

## APPELLATE CIVIL

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

TAN SEIK KE

vs.

C.A.M.C.T. FIRM.\*

1927

Oct. 26.

*Provincial Insolvency Act (III of 1922), ss. 28 (2), 42—Refusal of discharge does not terminate insolvency proceedings—Leave of Court necessary to file suit against insolvent.*

*Held*, that the refusal of the discharge of an insolvent is not necessarily a termination of the insolvency proceedings, and therefore the bar against the commencement of a suit against the insolvent without the leave of the Court continues to operate.

*Rewe & Co. v. Tan Thein Teik*, 2 Ran. 643—*followed*.

*Maung Po Toke v. Maung Po Gyi*, 3 Ran. 492—*overruled*.

*Khoo* for the appellant.

*Lambert* for the respondents.

RUTLEDGE, C.J., and CARR, J.—This is an appeal from a judgment of the District Court of Toungoo decreeing plaintiff-respondent's suit.

The appellant was adjudicated an insolvent in 1924 and his discharge refused in 1925. The learned Judge held, on the authority of a decision of Mr. Justice Das in *Maung Po Toke v. Maung Po Gyi* (1), that when a Court, under section 42 of the Provincial Insolvency Act, refuses the discharge of an insolvent the proceedings had terminated so far as the Court was concerned and that section 28 (2) of the Act, which provides that nothing shall be done against the property of the insolvent or against the insolvent without the leave of the Court during the pendency of the insolvency proceedings, do not apply.

\* Civil First Appeal No. 24 of 1927.

(1) (1925) 3 Ran. 492.

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In effect, the learned Judge's decision would make an order refusing an insolvent his discharge tantamount to an annulment of the adjudication. We are unable to agree with this decision. There is no provision in the Provincial Insolvency Act, whereby, on the refusal of an insolvent's discharge, his property which vested on adjudication in the Court or a Receiver, reverts in the insolvent; and although the wide powers of review conferred on the Court by the Presidency Towns Insolvency Act are not reproduced in the Provincial Insolvency Act, there seems to be nothing to prevent the insolvent renewing his application for discharge in case fresh circumstances might justify him in doing so. From a perusal of the Diary in the present case it would seem that so far as the Court was concerned, the proceedings were very far from being terminated, as the Court subsequently entertained and passed orders in respect of the sale of property belonging to the insolvent's estate. We are accordingly of opinion that the proceedings were not terminated by the refusal of discharge and that the leave of the Court was necessary before any suit could be brought. The decision of Mr. Justice Lentaigne in *Rowe & Co. v. Tan Thein Teik* (1) was under the Presidency Towns Insolvency Act. For the reasons already given, the principle of that decision applies equally to cases under the Provincial Insolvency Act.

For the respondent, however, it is urged that the Insolvency Court has in fact granted leave in the present case. The District Judge is undoubtedly the Insolvency Judge, and the entry in the Diary of the present case on 8th July 1926 runs as follows:—

“There is an application for permission to sue the defendant as the defendant is an undischarged

insolvent. Subject to what the defendant may have to say, I grant the permission applied for."

In our opinion this satisfied the provisions of section 28 (2) of the Act, and the grant of leave was a matter within the discretion of the Court with which we would not be disposed to interfere unless for very good reason. We are unable to say whether the learned District Judge would have been disposed to grant the leave if he had not considered himself bound by the decision already cited in *Maung Po Toke's* case (1). The decree cannot give the respondent a preferential claim on the assets of the insolvent's estate, though it may facilitate execution against the insolvent in person in the absence of a protection order. In our opinion, leave has in fact been given. Consequently, the appeal fails and must be dismissed with costs.

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C.J., AND  
CARR, J.

### PRIVY COUNCIL.

V.P.R.V. CHOKALINGAM CHETTY

v.

SEETHAI ACHA AND OTHERS.

J.C.\*  
1927

Oct. 28.

(On appeal from the High Court at Rangoon.)

*Parties—Appeal—Adding defendant as respondent—Appeal barred when application made—"Interested in the result of the appeal"—Property transferred by insolvent—Sale by Official Assignee—Transfer of Property Act (IV of 1882), s. 6—Code of Civil Procedure (Act V of 1908), O. XXI, rr. 20, 33.*

A plaintiff, having bought from an Official Assignee, for a trifling sum, property of great value which had belonged to the insolvent, sued to recover the property. He alleged that a transfer by the insolvent to the first defendant, and transfers by the first defendant and other defendants to one another successively, were all invalid. The suit was dismissed. The plaintiff appealed to the High Court, but failed to join the first defendant as a respondent. At the hearing, the time limited for appealing having then elapsed, the plaintiff applied

\* PRESENT:—LORD SHAW, LORD SINHA and SIR JOHN WALLIS.

(1) (1925) 3 Ran. 492.