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arbitrator with authority to sell the property under the arbitration provisions and would be able to sell the property under the terms of the award.

[The last objection dealt with an alleged error on the face of the award, in ignoring the admitted priority of certain debts, but the Court held that this objection failed, and continued :—]

The learned Subordinate Judge has written an able judgement and we are in entire agreement with the findings recorded by him. The appeal is dismissed with costs.

WALSH, J.—I have read the judgement of Mr. Justice DALAL and agree with it, and with the order proposed.

Appeal dismissed.

Before Mr. Justice Daniels and Mr. Justice King.

BIJAI INDAR SINGH (OBJECTOR) v. CHARAN SINGH
(OPPOSITE PARTY).*

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Act No. V of 1920 (Provincial Insolvency Act), sections 4, 28, 34—Insolvent—Permission to institute suit against undischarged insolvent not inclusive of permission to execute the decree.

Inasmuch as the entire property of an insolvent, when once an order of adjudication has been made, vests in the court or the receiver, it follows that permission given to a creditor to institute a suit against an insolvent does not imply permission to execute the decree which may be obtained against the property of the insolvent.

THE facts of this case sufficiently appear from the judgement of the Court.

Mr. G. W. Dillon, for the appellant.

Dr. Kailas Nath Katju, for the respondent.

DANIELS and KING, JJ. :—This appeal arises out of an order passed in execution proceedings against a

* Second Appeal No. 433 of 1926, from a decree of J. Allsop, Additional Judge of Aligarh, dated the 2nd of December, 1925, confirming a decree of Mirza Nadir Husain, Second Additional Subordinate Judge of Aligarh, dated the 21st of March, 1925.

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declared insolvent. It appears that the decree-holder obtained the permission of the insolvency court under section 28 of the Provincial Insolvency Act, 1920, to institute a suit against the insolvent and a decree was obtained against the insolvent on the basis of a promissory note executed on the 5th of September, 1920, i.e., some years after the date on which he was adjudged an insolvent. The decree-holder subsequently applied to execute the decree by the attachment of certain movable property belonging to the insolvent. The judgement-debtor raised an objection that his property was not liable to attachment so long as he remained an undischarged insolvent. Under section 28(2) the effect of the order of adjudication is to vest the whole of the property of the insolvent in the court or in the receiver, and under sub-section (4) any property acquired by the insolvent after the date of the order of the adjudication also vests in the court or the receiver. It seems clear, therefore, that this property which the decree-holder seeks to attach does not belong to the judgement-debtor and is not liable to attachment under section 60 of the Code of Civil Procedure because it does not belong to the judgement-debtor but vests either in the court or in the receiver. In the present case it appears that there is at present no receiver, since the receiver who was appointed originally, died and no one has been appointed in his place. The property, therefore, vests in the court.

It has been argued that as the court gave permission for the institution of this suit, the permission for instituting the suit should be held to cover permission for executing any decree obtained in the suit.

Under section 28 the permission of the court is required for any "suit or legal proceeding" against

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an undischarged insolvent, and we hold that permission to institute a suit does not necessarily cover permission to execute a decree obtained in that suit. A court might grant permission to institute a suit in order to obtain a judicial determination regarding a debt but it would not necessarily follow that the court would sanction the execution of a decree by sale of property in the possession of the judgement-debtor. This would prejudice the rights of scheduled creditors to share rateably in the assets.

In the present case it appears that sanction for the institution of the suit was, strictly speaking, unnecessary since the suit was not "in respect of any debt provable under this Act." The debt was incurred on the basis of a promissory note executed after the date of the adjudication and so does not fall within the definition of a "debt provable under the Act" under section 34. But whether such permission was required or not, it is clear that the property which the decree-holder seeks to attach does not belong to the judgement-debtor but vests in the insolvency court and therefore is not liable to attachment. Although the insolvency court itself has raised no objection, we cannot permit the decree-holder to attach property which does not belong to the judgement-debtor but vests in the court. We accordingly allow the appeal and declare that the property is not liable to be attached in execution of the decree. In view of the fact that the debtor incurred the debt while he was an undischarged insolvent we make no order as to costs.

Appeal allowed.