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be properly decided after the plaint has been admitted. We accordingly allow this revision, and, setting aside the order of the court below, send the case back to that court with directions to restore it and dispose of it according to law.

APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

HARNAM CHANDRA (DEFENDANT) v. RUP CHAND
AND OTHERS (PLAINTIFFS).*

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January, 26.

Provincial Insolvency Act (V of 1920), section 28(2)—Leave of court for filing proceedings against insolvent's property—Creditor filing appeal against a declaratory decree that certain property did not belong to the insolvent—Leave not necessary—"Remedy against the property"—Official receiver a necessary party.

The words "commence any suit or other legal proceeding" in section 28(2) of the Provincial Insolvency Act must be read in conjunction with the governing clause—"have any remedy against the property of the insolvent in respect of the debt". So, a proceeding to obtain a mere declaratory decree but no immediate remedy against the property of the insolvent was held not to require the leave of the court under that section.

The sons of *S* sued for and obtained a declaratory decree that certain property did not belong to *S* and was not attachable in execution of *H*'s decree against *S*. Shortly before the date of this decree *S* had been adjudicated an insolvent. *H* filed an appeal against *S* and the sons of *S* in respect of the declaratory decree. *Held* (1) that leave of the insolvency court was not necessary for the filing of the appeal inasmuch as the effect of the appeal, if allowed, would only be declaration that the property was attachable under the appellant's decree, which would not amount to a remedy against the property of the insolvent within the meaning of section 28(2), but if the appellant thereafter proceeded to attach the property, leave would be necessary; (2) that the official receiver, as representing the estate of the insolvent, should be impleaded as a party.

*First Appeal No. 34 of 1920, from a decree of Shamsul Hasan, First Subordinate Judge of Saharanpur, dated the 15th of September, 1928.

Messrs. *P. L. Banerji* and *G. S. Pathak* for the appellant.

Messrs. *Binod Behari Lal*, *Nanak Chand*, *P. M. L. Verma* and *Vishwa Mittra*, for the respondents.

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MUKERJI and BENNET, JJ. :—This is a first appeal by defendant No. 1, who is a creditor who holds a decree against defendant No. 4, one Shib Singh. The plaintiffs in the suit were four sons of Shib Singh and they sued for and obtained a declaration that certain property was not saleable or attachable under certain decrees, one of which was the decree of the appellant against Shib Singh. The decree of the court of first instance was made on the 15th of September, 1928, and prior to that date, on the 24th of August, 1928, Shib Singh was adjudged an insolvent. The appellant has named Shib Singh as one of the respondents, and he has not made the official receiver a party. A preliminary objection is taken on behalf of certain respondents, firstly to the effect that the appellant had not had the permission to bring this appeal, and secondly that the official receiver should be made a party as representing the estate of Shib Singh. In regard to the first objection learned counsel for respondents argues that section 28(2) of the Provincial Insolvency Act states that "On the making of an order of adjudication . . . no creditor . . . shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding except with the leave of the court and on such terms as the court may impose." Learned counsel argued that this appeal was a legal proceeding and as the appellant had not got the permission of the insolvency court, therefore the appellant was not entitled to commence this appeal. We consider, however, that the words "commence any suit or other legal proceeding" must be read in conjunction with something else in the subsection, for if they were read independently, they would prevent a creditor from indulging in any litigation at all.

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The expression in the sub-section which must govern this clause is "have any remedy against the property of the insolvent in respect of the debt". The present appeal is not an appeal of that nature. All that the appellant asks is that a declaratory decree should be set aside. That declaratory decree was that certain property was not attachable under the decree of the appellant. The effect of the appeal being allowed would be a declaratory decree that the property was attachable under the decree of the appellant. That, we consider, would not be a remedy against the property of the insolvent within the meaning of section 28. No doubt, if the appellant having obtained a decree on appeal from this Court proceeded to apply for execution, then he would be met with the bar of section 28(2), but that section does not bar the present appeal.

The next point which was urged was the second objection that the official receiver should represent the estate of the insolvent Shib Singh as a respondent. We consider that this objection is sound and, as the learned counsel for the appellant has undertaken to apply today to make the official receiver a party, we adjourn this appeal for a sufficient period for the official receiver to be brought on the record. Costs will abide the result of the appeal.

*Before Justice Sir Shah Muhammad Sulaiman and
Mr. Justice Young.*

1932
January, 28.

ANANDI DEVI (PLAINTIFF) v. MOHAN LAL AND OTHERS
(DEFENDANTS).*

Transfer of Property Act (IV of 1882), section 122—Gift—Acceptance may be either express or implied—No presumption of acceptance—Knowledge and possession evidencing acceptance.

Acceptance of a gift, required by section 122 of the Transfer of Property Act, may be either express or implied.

*First Appeal No. 101 of 1928, from a decree of Farid-ud-din Ahmad Khan, Subordinate Judge of Mainpuri, dated the 8th of December, 1927.