The conclusion at which I have arrived is, therefore, that the appeal must be allowed, the decision of the Subordinate Judge set aside and the suits decreed with costs.

JAMES, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Khaja Mohamad Noor, J.

CHOUTHMAL BHAGIRATH

v.

JOKHIRAM SURAJMAL.*

1932.

November, 5.

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 37, *significance of*—"*as the court may, by order in writing, declare*", *meaning of*—*words, whether govern the vesting of the property in the debtor only*—*vesting order, whether must be passed simultaneously with the order of annulment.*

Section 37 of the Provincial Insolvency Act, 1920, lays down:—

"(1) Where an adjudication is annulled, all sales and dispositions 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, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the court may, by order in writing, declare....."

Held, (*i*) that the words "as the Court may, by order in writing, declare" govern the vesting of the property in the debtor only and they mean that the vesting of the property in him, in the absence of any other person being appointed by the Court, shall be subject to any condition which the Court may declare and that in the absence of any declaration of condition it will vest in the debtor unconditionally;

(*ii*) that, therefore, in the absence of appointment of any person by the Court, the property of the debtor would, on the annulment of the insolvency, revert to him;

* Miscellaneous Appeals nos. 210 and 217 of 1930, from the orders of H. R. Meredith, Esq., I.C.S., District Judge of Manbhum-Sambalpur, dated the 9th August, 1930, and 15th August, 1930, respectively.

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Bailey v. *Johnson*(1), *Flower* v. *Lyme Regis Corporation*(2) and *Maung Hme* v. *U Po Seik*(3), followed.

(*iii*) that an order directing the debtor's property to vest in someone need not, however, be passed simultaneously with the order of annulment.

Venugopalachariar v. *K. Chinulal Sowcar*(4), distinguished.

Jethaji Peraji Firm v. *Krishnayya*(5) and *Roop Narain* v. *King King & Co.*(6), referred to.

Where, therefore, the Court annulled the adjudication on the 14th June, 1928, and by a subsequent order, dated 1st August, 1928, directed the debtor's property to vest in the receiver appointed by the Court, *held*, that after the order of annulment the Court did not cease to have jurisdiction in the matter and that his vesting order was valid and operative.

Appeals by the creditors.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

P. R. Das (with him *S. M. Mullick* and *S. C. Mazumdar*), for the appellants.

Sir Sultan Ahmad and *N. N. Ray*, for the respondents.

KHAJA MOHAMAD NOOR, J.—These two appeals arise out of the same insolvency proceedings. The appellant in appeal no. 210, Chouthmal Bhagirath, applied on the 24th February, 1926, that one Gurdut Singh be adjudged an insolvent. That application was refused on the 20th February, 1927. On appeal this Court made an order of adjudication on the 8th November, 1927. After the presentation of the application before the District Judge, an *ad interim*

(1) (1872) 7 Exch. 263.
(2) (1921) 1 K. B. 488.
(3) (1925) A. I. R. (Rang.) 801.
(4) (1926) A. I. R. (Mad.) 942.
(5) (1929) I. L. R. 52 Mad. 648.
(6) (1926) 94 Ind. Cas. 284.

receiver was appointed on 13th March, 1926, and a similar order for an *ad interim* receiver was passed by this Court when an appeal was preferred against the order refusing adjudication and an *ad interim* receiver was appointed on 25th May, 1927. In the meantime, i.e. between the date of the refusal of the application by the District Judge and that of adjudication by this Court, two creditors of the insolvent, Khemkaran Das Jokhi Ram and Gouridut Ganesh Lal (creditors nos. 2 and 3), who held two decrees against him, proceeded with their execution in the Court of the Deputy Commissioner-Subordinate Judge of Singhbhum and brought to sale an unliquidated debt which has since then been found to be Rs. 6,095/15/- payable to the insolvent by the Bengal Nagpur Railway Company. That debt was purchased by Jokhi Ram Suraj Mal, the principal respondent in the two appeals. The order of adjudication was annulled on 14th June, 1928, on account of the insolvent not applying for his discharge within the time fixed by the Court and later on 1st August, 1928, an order presumably under section 37 of the Insolvency Act was passed directing the properties realized to vest in the receiver on behalf of the creditors. After this a question arose whether the auction-purchaser of the debt due from the Bengal Nagpur Railway could take advantage of the sale as it was alleged that he was the benamidar of the two decree-holders who were debarred from getting any benefit of the execution by virtue of section 51 of the Insolvency Act. The learned District Judge by his order, dated the 17th January, 1929, decided against the respondents Jokhi Ram Suraj Mal, holding that they were really the benamidars of the two creditors above-mentioned, and therefore the debt due from the Bengal Nagpur Railway was still an asset of the insolvent and was liable to be distributed amongst all the creditors.

The auction-purchasers Jokhi Ram Suraj Mal preferred an appeal to this Court which was heard

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by Wort and Adami, JJ. who, without deciding the question of the benami nature of the purchase, on the ground of law held that the sale to the then appellant (now respondent no. 1) was perfectly valid and that he was entitled to Rs. 6,095/- realised from the Bengal Nagpur Railway. The effective part of the order so far as it concerns us in the present appeal runs thus:

"It is therefore directed that the Rs. 6,095-15-0 be paid over to the appellants (Jokhi Ram Suraj Mal)."

During the pendency of that appeal in the High Court Chouthmal Bhagirath, one of the creditors, who is appellant in appeal no. 210, withdrew Rs. 2,312/8/9 out of Rs. 6,095/15/-, after giving security and an undertaking to refund the amount if the order of the District Judge, dated the 7th January, should be reversed on appeal. After disposal of the appeal he was called upon to pay up this amount in Court. He objected on the ground that the auction-purchasers Jokhi Ram Suraj Mal were the benamidars of creditors nos. 2 and 3 aforesaid and as such these two creditors were liable to refund Rs. 5,750/- the sale proceeds of the debt which they have taken away in satisfaction of their decrees against the provisions of section 51 of the Provincial Insolvency Act. This contention was overruled.

It is against this order that Chouthmal Bhagirath has come up in appeal and it is the subject-matter of appeal no. 210 of 1930. The questions whether creditors nos. 2 and 3 are liable to refund the sale proceeds, or, whether Jokhiram Suraj Mal is their benamidar, are irrelevant at present. The appellant having taken away the money on the express undertaking that he would refund it if the order of the District Judge was set aside can raise no objection against the refund. In fact we are informed that the money has already been deposited in Court. So far as this appeal is concerned, in my opinion, it

should be dismissed with costs. Hearing fee two gold mohurs. The order directing Jokhiram Suraj Mal to furnish security before withdrawing the money deposited will be discharged.

Appeal no. 217 is on behalf of Tejmal Marwari who was one of the creditors (creditor no. 4) and who had proved his debt. He was a party to the proceeding when the order of the 17th January, 1929, to which I have already referred, was passed. Unfortunately he was not impleaded in the appeal which was preferred to this Court against that order. After the appeal was allowed, he appeared and filed an application before this Court for modifying or vacating that order. This was rejected on the 8th May, 1930, in Miscellaneous Judicial Case no. 69 of 1930. The order ran thus:

> "This application is misconceived. It is open to the petitioner to approach the Receiver for distribution of the assets from the sale of the debt."

Since then he applied before the learned District Judge to take steps for the realisation of the Rs. 5,750, the sale proceeds of the debt which had been taken away by the creditors nos. 1 and 2. This has been rejected on the ground that no proceeding was pending and that the receiver had become functus officio. It has been contended before us that as after the annulment of the order of adjudication on the 14th June, 1928, there was an order on the 1st August, 1928, vesting the properties realized in the receiver for the benefit of the creditors, the proceedings continue, and the receiver could realize the assets of the insolvent. Sir Sultan Ahmad, who appears on behalf of the respondents, has, however, contended that the order of the 1st August, 1928, was ultra vires. His argument is this: The effect of the order of the 14th June was that whatever assets of the creditor remained undisbursed reverted ipso facto to the debtor. Any subsequent vesting order in favour of the receiver could not divest the properties which had already become vested in him.

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He contends that the order of vesting the properties in the receiver ought to have been simultaneous with the order of annulment. The appellant, however, points out that there is nothing in section 37 of the Insolvency Act (which is referred to in section 43 of the Act under which the order of annulment was passed) to make it imperative upon the Court to give the direction contemplated in that section simultaneously with the order of annulment. It is argued on his behalf that in spite of the annulment the properties cannot be vested in the debtor unless there is an order of the Court to that effect.

Section 37 of the Provincial Insolvency Act runs thus:

> "Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts heretofore 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, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the court may, by order in writing, declare."

The appellant contends that the last few words "as the Court may, by order in writing, declare" govern both the previous clauses, namely, the vesting in such person as the Court may appoint and also the vesting in the debtor. I cannot accept that the property does not vest in either unless the condition is declared. In my opinion, those words govern the vesting of the property in the debtor only, and it means that the vesting of the property in him, in the absence of any other person being appointed by the Court, shall be subject to any condition which the Court may declare. Declaring a condition is not necessary (if any). In the absence of any declaration of condition it will vest in the debtor unconditionally. This is the view which seems to have been taken of section 81 of the old Bankruptcy Act of 1869 and section 29 of the present Bankruptcy Act of 1914, and for the present purpose section 37 of our Act is similar to the two above-mentioned sections of the two Bankruptcy Acts. It was held under the

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English Acts that in the absence of appointment of any person the properties of the debtor will, on the annulment of the bankruptcy, revert to him: see *Bailey* v. *Johnson*(1) and *Flower* v. *Lyme Regis Corporation*(2). A similar view has been taken under our Act in *Maung Hme* v. *U Po Seik*(3). This does not, however, end the matter. In this particular case an order vesting the property in the receiver was passed on the 1st of August, 1928, about six weeks after the order of annulment. The question is—is this order valid and operative? If so, the insolvency proceeding has not come to an end, though the protection afforded to the debtor has been taken away from him. Sir Sultan Ahmad has contended, as I have said, that the order contemplated in the last clause of section 37 must be passed simultaneously with the order of annulment, and, if it is not done, the Court is deprived of its powers and no subsequent vesting order can be of any avail. I cannot accept it, and see no reason why the order cannot be passed later on. To hold otherwise will lead to serious injustice, as it would have done in this case, and this the legislature could never have contemplated. It is to be noted that in the case before us the order of adjudication was made on appeal by this Court at the instance of one of the creditors (appellant in Miscellaneous Appeal no. 210 of 1930), and the annulment was made on account of the default of the insolvent behind the back of the creditors, who were vitally interested in the administration of the insolvent's estate. The order of annulment, on failure to apply for discharge, is intended to punish the insolvent by withdrawing from him the protection which he gets by the order of adjudication and if, while passing the order of annulment the Court, by some oversight or other, fails to pass orders for the protection of the creditors, there is no reason why the Court cannot do so when the mistake is pointed out to it. There is nothing in the

(1) (1872) 7 Exch. 269.
(2) (1921) 1 K. B. 488.
(3) (1925) A. I. R. (Rang.) 301.

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Insolvency Act to prevent it. It is not correct to say that after the order of annulment the insolvency proceeding comes to an end ipso facto. This very section 37 provides that all the previous acts of sale or disposition of property, etc., will hold good. Cases may arise in which the direction and orders of the Court may be necessary for the purpose of doing acts to complete the titles of the transferee, etc. or for protecting their interest and there is no reason to hold that the Court after the order of annulment ceases to have jurisdiction in the insolvent's estate. The cases which I have referred to above and on which reliance has been placed on behalf of the respondents are of no help to us. In none of these cases was any order vesting the property in any other person passed by the Bankruptcy Court, even on a subsequent date, and therefore the legal consequences followed and the property was held to be vested in the insolvent. None of these cases can be an authority for the proposition that the order contemplated in the last clause of section 37 cannot be passed some time after the order of annulment. Reliance has, however, been placed upon the case of *Venugopalachariar* v. *K. Chinnulal Sowcar*(1) where it was held that the order of annulment cannot be reviewed. In this case the order of the 1st of August is not a review of the order of annulment, but is supplementary to it. Section 5(*1*) of the Provincial Insolvency Act says that subject to the provisions of the Act the Court in regard to proceedings under it shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction. Section 141 of the Civil Procedure Code provides that provision of the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. Section 151 of the Code reserves to the Court its inherent powers to make necessary orders for the ends of justice to prevent abuse of the process of the

(1) (1926) A. I. R. (Mad.) 942.

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Court. The order of annulment without making provision for the protection of the creditors was obviously an order which would have defeated the ends of justice and led to an abuse of the process of the Court, and the Court was, in my opinion, perfectly entitled to exercise its inherent powers by making supplementary order on the 1st of August. In this case, however, there is much stronger reason to hold that the order of the 1st August, 1928, stands and the insolvency proceeding is not at an end. All the parties acquiesced in the order of that date, and no step was taken by any person to have it set aside, and it was in pursuance of that order that the Court by the order, dated the 17th January, 1929, withheld the payment to the respondent of the dues of the insolvent from he Bengal Nagpur Railway. No doubt, the respondent appealed to this Court against that order and collaterally challenged the validity of the order of 1st of August, but the debtor or other creditors who were affected by that order did not appeal against it. I may refer to two cases in which the order of vesting the property in the receiver was passed by the High Court in revision though the Insolvency Court at the time of the passing of the order of annulment omitted to do so. They are *Jethaji Peraji Firm* v. *Krishnayya*(1) and *Roop Narain* v. *King King & Co.*(2).

No doubt, different considerations may arise if subsequent to the order of annulment and before the order vesting the property in some other person than the insolvent, the latter has made transfers of properties to a bona fide purchaser. Such a purchaser perhaps may not be affected. But the insolvent and all those persons who were party to the insolvency proceeding are bound by the order.

Therefore, in my opinion, in spite of the annulment of adjudication the insolvency proceeding continues and it is still open to the receiver to proceed

(1) (1929) I. L. R. 52 Mad. 648.
(2) (1926) 94 Ind. Cas. 234.

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to realise the assets vested in him. I would, therefore, set aside the order of the learned District Judge and direct him to proceed with the application of the appellant and dispose of it according to law. It will be open to him to take steps to realise the assets of Gurdat Singh vested in the receiver wherever they may be found and may be lawfully realisable and to take such legal steps for their realisation as the parties may ask him to take. The appeal no. 217 of 1930 is allowed with costs. Hearing fee two gold mohurs.

COURTNEY TERRELL, C.J.—I agree.

Appeal no. 210 *dismissed.*

Appeal no. 217 *allowed.*

Before Courtney Terrell, C.J. and Khaja Mohamad Noor, J.

JNANENDRA PRASAD BOSE

v.

GOPAL PRASAD SEN.*

1932.

November, 10.

Contempt of Courts Act, 1926 (*Act XII of* 1926), *section* 2, *sub-section* (3), *scope and meaning of—High Court, cognisance by, barred only when contempt of court is punishable as such under Penal Code,* 1860 (*Act XLV of* 1860)—*section* 228 *of the Code, whether is the only section dealing with contempts of court.*

The Contempt of Courts Act, 1926, enables the High Court to punish contempt of the inferior courts notwithstanding that such contempt as is complained of is not an offence (as contempt) against any of the sections of the Penal Code; only those contempts which are punishable by the Code as contempts of court are excluded from the jurisdiction of the High Court by the Act.

Kaulashia v. *King-Emperor*(1), followed.

Sections 175 to 179 of the Penal Code define as offences various acts and those acts are offences not against the court

* Civil Revision no. 554 of 1932, against an order of Babu A. N. Singh, Subordinate Judge of Cuttack, dated the 26th August, 1932.

(1) (1932) I. L. R. 12 Pat. 1.