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There is also a cross-appeal by the decree-holders against the decision of the learned Subordinate Judge refusing to allow interest on the costs awarded by the Privy Council. In this matter it is clear that the Subordinate Judge was right and the learned Advocate for the decree-holders admitted that he could not seriously support the appeal. It has long been held that the costs of the Privy Council do not carry interest unless such interest is specifically mentioned.

In the result I would, save in the matter of the interest on the High Court and trial court costs, dismiss the appeals both of the judgment-debtors and the decree-holders. There will be no order as to costs.

SAUNDERS, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

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Sept. 7, 11.

Before Courtney Terrell, C. J. and Saunders, J.

MUKTI RAM MARWARI

v.

FIRM GANGA RAM.*

Provincial Insolvency Act, 1920 (Act V of 1920), sections 4, 51 and 52—sale of debtor's property after adjudication—no notice to receiver—sale, whether is a nullity—court, power of, to annul sale and delivery of possession—section 4—decree-holder purchaser having notice of insolvency proceeding, whether entitled to protection afforded by section 51(3).

On the 23rd of April, 1928, the judgment-debtor filed a petition for an adjudication of insolvency. In December, 1928, one of the creditors, who had in the meantime brought a suit for money due to him by the debtor, obtained a decree and on the 23rd March, 1929, applied for execution. On the

* Appeal from Original Order no. 41 of 1932, from an order of H. R. Meredith, Esq., I.C.S., District Judge of Monghyr, dated the 2nd February, 1932.

6th of April, 1929, an order of adjudication was made. On the 24th June the sale was held, the creditor (decree-holder) having purchased the property, and delivery of possession was duly effected. The receiver, in whom the property of the insolvent had vested, had no notice of the sale. On a report of the receiver the insolvency court set aside the sale and delivery of possession.

Held, (i) that the sale without notice to the receiver was a nullity, and that the decree-holder purchaser was responsible for the irregularity in procedure in not taking proper steps to bring the receiver before the court;

(ii) that the court had power to annul the sale and delivery of possession and its action was covered by section 4 of the Provincial Insolvency Act, 1920;

(iii) that the decree-holder purchaser, who was aware of the insolvency proceeding, having got the executing court in motion without giving any notice to the receiver under Order XXI, rule 22, Code of Civil Procedure, 1908, notwithstanding that the property of the debtor had vested in him, the action of the purchaser was clearly prompted by an intention to obtain preferential treatment and, therefore, that he could not avail himself of any protection afforded by sub-section (3) of section 51 of the Act.

Raghunath Das v. Sundar Das Khetri⁽¹⁾, *The Official Receiver, Tinnevely, v. Sankaralinga Mudaliar*⁽²⁾ and *Westbury v. Twigg and Co.*⁽³⁾, followed.

Trustee of the Woolford Estates v. Levy⁽⁴⁾, distinguished.

Appeal by one of the creditors.

This was an appeal from the order of the District Judge of Monghyr made upon the report of the receiver of the estate of an insolvent by which order two sales and delivery of possession in execution of a decree obtained by two of the creditors were annulled. The appeal was in respect of one of the sales by one of the other creditors.

(1) (1914) I. L. R. 42 Cal. 72, P. C.

(2) (1920) I. L. R. 44 Mad. 524.

(3) (1892) 1 Q. B. 77.

(4) (1892) 1 Q. B. 72.

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On the 23rd April, 1928, the judgment-debtor filed a petition for an adjudication of insolvency. On the 25th August, 1928, the appellant-creditor filed a petition of objection alleging that he (the appellant) had already instituted a suit for money due to him by the debtor and that the trial was pending. On the 5th December the appellant obtained a money decree. On the 23rd March, 1929, he applied for execution of the decree but did not apply for attachment of the property in question and asked for notice to issue under Order XXI, rule 66, of the Code of Civil Procedure. He did not ask for the issue of any notice to the receiver. On the 6th April, 1929, before the notice was served an order of adjudication was made and the notice under Order XXI, rule 66, was not effected until the 23rd April. On the 11th May the decree-holder deposited the publication costs and the proclamation of sale was issued. On the 24th June, 1929, the sale was held and the appellant decree-holder purchased the property. On the 21st September the judgment-debtor under section 52 of the Insolvency Act gave notice to the executing court of the insolvency proceedings and asked that the sale might not be confirmed. The request of the judgment-debtor was refused and on the 12th November the sale was confirmed. Throughout these proceedings the receiver had no notice. He got to know of the facts and tried to get the nazir of the executing court to refrain from delivering possession but his request was refused by the nazir and delivery of possession to the appellant was duly carried out. The receiver reported to the Judge who by his order of the 2nd February, 1932, set aside the sale and delivery of possession. The decree-holder appealed from that order.

P. R. Das and *S. N. Ray*, for the appellant.

S. N. Bose (with him *S. K. Basu*, *M. K. Mukharji*, *L. K. Chaudhuri*, *M. M. Sinha* and *K. K. Banerjee*), for the respondents.

COURTNEY TERRELL, C. J. (after stating the facts set out above proceeded as follows:)

It is objected by the appellant that the order of the District Judge in insolvency was without jurisdiction and that the only remedy of the receiver and the other creditors was under section 52 of the Provincial Insolvency Act or to obtain from the receiver the proceeds of the sale under section 51 for distribution among the creditors and that no such application had in fact been made to the executing court. Reliance is also placed on sub-section (3) of section 51 which states

" 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."

It is argued that after confirmation of sale no court save on appeal from the order of confirmation has power to set it aside. We were referred to the English case *In re Trustee of the Woolford Estates v. Levy*⁽¹⁾ in support of this argument. This was an action by the trustee in bankruptcy against the sheriff for damages for having wrongfully sold the property of the bankrupt after he had had notice of the bankruptcy proceedings. The sheriff was able to prove that the official receiver had written to him asking him to proceed with the sale and to account to him for the sale proceeds. In addition to this fact it was contended before us that in that case there was a further difference in that the property of the debtor had not at the time of the sale vested in the trustee who was appointed after the sale but I am of opinion that this particular distinction is immaterial for the learned Judges (Esher, M.R. and Fry, L.J.) proceeded upon the assumption that the property of the debtor had vested in the receiver and overruled the argument that the sheriff had therefore sold the property of some one other than the debtor. But they held that the sale was nevertheless good as against the trustee because the steps open to the receiver were specified by section 46 of the Act (corresponding to section 52

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of the Indian Act) which was the only limitation on the power of the sheriff who had not acted illegally and the sale was not illegal and had been conducted with the actual approval of the official receiver. Secondly, there was no contention and no facts in that case to justify a contention that the proceedings by which the sheriff's activities were set in motion were void ab initio. In the case before us, however, it is clear that both the judgment-debtor and the appellant were aware of the insolvency proceedings for they had been parties to such proceedings from the beginning. The appellant set the executing court in motion without giving any notice to the receiver under Order XXI, rule 22, of the Code of Civil Procedure, notwithstanding that the property of the debtor had vested in the receiver, and his action was clearly prompted by an intention to obtain preferential treatment. Had the executing court had notice of the order of adjudication on the 6th April, 1931, it would have been bound under section 29 to stay the sale.

In the case of *Raghunath Das v. Sundar Das Khetri*(¹) it was held by the Privy Council that a sale without notice to the official assignee was a nullity and that the decree-holder purchasers (as in this case) had been responsible for the irregularity in procedure in not taking proper steps to bring the Official Assignee before the court.

As to the argument that the insolvency court had no power to annul the sale and delivery of possession there is direct authority to the contrary in the case of *The Official Receiver, Tinnevely, v. Sankaralinga Mudaliar*(²) and the action of the court is moreover in my opinion covered by section 4 of the Insolvency Act. An analogous case is presented by *Westbury v. Twigg and Co.*(³) in which it was held that if a company were being wound up either voluntarily or by the court the court would have power to stay

(1) (1914) I. L. R. 42 Cal. 73, P. C.

(2) (1920) I. L. R. 44 Mad. 524.

(3) (1892) 1 Q. B. 77.

proceedings in execution against the Company, the intention of the legislature being that the assets of insolvent companies should be distributed equally among the creditors. The appellant who was himself the purchaser certainly cannot avail himself of any protection afforded by sub-section (3) of section 51 for his conduct has obviously been devoid of good faith. In my opinion the order of the District Judge was right and this appeal should be dismissed. The contesting creditors are entitled to one set of costs and the official receiver is entitled to another.

SAUNDERS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Wort and Dhaile, JJ.

VASISTHA NARAIN SINHA

v.

SANT LAL KUMAR.*

District Board Electoral Rules—rule 68—Bengal Local Self-Government Act, 1885 (Beng. Act III of 1885), section 138—suit for setting aside election—no free voting by reason of rioting—dispute, whether arising under the rules—District Magistrate, dispute whether falling within the cognizance of—Civil Court, jurisdiction of, whether ousted.

Rule 68 of the District Board Electoral Rules, framed under the Bengal Local Self-Government Act, 1885, provides :

“ All disputes arising under the rules in regard to any matter other than a matter the decision of which by any other authority is declared by these rules to be final, shall be decided by the District Magistrate whose decision shall be final.”

Where the plaintiffs brought a suit for a declaration that the defendant's election was illegal and the substance of the plaintiffs' claim was that by reason of the conduct of the Returning Officer and at the instance of the defendant a riot

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* Appeal from Original Decree no. 23 of 1932, from a decision of Babu R. C. Mitra, Additional Subordinate Judge of Bhagalpur, dated the 3rd November, 1931.