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passed. As the proceedings were not conducted in the proper form, we direct that the parties should bear their own costs of these proceedings throughout.

Appeal allowed.

REVISIONAL CRIMINAL.

1926 January 26.

Before Mr. Justice Sulaiman and Mr. Justice Mukerji.

EMPEROR *v.* KAMLA PAT AND OTHERS.*

Act no. XLV of 1860 (Indian Penal Code), section 379—Insolvency—Removal of property from custody of official receiver by persons alleging themselves to be owners—Act No. V of 1920 (Provincial Insolvency Act), sections 56 and 68—Theft.

Where property has been taken possession of by a receiver in insolvency in the *bonâ fide* belief that it is property belonging to the insolvent, any person who takes such property from the possession of the receiver is guilty of theft, even though he may claim to be the owner thereof. *Chunnu* v. *King-Emperor* (1) and *Grey* v. *Woogramohan Thakur* (2), referred to.

THE facts of this case were as follows:

One Malkhan Singh was adjudicated an insolvent and the official receiver took charge of his property. The receiver on the 30th of March, 1925, attached certain agricultural produce, believing it to be the property of the insolvent, and put it in charge of one Badlu. From the possession of Badlu the property was removed by Kamla Pat and others on the 3rd of April, 1925. In respect of this removal Kamla Pat and others were charged with and convicted of theft. They appealed to the Session Judge by whom the convictions and sentences were confirmed.

* Criminal Revision No. 500 of 1925, from an order of E. L. Norton, Sessions Judge of Jhansi, dated the 25th of July, 1925.

(1) (1911) 8 A.L.J., 656. (2) (1901) I.L.R., 28 Calc., 790.

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They then applied in revision to the High Court.

Dr. *N. C. Vaish*, for the applicants.

The Assistant Government Advocate (Dr. *M. Wali-ullah*) for the Crown.

The judgement of MUKERJI, J., after reciting the facts, thus continued:—

Two points have been raised in this Court. The first is that the act of the applicants was done honestly, although they had a knowledge of the fact that the property had been attached by the receiver.

* * * * * *

The first question is the one which has to be decided and there seems to be no clear authority on the point. In the case of *Chunnu* v. *King-Emperor* (1), it was held that where a certain movable property had been attached in execution of a decree as belonging to a judgement-debtor and the judgement-debtor himself took possession of the property, he was guilty of the offence of theft. The whole question is whether the receiver was in possession of the property and if the applicants removed that property from the possession of the receiver, even under an assertion of *bonâ fide* claim of title, they ought to be held liable under section 379 of the Indian Penal Code. The gist of the offence is that a person shall not remove from any person's possession without his consent any movable property. The remedy in such a case of the true owner would be to move the court under section 68 of the Provincial Insolvency Act and not to take the law in his own hand.

Under section 20 of the Insolvency Act the court may appoint a receiver before an adjudication. The receiver acquires all the powers which were conferable on the receiver appointed under the Code of Civil Procedure of 1908.

(1) (1911) 8 A.L.J., 656.

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Under section 28 of the Insolvency Act the property, on adjudication, vests in court or in the receiver. It follows that on an adjudication the property of the insolvent vests in the court and if there is no receiver, in nobody else.

Mukerji, J.

Under section 56 of the Provincial Insolvency Act where a receiver is appointed the property vests in such receiver.

Under section 57 the Local Government may appoint such persons as it thinks fit as official receivers. The present case is that of an official receiver.

Under section 58 of the Act where there is no receiver, the court has all the rights as to exercise all the powers conferred on a receiver. It will be noticed therefore that the receiver comes in only to aid the court in the performance of its duties.

Under section 59 of the Insolvency Act it is the receiver's duty to realize the property of the debtor with all convenient speed. To realize the property of the debtor the receiver has actually to seize that property and to reduce it into his possession. In this particular case the receiver, believing that the property in question was the property of the insolvent, reduced it into his possession by sending his man to seize the property and by appointing a guard. On the facts, therefore, there can be no doubt that the receiver was in possession of the property when the same was removed by the applicants.

It has been urged that the court has no jurisdiction to dispossess any person who is not the insolvent or who does not claim under him, from the possession of any property. This may be at once conceded. But the question is not of title but of possession.

When a court takes possession of another man's property, under the *bonâ fide* belief that it is the property of the insolvent, it is entitled to keep possession till the title of the claimant is established. Similarly the receiver, acting under a *bonâ fide* belief that it is the property of the insolvent which he is seizing, is entitled to be maintained in possession till the title of the claimant is established. The law provides an easy remedy against the action of the receiver by the provisions of section 68 of the Provincial Insolvency Act. That was the remedy of the applicants, and not to seize the property which had been reduced into possession by the receiver.

Mukerji J.

If we look to the broad principles of administration we shall see that the view taken in this case by me is in accordance with public policy. If the receiver be treated as having no better position than that of the insolvent himself, that is to say, the position of a private person, it would be impossible for him to administer the estate of an insolvent. Any property that he seizes may be taken away from him, and instead of the party taking away the property from the possession of the receiver, coming to court for his remedy, the receiver will be obliged to go to court for his remedy. It would be impossible for him to administer the estate of the insolvent. Section 68 of the Insolvency Act will become a dead letter.

I hold that the applicants acted contrary to law in removing the property from the possession of the receiver and were consequently rightly held to be guilty of the offence under section 379 of the Indian Penal Code. I would, therefore, dismiss the application in revision.

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SULAIMAN, J.—I concur in the conclusion, though with some difficulty. The case of *Chunnu* v. *King-Emperor* (1), related to a case where property had been attached in execution of a decree. In my opinion there is a slight difference between the case of an attachment in execution of a decree and a seizure by a receiver in an insolvency matter. In the case of an attachment the decree-holder moves the court in the first instance and furnishes an inventory duly verified describing the property sought to be attached in detail. The attachment is effected through an officer of the court at the risk of the decree-holder and if it subsequently turns out that an innocent third person has suffered loss in consequence of that attachment the party who moves the court is civilly liable therefor. Furthermore, in cases of movable properties under order XXI, rules 43 and 44, it is specifically provided that they are to be attached by actual seizure or by a proclamation, both of which have the legal effect of passing the possession of the property into the custody of the court. Therefore when a property has been attached under an order of a civil court in execution of a decree, possession has legally passed to the court. Any person who takes possession of that property subsequent to that attachment would obviously be guilty under section 379 of the Indian Penal Code, if he knew that the property had been attached and was therefore necessarily acting dishonestly. In the case of a receiver under the Insolvency Act there can be no question of attachment whatsoever. By operation of section 28 the property vests in the receiver himself. It is, therefore, not necessary for him to attach any property in the sense in which a decree-holder who has no interest in the property of the

(1) (1911) 8 A.L.J., 656.

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judgement-debtor before attachment proceeds to do so. The position of the receiver is for the time being that of a true owner and he is certainly entitled to obtain possession. Section 59 authorizes him to realize with convenient speed the property of the debtor, which may in ordinary cases include a power to obtain possession of the property peacefully. Section 56 contains a proviso that nothing in the Act shall be deemed to authorize the court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove. There is no express provision in the Act laying down that a receiver has power to seize the property of another person other than the insolvent, provided he acts *bonâ fide* in the belief that the property is part of the assets of the insolvent. Under these circumstances it may be urged that the initial seizure of the property of a third party by the receiver was not lawful or justified. In a case where a receiver had been appointed by the High Court in appeal and he was dispossessed, the Calcutta High Court thought that the person offending would be guilty of contempt of court, vide *Grey* v. *Woogramokun Thakur* (1). In a number of cases where the party acts fraudulently it may be possible to bring the case within the purview of section 206 of the Indian Penal Code or, where there is an obstruction, under section 183 of the Indian Penal Code. But I would have imagined that if the receiver had no lawful authority to dispossess a true owner from his property, if he professed to do so and the true owner did not recognize his dispossession and retained possession, it would be difficult to hold that the true owner was guilty of theft.

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(1) (1901) I.L.R., 28 Calc., 79.

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I realize, however, that the general policy of the law would be defeated if it were to be held that any person can defy a receiver in insolvency and refuse to recognize a seizure made by him. Under section 68 the person aggrieved has power to apply to the court requesting it to revise or modify the act or decision of the receiver. Furthermore, the offence as defined in section 378 of the Indian Penal Code is really an offence against possession and not so much against title. The result is that under certain circumstances it is possible to convict the owner himself of having stolen his property where he has removed it dishonestly from the custody of another person lawfully in possession for the time being. It, therefore, seems immaterial to consider how the possession of the receiver arose originally, provided it can be held that at the moment when the accused dispossessed him, the receiver was lawfully in possession of it, actual or constructive. In the present case it has been found by the courts below that the accused were aware of the fact that the crops which they removed had really been seized by the receiver's agent. On the day when they removed the crops the receiver was in lawful possession of it, though his initial taking possession might not have been quite justified. Under these circumstances I agree with my learned brother that an offence under section 379 of the Indian Penal Code was committed. When the accused were aware of the fact of the previous seizure by the receiver it cannot be urged that they were not acting dishonestly merely because they were putting forward a *bonâ fide* claim of title.

BY THE COURT.—The application is dismissed.

Application dismissed.