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CHATTERJI, J.

Such a person was not treated as a tenant after the term of the lease. The position therefore is quite different from the position in the present case. As to the observations in the case of *Ramji Ram* v. *Bansi Raut*(1) it must be remembered that the facts were quite different and it will be a manifest abuse of judicial precedents to apply isolated dicta from a judgment to a case where the facts are in essential particulars different.

S. A. K.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Ross, JJ.

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JAGDISH NARAIN SINGH

v.

MUSSAMMAT RAMSAKAL KUER.*

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 28(4)—*after-acquired property, whether insolvent can deal with, before intervention of Receiver.*

Section 28(4), Provincial Insolvency Act, 1920, provides :

" All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or Receiver, and the provisions of sub-section (2) shall apply in respect thereof."

Held, that the section is subject to the proviso that after-acquired property can be dealt with by the insolvent before the intervention of the Receiver in insolvency.

Ali Mahamad Abdul Hussain Vohora v. *Vadi Lal Devchand Parikh*(2), *Chhote Lal* v. *Kedar Nath* (3), and *Cohen* v. *Mitchell*(4), followed.

Ma Phaw v. *Maung Ba Thaw*(5), not followed.

*Appeal from Original Order no. 247 of 1927, from an order of Rai Bahadur Amrita Nath Mitra, District Judge of Gaya, dated the 16th of August, 1927.

(1) (1925) I. L. R. 4 Pat. 105.
(2) (1919) I. L. R. 43 Bom. 890.
(3) (1924) I. L. R. 46 All. 565.
(4) (1890) 25 Q. B. D. 262.
(5) (1926) I. L. R. 4 Rang. 125.

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ROSS, J.

Appeal by the insolvent.

The facts of the case material to this report are stated in the judgment of Ross, J.

K. P. Jayaswal (with him *Janak Kishor* and *Dhyan Chandra*), for the appellant.

S. N. Rai, *Gaindhari Prasad Singh* and *Shiveshwar Dayal*, for the respondents.

Ross, J.—This is an appeal by Jagdish Narain Singh, an insolvent, against the order of the District Judge of Gaya refusing an application to reconsider an order of attachment issued against him in respect of a sum of Rs. 4,000 deposited in the High Court as security for the costs of an appeal to His Majesty in Council. It appears that on the 15th of September, 1908, and again on the 2nd of May, 1911, the appellant executed mortgages in favour of Kesari Mull and others upon which a decree was obtained on the 23rd of December, 1915. The appellant was adjudged insolvent on the 15th of September, 1916. The mortgagees executed their decree in 1922. The receiver in the insolvency refused to intervene and it was found that it was not necessary for him to do so. The appellant contended in these execution proceedings that the execution was barred by time and the learned Subordinate Judge on the 18th of July, 1922, decided in his favour; but this decision was reversed by the High Court on the 17th of July, 1923. The appellant desired to appeal to the Privy Council against this order, but the receiver refused to provide the necessary security or to become a party to the appeal. The appellant then obtained Rs. 4,000 from his step-brother Haldhar Prasad Singh and the appeal was presented. On the 11th of December, 1925, Kesari Mull purchased in execution of the decree two properties which had been mortgaged to him, namely, Reola and Abhaipur, both of which were subject to a prior mortgage; and a compromise of the appeal pending before the Privy Council was attempted to be entered into in February 1926 by an agreement

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between the appellant and the decree-holder and Haldhar Prasad Singh by which Haldhar Prasad Singh undertook to pay off the prior charges on both the villages amounting to Rs. 4,200 and to purchase Reola for Rs. 9,000 to be made up of this Rs. 4,200, the Rs. 4,000 deposited as security for costs of the appeal and Rs. 800 in cash, while the decree-holder retained Abhaipur which thus became free from encumbrances.

The contesting respondent to this appeal is Mussammat Ramsakal Kuer and her interest arises in this way. On the 21st of April, 1905, a will was executed by Jagarnath Prasad Singh, the father of Ramsakal Kuer by which he left all his properties to his step brothers one of whom was the father of the appellant, and to his nephew. The will also provided that the legatees should pay a sum of Rs. 7,000 to the testator's daughter, that is, Rs. 1,400 each. The testator died in 1905 and his will was proved in 1907. The appellant's original share in this debt was only Rs. 700, but this has accumulated on account of interest, the rate of which was fixed in the will itself. On the 19th of August, 1916, Mussammat Ramsakal Kuer presented a petition in the insolvency claiming that she was a secured creditor in respect of Rs. 4,562-10-0 and stating that she would stand upon her security. Again on the 8th of April, 1926, she filed a petition as a secured creditor applying for the attachment of the Rs. 4,000 in question in this appeal and, on her application, the learned District Judge directed that the Registrar of the High Court be requested not to pay this money to Kesari Mull unless and until he satisfies the Court that the money had not vested in the receiver under section 28(4) of the Provincial Insolvency Act and this order has in effect been confirmed by the order now under appeal.

The first contention on behalf of the appellant is that as the respondent claimed to be a secured creditor, she is not entitled to attach this money and must proceed against the property. It is clear, however,

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on a perusal of the will that no charge was created thereby and that Ramsakal Kuer is not a secured creditor and she is therefore, in my opinion entitled to proceed against this personal property.

The second point taken was that, on the decisions, section 28(4) of the Act is subject to the proviso that after-acquired property can be dealt with by the insolvent before the intervention of the receiver and that the property in question in this appeal has been so dealt with. Reliance was placed on the decisions in *Ali Mahmad Abdul Hussein Vohora* v. *Vadi Lal Devchand Parikh*(1) and on *Chhote Lal* v. *Kedar Nath*(2). These decisions apply the doctrine of *Cohen* v. *Mitchell*(3) to which statutory effect has been given in England by section 47(1) of the Bankruptcy Act 1914; and what was decided was that after-acquired property of an insolvent before discharge can be transferred by him provided the transaction is bona fide and for value and is completed before the intervention of the official assignee. A different view was taken in *Ma Phaw* v. *Maung Ba Thaw*(4) where it was held that the insertion of the word 'forthwith' in section 28(4) of the Act had the effect of sweeping away these earlier decisions which were based on the language of section 7 of the Act to consolidate and amend the law relating to insolvent debtors in India (11 & 12 Victoria, c. 21) where the words were "do vest in the official assignee." But, with all respect, I am unable to hold that the language of the present section is stronger than that of the old section 7. I should hold that this money was not liable to attachment if it had been effectively parted with before the receiver intervened. But that does not seem to be the fact. Kesar Mull has withdrawn from the compromise because of the attachment; and the argument of the learned Counsel for the appellant therefore fails on the facts.

(1) (1919) I. L. R. 43 Bom. 890.
(2) (1924), I. L. R. 46 All. 565.
(3) (1890) 25 Q. B. D. 282.
(4) (1926) I. L. R. 4 Rang. 125.

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The last argument was that this money is not liable to attachment as being money which is in the hands of an Officer of the Court, under the decisions referred to in Halsbury's Laws of England, Vol. 14, page 94 and under the provisions of section 28 (5) of the Provincial Insolvency Act read with section 60 of the Code of Civil Procedure. The argument is that this is not property over which the insolvent has a disposing power which he may exercise for his own benefit. This argument is clearly sound so far as it goes. There are two possible contingencies. The appellant may succeed in his appeal in the Privy Council, or he may fail. If he fails then this Rs. 4,000 will have to meet the expenses of the successful respondent; but if he succeeds, the Rs. 4,000 will be at his own disposition and ought therefore to be available for his creditors and he should be prevented from dealing with it in any such manner as is proposed by the compromise referred to above. The proper order to make therefore would be an order attaching the Rs. 4,000 subject to the result of the appeal. If the appellant becomes entitled to a return of this money as the result of the appeal, the attachment will take effect, but not otherwise. A limited attachment of this kind was made in *Kabuthan* v. *Subramanya*(1). There will be no costs of the appeal.

DAS, J.—I agree.

APPELLATE CIVIL.

Before Das and James, JJ.

KUMAR KAMAKHYA NARAYAN SINGH

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v.

Dec., 12.

AKLOO SINGH.*

Mesne profits, application for the ascertainment of—limitation.

An application for the ascertainment of mesne profits, being an application in the suit itself, is not governed by any provision of the Limitation Act.

*Appeals from Original Decree nos. 11, 15 and 17 of 1926, from a decision of Babu Ashutosh Mukharji, Subordinate Judge of Hazaribagh, dated the 7th August, 1925.

(1) (1886) I. L. R. 9 Mad. 203.