the court ought to have dealt with him on that footing and dismissed him from the application giving him his costs. The court passed a decree partly in favour of the two applicants. From that decision the present appeal is brought, not by the receiver, but by the petitioning creditor. I am of opinion that such a person has no right of appeal at all. If he was not a proper party to the application, he clearly could not appeal except of course in the event of an order for costs being made against him which ought not to have been made. He is not a "person aggrieved" under section 46. He has no interest of his own in the property in dispute, which, if it belonged to the insolvent, is vested in the receiver. The question is well settled by the decisions in England. In *Ex parte Sidebotham* (1) Lord Justice JAMES giving judgement in the Court of Appeal in a case which is precisely in point laid down the law as follows:— "It is said that any person aggrieved by any order of the court is entitled to appeal. But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. 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." This observation applies precisely to the position of the present appellant. Again, "if there has been any misfeasance on the part of the trustee or the bankrupt, any creditor has a right under section 20 to apply to the court. The person who made such an application would be in the position of a litigant and would have a right of appeal from any order which the court might make." That applies precisely to the position of a creditor who under section 22 complains against an act of the receiver. Reliance was sought to be placed upon a decision of my brother PIGGOTT and myself in *Balli* v. *Nand Lal* (2). In that case

(1) (1879) 14 Ch. D., 458 (2) (1916) 33 Indian Cases, 778.

leave was necessary and had not been obtained. We looked into the merits and declined to grant leave. The question now before us did not arise. Furthermore in that case no receiver had been appointed. It is perhaps as well to point out that where no receiver has been appointed and the Judge is acting as receiver under the provisions of the Act, the better course in a case where a dispute arises is for the Judge to make an order appointing a particular creditor to represent the interests of the general body of creditors. There is nothing in the Act providing for such a case, but it is obvious that the general body of creditors have to be represented and it is difficult to see how the Judge, who has to determine the dispute, can do it himself.

In *Ketokey Churan Banerjee* v. *Sreemutty Sarat Kumari Debee* (1), there is a dictum of MUKERJEE, J., apparently in favour of the appellant. I say, apparently, because if the learned Judge meant to refer to a person who had already made a proper application or had been properly brought before the court, I agree with him, and the English authorities cited by him bear out that proposition, but they have no bearing upon the case before us. The appeal in that case was an appeal against the decision of the official assignee or receiver.

An attempt was made before us to justify the position of the appellant here as being that of "a person aggrieved by any act or decision of the receiver." He clearly was nothing of the kind. The attachment had been ordered by the court and the receiver had carried out the order. The applicants alleged themselves to be aggrieved by that and the present appellant supported the act of the receiver. If the receiver fails to appeal when he ought, a creditor may clearly apply to the court under section 22, but the appeal if brought by the order of the court must be an appeal by the receiver.

There would be strong reasons upon grounds of public policy for maintaining this view even if the Act were not clear upon the point. To hold otherwise would enable any creditor to harass and delay the winding up by frivolous and irresponsible appeals, and would enable the insolvent by scheduling a fictitious creditor with a trivial claim which had no real existence to provide himself with a tame litigant who could raise questions

(1) (1916) 20 C. W. N., 995.

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and get them decided adversely to the general body of creditors. Decisions in such matters must be passed against some body representing the estate and must be such as will bind the estate in law.

Fortunately no harm can be done by dismissing this appeal upon this purely technical but important point. The applicants have appealed in another appeal against the order on the merits which was passed in their favour. That appeal has been returned to the Insolvency Court for re-hearing and we have pointed out to the Insolvency Court that the receiver is a necessary party to the litigation, which at the re-hearing can be determined on the merits in favour of either one party or the other.

We, therefore, dismiss the appeal with costs.

STUART, J.—I concur.

Appeal dismissed.

Before Mr. Justice Walsh and Mr. Justice Stuart.

1916
October, 30.

AMIR KAZIM (APPLICANT) *v.* MUSI IMRAN AND OTHERS (OPPOSITE PARTIES)*.

Act No. IV of 1912 (Indian Lunacy Act), section 72—Lunatic—Appointment of guardian of the person—Wife of lunatic not necessarily excluded by section 72.

Section 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a person is entitled to inherit a part of the property of a lunatic, and is therefore benefited by his death, to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one.

The section, however, does not absolutely preclude such an appointment and in some cases the appointment of, for instance, the wife of the lunatic may be the most suitable, notwithstanding that she is one of the heirs. *Fazal Rab* v. *Khatun Bibi* (1) distinguished.

THIS was an appeal arising out proceedings taken under the Indian Lunacy Act, 1912, for the appointment of a guardian to the person and the property of a certain lunatic. The facts of the case are fully stated in the judgement of the Court.

Mr. *B. E. O'Conor*, for the appellant.

Dr. *S. M. Sulaiman*, for the respondents.

WALSH and STUART, JJ. :—Five connected appeals are brought before us, as to two of which we direct an adjournment, namely,

* First Appeal No. 152 of 1915, from an order of E. C. Allen, Additional Judge of Moradabad, dated the 1st of May, 1915.

(1) (1892) I. L. R., 15 All., 29.