

## APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

## COLLECTOR OF AKYAB

v.

## PAW TUN U AND ONE.\*

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Aug. 30.

*Provincial Insolvency Act (V of 1920), ss. 2, 23 (1), 31, 44, 61 (1)—Land Improvement Loans Act (XIX of 1883), s. 7 (1) (a)—Lower Burma Land and Revenue Act (II of 1876), s. 45—Whether Insolvency Court has jurisdiction to release or give protection to a Crown debtor imprisoned under revenue proceedings—Prerogatives and rights of Crown not affected by statute unless expressly made so.*

*Held*, that the proceedings of the Collector in recovering loans under section 7 (1) (a) of the Land Improvement Loans Act "as if they were arrears of land revenue" is neither a "suit" nor the execution of the decree of any Court, within the meaning of section 2 (2) of the Provincial Insolvency Act. Consequently a debtor who is under arrest or imprisonment by reason of an order of a Revenue Officer acting under section 45 of the Land and Revenue Act, is not "under arrest or imprisonment in execution of the decree of any Court" and so the Insolvency Court has no jurisdiction to order the release of such a debtor under the provisions of section 23 (1) of the Provincial Insolvency Act, nor can such Court on adjudication make a protection order under section 31 of the Act in the absence of express words, so as to extend the protection against Crown debts. Even if it had the discretionary power to do so, it would be an improper order to make, because under the Act Crown debts are payable impriority to other debts, an order of discharge does not release the debtor from such debts, and it would be an interference with the proceedings of a revenue officer to recover such debts.

*Ganpat Putaya v. The Collector of Kanara*, 1 Bom. 7; *In re Smith*, [1876] 2 Exch. Dvn. 47—*referred to*.

*A. Eggar* (Government Advocate)—for the Collector.  
*Sein Tun Aung*—for Respondents.

HEALD, J.—The present respondents, who carried on a business in partnership at Maungdaw in the Akyab District, filed a joint petition to be adjudicated insolvents, and were duly adjudicated.

Among the debts entered in their schedule was a loan of Rs. 1,800 which they had taken from Government under the provisions of the Land Improve-

\* Civil Miscellaneous Appeal No. 211 of 1926.

ment Loans Act (XIX of 1883), and they were actually in the civil jail for failure to repay that loan at the time when they filed their petition.

At the time when the petition was filed the Judge recorded that respondents applied to be released on furnishing security and he released them on their finding a surety for Rs. 250 each, purporting to act under the provisions of section 23 (1) of the Provincial Insolvency Act (V of 1920).

When notice of the petition was served on the Collector, as representing Government, he protested against respondent's release on security on the ground that the order of a Revenue Officer committing a revenue defaulter to prison under powers given by section 45 of the Lower Burma Land and Revenue Act II of 1876) was not an order made "in execution of the decree of any Court," and that therefore section 23 of the Provincial Insolvency Act did not apply to arrest and imprisonment under such an order and the Insolvency Court had no jurisdiction to order the respondents' release.

The respondents replied that a loan made under the Land Improvement Loans Act was a debt and that, although Government was entitled to priority in respect of such a debt, section 23 of the Insolvency Act applied to it and under that section the Insolvency Court had power to release them.

The Court said that the words "the decree of any Court" in section 23 of the Insolvency Act do not exclude a Revenue Court decree and held that it had power to release respondents.

The Collector on behalf of Government applied for leave to appeal against that order and leave was given.

The learned Government Advocate has accordingly filed the present appeal on the ground that section

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23 (2) of the Insolvency Act has no application in the case of an order for imprisonment made under section 45 of the Land and Revenue Act because a loan recoverable under section 7 (1) (a) of the Land Improvement Loans Act is not the amount of a "decree of any Court."

Under section 2 (2) of the Insolvency Act the word "decree" bears the same meaning in the Insolvency Act as in the Code of Civil Procedure. "Decree," therefore, means "the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit."

From this definition it is clear that before there can be a decree there must be a "suit" in a "Court." There is no definition of either "suit" or "Court" in the Code, but it seems to me certain that the proceedings of the Collector in recovering loans under the section 7 (1) (a) of Land Improvement Act "as if they were arrears of land revenue" is neither a "suit" nor the execution of the decree of any Court. It is true that under certain Acts, e.g., the Bengal Rent Act of 1859, Revenue Courts are constituted and that such Courts deal with "suits" and make "decrees," but there is no such constitution of Revenue Courts either in the Land Improvement Loans Act or in the Land and Revenue Act, and so far as I know there are no "Revenue Courts" in Burma.

Section 45 of the Land and Revenue Act, to which section 7 (1) (a) of the Land Improvement Loans Act refers, says that an arrear of land revenue may be realised "as if it were" the amount of a decree for money passed against the defaulter in favour of any Revenue Officer whom the Local

Government may from time to time appoint in this behalf by name or as holding any office, that proceedings with a view to the realisation of such arrears may be instituted by such officer before any other Revenue Officer whom the Local Government may from time to time appoint by name or as holding any office, and that, except in so far as the Local Government may otherwise by rule direct, such other officer may exercise all powers conferred on, and shall conform to all rules of procedure prescribed for, a Court executing a decree by the Code of Civil Procedure.

It seems to me clear from the wording of this section that an arrear of land revenue is not the amount of a decree for money and that the revenue officer before whom proceedings for the recovery of such an arrear are taken is not a Court although by virtue of the section he exercises certain of the powers of a Court, including the power of arrest and detention given by sections 55 and 56 of the Code of Civil Procedure.

But since the Revenue Officer is not a "Court" and an arrear of land revenue is not the amount of a "decree," it follows that a debtor who is under arrest or imprisonment by reason of the order of a Revenue Officer made under the provisions of section 45 of the Land and Revenue Act is not "under arrest or imprisonment in execution of the decree of any Court" and that the provisions of section 23 (1) of the Insolvency Act have no application to the case of such a debtor. I am of opinion therefore that the Insolvency Court had no jurisdiction to order the release of respondents under that section.

But by the time when the order under appeal was made the respondents had already been

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adjudicated insolvent and therefore the question of the application of section 31 of the Insolvency Act may possibly arise. Under that section the Insolvency Court can make an order for the protection of the insolvent from arrest and detention and such an order may apply either to all the debts of the debtor or to any of them as the Court may think proper.

The question which arises in this case is therefore whether section 31 gives power to make a protection order applying to Crown debts.

Debts due to the Crown are mentioned in the Insolvency Act in section 44 which says that an order of discharge shall not release the insolvent from any debts due to the Crown and in section 61 (1) which says that in the distribution of the property of the insolvent there shall be paid in priority to all other debts all debts due to the Crown. Maxwell in his interpretation of Statutes (6th edition, p. 244) says "The Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an existing prerogative or interest. It is presumed that the legislature does not intend to deprive the Crown of any prerogative, right, or property unless it expresses its intention to do so in explicit terms or makes the inference irresistible." Where therefore the language of the statute is general and in its wide and natural sense would divest or take away any prerogative or right from the Crown, it is construed so as to exclude that effect." The learned commentator cites various English authorities in support of that proposition, but it is not necessary to refer to them since the same principle was adopted in India in the case of *Ganpat Putayya v. The Collector of Kanara* (1), where it was said "It is a universal rule that prerogative

(1) (1875) 1 Bom. 7.

and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a Statute."

In the English case of *In re Smith* (1), it was held that the provisions of the Debtors Act, 1869 (32 and 33 Vict. 62), which laid down that, subject to certain exceptions mentioned in the Act in which Crown debts were not included, no person should be imprisoned for making default in payment of a sum of money, did not apply in respect of Crown debts and that therefore the power of imprisonment continued. In that case it was admitted at the Bar as indisputable that because the Act did not expressly mention the Crown it did not bind the Crown. Applying that principle to the present case it would appear that section 31 (1) of the Provincial Insolvency Act must be construed so as not to apply to debts due to the Crown or to affect any rights which the Crown has in respect of those debts, and that the right of arrest and detention which is given by section 7 (1) (a) of the Land Improvement Loans Act, section 45 of the Land and Revenue Act and section 55 of the Code of Civil Procedure, if those sections are read together, continues. It may be possibly open to doubt whether or not in the case of a debt due to the Crown the Revenue Officer, exercising the powers conferred on and being bound to conform to all rules of procedure prescribed for a Court executing a decree, would be bound to release the debtor on his expressing his intention to apply to be declared an insolvent and furnishing security in accordance with the provisions of sub-sections (3) and (4) of section 55 of the Code, but it is certain that in respect of such debts he has the powers of

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(1) [1876] 2 Exch. Div. 47.

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arrest and detention, and it would seem to follow from the decision, *In re Smith* cited above, that those powers would not be affected by the provisions of section 31 (1) of the Insolvency Act.

I may add that in my opinion it would on general principles be clearly inconvenient and improper that the Insolvency Court should, in the absence of express statutory powers, interfere with the proceedings of the Revenue Officers of Government in the recovery of debts due to the Crown, and that it seems to me to be inconceivable that such interference should have been intended by the legislature when it framed section 31 of the Insolvency Act. I may say further that even if section 31 did apply to debts due to the Crown nevertheless in view of the fact that even an order of discharge does not release the insolvent from such debts, it would be improper for the Insolvency Court, which under section 31 has a discretion in the matter, to make a protection order which would apply to such debts.

I would therefore hold that the order which the lower Court made for the release of the respondents in this case, purporting to act under the provisions of section 23 (1) of the Insolvency Act was an illegal order and was made without jurisdiction and that even if the order under appeal be regarded as an order made under section 31 of the Act it also was illegal and made without jurisdiction.

Both those orders should be set aside and the Insolvency Court should order the respondents to be re-arrested and re-committed to the custody from which they were released.

MYA BU, J.—I concur.