

## APPELLATE CIVIL

*Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.*

1927

Nov. 14.

JEFFERY

*v.*

OFFICIAL ASSIGNEE OF RANGOON.

*Presidency Towns Insolvency Act (III of 1909), s. 47—Mutual dealings and set-off—Damages for breach of contract against share of profits—Refusal of creditor to answer claim for damages, effect of.*

A creditor claimed from an insolvent a sum of money for his share of profits in a business of which he was manager. The insolvent claimed damages for a breach of contract on the part of the creditor in failing to purchase the business of the insolvent. The creditor, under legal advice, refused to say whether he was liable for damages that would wipe out or reduce his claim.

*Held*, that the case was one of mutual dealings within the meaning of section 47 of the Presidency Towns Insolvency Act. The Official Assignee was bound to enquire whether a claim made against the estate really existed and whether there was a set-off. The creditor's refusal to answer the Official Assignee on the question of set-off justified the latter in rejecting his claim.

*Booth v. Hutchinson*, 15 Eq. 30; *Palmer v. Day*, (1895) 2 Q.B. 618—*referred to.*

*Sen* for the appellant.

*Dantra* for the respondent.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal from an order of the Judge in Insolvency confirming an order of the Official Assignee rejecting the claim by the appellant for a sum of Rs. 10,430 alleged to be due to him by the insolvent in respect of his share of profits in a business of which he was for a number of years the manager.

He stated that the amount was evidenced by a promissory note signed by the insolvent some time before his adjudication. The insolvent had stated to the Official Assignee that Jeffery had agreed to purchase the insolvent's business carried on under the name of Bowyer, Sowden & Co., in Barr Street, Rangoon, and that he had not carried out his contract and that

consequently a substantial sum of damages was due from Jeffery to the estate.

We are satisfied that if this was in fact the case, this would constitute mutual dealings within the meaning of section 47 of the Presidency Towns Insolvency Act. The provisions of the English Bankruptcy Act on this point are similar to the provisions of section 47 and it seems clear that unliquidated as well as liquidated claims for damages, provided they arise out of contract, come within the words "mutual dealings" of this section, see *Palmer v. Day* (1) and *Booth v. Hutchinson* (2).

It is the duty of the Official Assignee to enquire, when a claim is made, into its substance and to satisfy himself that the estate is liable in respect of the claim made. In order to arrive at this result, he must satisfy himself that there is not a set-off for the whole or a part of the amount claimed. The appellant on legal advice declined to answer any question as to whether he was liable for any amount by way of damages which would wipe out or reduce the amount of his claim.

We are clearly of opinion that he was not justified in so refusing to answer. To uphold his contention in this respect would, in effect, prevent the Official Assignee from satisfying himself whether the claimant's claim was owing or had been satisfied.

We are consequently in complete agreement with the decision of the Insolvency Judge and the appeal must be dismissed with costs five gold mohurs.

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RANGOON.RUTLEDGE,  
C.J. AND  
BROWN, J.

(1) L.R. [1895] 2 Q.B. 618.

(2) L.R. 15 Eq. 30.