off against the interest and no further interest will be allowed to the plaintiffs. The amount found payable on account of mauza Jamuawan, Tauzi no. 7708, should be paid by the defendant no. 1 within six months from the date of the decree of this Court. The defendant no. 1 must also pay the costs awarded to the plaintiffs by the decree of the Subordinate Judge and also the costs of this Court in appeal no. 141 of 1926 which appeal is hereby dismissed. In the event of the failure on the part of the defendant no. 1 to pay the amount on account of principal and interest and costs within six months from this date, she will be debarred from her right of redemption which will be extinguished and the plaintiffs will thereafter be put in possession of mauza Jamuawan, Tauzi no. 7708. Appeal no. 13 is allowed in part but there will be no order for costs.

ADAMI, J.—I agree.

*Appeal no.* 141 *dismissed.*

*Appeal no.* 13 *allowed in part.*

## APPELLATE CIVIL.

*Before Adami and Wort, JJ.*

JOKHIRAM SURAJMAL FIRM

*v.*

CHOUTHMAL BHAGIRATH.*

1930.

*April, 24.*

*Provincial Insolvency Act,* 1920 (*Act V of* 1920), *sections* 20, 37, 51 (1) *and* 56—*adjudication annulled—effect of order —debtor reverts to original position—application by the receiver necessary in order to give effect to section* 51 (1)—*debt owing to debtor sold before annulment—"property of the debtor", what is—original debt, whether vests in receiver after annulment—section* 37—*ad interim receiver, whether debtor's property ipso facto vests in—sections* 20 *and* 56.

*Appeal from Original Order no. 15 of 1929, from an order of Rai Bahadur Amrita Nath Mitra, District Judge of Manbhum, dated the 17th January, 1929.

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When an order of adjudication is annulled, the debtor reverts to the position as he was before the insolvency.

*Bailey* v. *Johnson* (1), referred to.

Section 51 (1), Provincial Insolvency Act, 1920, provides :

" Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition."

*Held*, that in order to give effect to the section it is necessary for the receiver to make an application for the proceeds; they do not ipso facto belong to the receiver or to the estate of the insolvent.

Section 37 of the Act lays down;

" Where an adjudication is annulled, all sales and disposition of property and payments duly made, and all acts theretofore, done, by the court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the court may appoint."

Where, therefore, before the order of annulment, a debt owing to the debtor by a third person was sold up, *held*, that the only property of the debtor at the date of the annulment was the sale-proceeds, and not the original debt, and that, therefore, all that vested in the receiver was the sale-proceeds and not the debt.

An ad interim receiver appointed before adjudication under section 20 of the Act has not all the powers of a receiver appointed after adjudication under section 56; in the former case the property of the debtor does not vest in the receiver until and unless the court makes an order under section 20 by which the court may, in its discretion, direct him to take immediate possession of the property or any part thereof.

Appeal by the auction-purchasers.

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

*Sir Sultan Ahmed* and *N. N. Ray*, for the appellants.

(1) (1872) L. R. 7 Exch. 263.

*S. C. Mazumdar*, for the respondents.

WORT, J.—On the 24th February, 1926, one of the creditors of Gurudat presented an insolvency petition against him praying that he be adjudged insolvent. It appears that the Bengal-Nagpur Railway owed a sum of about Rs. 6,000 to Gurudat and it is that sum of money which is the subject-matter of this appeal. On the 16th June, 1926, the respondent decree-holders made two applications in the Subordinate Judge's Court for execution against the property of the judgment-debtor. In this Court they are represented by respondents 3 and 4. On their application an attachment was made of this sum owed by the Bengal-Nagpur Railway and in the hands of the Railway Company at that time. I might say that at the date of the application for attachment the sums were unliquidated; that is to say, the exact amount which was owed by the judgment-debtor had not been determined. On the 27th July, 1926, the Subordinate Judge of Chaibassa wrote to the Railway Company authorizing them to pay over the money to the judgment-creditors. On the 14th September, 1926, there was an application for the sale of this undetermined debt. On the 12th February, 1927, the petition in insolvency was dismissed; and a few days later an appeal was filed. On the 1st April, 1927, the debt owed by the Bengal-Nagpur Railway was brought to sale and purchased by the appellants for the sum of Rs. 5,750 and the proceeds, it appears, were distributed between the creditors. On the 8th November, 1927, the appeal in the insolvency matter came before this Court. The appeal succeeded and Gurudat was adjudged insolvent. Under section 43 of the Provincial Insolvency Act and on the 14th June, 1928, for not having complied with the order of the Court, the insolvency was annulled; and then on the next date which is material and which was the 17th July, 1928, the executing court wrote to the Bengal-Nagpur Railway

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authorizing them to pay over the sum owed by the Railway Company to the appellants who were, as I have stated, the purchasers. It is to be noted that when the annulment was made under section 43 of the Provincial Insolvency Act no order was made by the Court as to the appointment of a receiver of the property of the insolvent. Therefore by reason of the provisions of section 37 of the Provincial Insolvency Act the property of the judgment-debtor reverted to the judgment-debtor. Now on the 1st August, 1928, this omission was sought to be remedied by an application to the District Judge whereupon he made an order appointing a receiver of the property of Gurudat, the judgment-debtor, and on the 19th November, 1928, an application was made to the District Judge which is the subject-matter of this appeal. The learned Judge dismissed the appellants' application which was in substance an application objecting to the distribution of this sum which had now been determined as amounting to Rs. 6,095-15-0 amongst the creditors.

The first point which is raised by Sir Sultan Ahmed on behalf of the appellants is that once the order of annulment having been made and no order appointing a receiver of the property of the judgment-debtor having been made at the same time, the Court had no jurisdiction to remedy that omission as it purported to do on the 1st August, 1928. Now that is perhaps a question of some difficulty; but it seems to me that the matter is determined on different considerations. On behalf of the respondents it is argued that by reason of section 28 of the Provincial Insolvency Act the property of the judgment-debtor vested in the receiver and consequently this debt which was owed by the Bengal-Nagpur Railway vested amongst the other property, if any, of the insolvent. But the answer to that is this that the annulment of the insolvency was made on the 14th June, 1928, and there is abundant authority for the proposition that when such annulment is made, the debtor reverts

to the position as he was before the insolvency. Section 37 of the Provincial Insolvency Act is for purposes of this point similar to section 29 of the Bankruptcy Act, 1914, and section 81 of the old Bankruptcy Act of 1869 and on that section the proposition of law which I have just stated was laid down by the Exchequer Chamber in the case of *Bailey* v. *Johnson* (1). Chief Justice Cockburn in the course of his judgment stated as follows: "The effect of section 81 is, subject to any bona fide disposition lawfully made by the trustee, prior to the annulling of the bankruptcy, and subject to any condition which the Court annulling the bankruptcy, may by its order impose, to remit the party whose bankruptcy is set aside to his original situation."

But although, as I have stated, that proposition of law is fully established, it does not quite dispose of the question which comes before us. This was, as we know, a sale in execution and section 51(*1*) of the Provincial Insolvency Act makes this provision with regard to such matters:

> "Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition;"

and sub-section (*3*) also provides that a person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver. An argument is placed before us on behalf of the respondents on sub-section (*3*) of section 51 which in its turn is based upon a statement made by the learned District Judge to the effect that it is admitted that the appellants were benamdars of some of the creditors in the insolvency. The learned Judge appears to come to the conclusion on that alleged admission that they had knowledge of the insolvency and, therefore, could not be said to have made this purchase in execution in good faith. On this point I should like to

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add that it is pointed out by Sir Sultan Ahmed that there is no evidence whatever of the fact which is stated to be admitted by the learned District Judge and consequently there is no evidence at all in the case of a lack of good faith by the appellants; but it is unnecessary to decide that question because I think that the first sub-section to section 51 disposes of the matter. For the purposes of the argument we will assume for the reasons which I have given that the bankruptcy was not annulled (although in fact it was) on the 14th June, 1928. Now that being so, what would be the effect of this sale in execution in the absence of any application by the receiver for the proceeds of the execution? It is to be noted that the words used in section 51 (*1*) are these:

"no person shall be entitled to the benefit of the execution against the receiver."

There is no suggestion in that section that the sale is null and void and that the title obtained in the property purchased in execution does not vest in the purchaser. In other words, in order to give effect to the section, it is necessary for the receiver to make an application for the proceeds; in other words, they do not ipso facto belong to the receiver or to the estate of the insolvent.

Now that being so, even assuming that the insolvency was not annulled, the purchasers being the appellants before us when they purchased on the 1st April, 1927, obtained a good title to this debt. That being so, they were, to use a colloquial expression 'the owners of the debt.' A reference to section 37 of the Provincial Insolvency Act will indicate what property would vest in the receiver, if in fact the order which the learned Judge made on the 1st August, 1928, was an order which was made with jurisdiction. The relevant portion to section 37 is as follows:

"Where an adjudication is annulled, all sales and disposition of property and payments duly made, and all acts theretofore done, by

the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint."

Now this sale having been carried out on the 1st April, the only properties of the debtor properly so-called were the proceeds of the sale, namely, Rs. 5,750 and not the debt of Rs. 6,000 odd which was owed by the Bengal-Nagpur Railway. It stands to reason, therefore, that assuming that the order of the 1st August was made with jurisdiction, the debt of Rs. 6,000 did not vest in the receiver. That, in my judgment, is the short answer to the decision which has been come to by the District Judge. In my judgment, the order of the learned District Judge was wrong and should be reversed.

Another point, however, before I leave the case, as argued by the learned Advocate on behalf of the respondents is to this effect that although he may be wrong as regards the vesting in the receiver, having regard to the fact that the insolvency was annulled and there was an ad interim receiver appointed on the 13th March, 1926, the debt vested in him. A reference to section 20 of the Provincial Insolvency Act will show that a receiver appointed under that section does not have all the powers but it is necessary for the Court to make an order under that section in which the Court in its discretion may direct him to take immediate possession of the property or any part thereof. There is, therefore, a very considerable difference between that section and section 56 which is the section under which jurisdiction is given to the appointment of the receiver after adjudication and that section provides that on the appointment of the receiver such property shall thereupon vest in such receiver. The answer, therefore, to the argument is that on the appointment of the receiver in March, 1926, this property did not vest in the receiver. In my judgment, the learned District Judge was wrong and the objection which was put forward by the appellants should have prevailed. It is, therefore,

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directed that the Rs. 6,095-15-0 be paid over to the appellants.

The appeal is allowed with costs.

ADAMI, J.—I agree.

*Appeal allowed.*

WORT, J.

## APPELLATE CIVIL.

*Before Adami and Wort, JJ.*

CHAMRU SAHU

*v.*

KANAK SINGH MUNDA.*

1930.

*April, 28.*

*Chota Nagpur Tenancy Act*, 1908 (*Beng. Act VI of* 1908), *section* 256—*holding recorded as "maurusi khunt-katti"—evidence showing tenant as Munda admitted—finding that tenancy was "mundari khunt-katti"—evidence, whether wrongly admitted.*

Section 256, Chota Nagpur Tenancy Act, 1908, provides;

"Where a record-of-rights has been finally published under section 83 of this Act or under sub-section (2) of section 183A of the Bengal Tenancy Act, 1885, or amended under section 254 of this Act, the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such entries; and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any court to show that such tenancy is a Mundari khunt-kattidari tenancy."

Where, therefore, the entry in the record-of-rights showed the holding in question as "maurusi khunt-katti" and the lower appellate court admitted evidence which showed that the tenant was a Munda and, relying upon that evidence, held that the tenancy was a Mundari khunt-katti.

*Held*, that the mere fact that the holding was not recorded as a Mundari khunt-katti was in itself sufficient to exclude evidence under section 256 and that, therefore, the evidence was wrongly admitted.

*Appeal from Original Order no. 290 of 1929, from an order of H. R. Meredith, Esq., Judicial Commissioner of Chota Nagpur, dated the 31st August, 1929, reversing an order of Babu Gopal Chandra De, Munsif of Ranchi, dated the 18th February, 1929.