

INSOLVENCY JURISDICTION.

Before Mr. Justice Das.

IN THE MATTER OF G. H. GHANCHEE & SONS.*

1929

Sept. 4.

Presidency Towns Insolvency Act (III of 1909), s. 36—Summary procedure to obtain insolvent's property from a third party—Remedy available only if third party admits claim of Official Assignee—No cross-examination of third party to be allowed under s. 36 to obtain proof by Official Assignee for his case.

Section 36 of the Presidency Towns Insolvency Act, as amended by Act XIX of 1927, enables the Official Assignee to get hold of properties belonging to an insolvent in the possession of a third party, provided the third party admits the claim. It does not enable the Official Assignee to cross-examine a claimant and get from him the proof of his case which he has to establish.

N. N. Burjorjee for the Official Assignee.

N. N. Sen for the claimant.

In this case the Official Assignee wrote to the claimant calling upon him to restore to the Official Assignee certain goods or their value which were transferred by the insolvent to him and which transfer the Official Assignee claimed to be void as against him. The claimant through his advocate denied the claim and stated that he was prepared to defend any action the Official Assignee might take. The Official Assignee applied to have the claimant examined under the provisions of section 36 of the Presidency Towns Insolvency Act.

The matter came on before the Registrar of Insolvency. Mr. Sen for the claimant cited *In re J. M. Larcas and another*, (1914) 52 Cal. 109; *Jnanendra Debi v. Official Assignee*, (1925) 54 Cal. 251; *Mirmahomed and Brothers v. Ismail Karim*, A.I.R. July 1929, Bombay, page 230. Mr. Sen argued that his client could not be examined and the Official

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Assignee could either file a suit or under section 7 of the Act make an application. Reliance was placed on Davar, J.'s statements in the last case as follows : "Following general directions given to the Official Assignee, the Official Assignee is careful when presenting these applications to me to satisfy himself that the order asked for is not intended for the purposes of annoyance to the insolvent or to the deponent under section 36 with a view to extract information in a pending suit or in a suit intended to be filed. Orders made under section 36 in my opinion are purely discretionary At the same time it is clear that the law never contemplated that the provisions of section 36 should be used for the purposes of a fishy cross-examination in order to prepare for future litigation."

The Registrar was of opinion that the Official Assignee's intention was to examine the witness in order to prepare for future litigation. At the request of Mr. Burjorjee the matter was placed before the Insolvency Judge.

DAS, J.—This is an application by the Official Assignee for the examination of M. D. Oomer under section 36 of the Presidency Towns Insolvency Act.

It appears that the insolvent transferred certain properties to this person and the Official Assignee challenges this transfer. Before making this application, the Official Assignee demanded these properties from this person and this person denied the rights of the Official Assignee. The Official Assignee now applies to this Court for the examination of M. D. Oomer under section 36 of the Presidency Towns Insolvency Act. I do not think that section 36 was intended for this purpose. Section 36 has now been amended by Act XIX of 1927 and sub-

sections 4 and 5 now read as follows:—"If on his examination any person admits etc." That makes a lot of difference in the construction of section 36. Section 36 was only intended for the purpose of enabling the Official Assignee to get hold of properties belonging to the insolvent in the possession of third persons. It is only on the admission of those persons that the Court could order them to give up the properties. Section 36 was not intended for the purpose of enabling the Official Assignee to cross-examine a claimant and get from him the proof of his case.

The order of the Registrar is confirmed and this application is dismissed. There is no order as to costs.

FULL BENCH.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, Mr. Justice Carr, Mr. Justice Maung Ba, Mr. Justice Brown

AND

Before Sir Benjamin Heald, Kt., Officiating Chief Justice, Mr. Justice Chari, Mr. Justice Das, Mr. Justice Mya Bu, Mr. Justice Ormiston.

U PYINNYA AND OTHERS

v.

MAUNG LAW AND ANOTHER.*

Buddhist monks, law applicable to—Vinaya, rules of the, whether enforceable by civil courts—"Laws", meaning of—Sale of immoveable property to Buddhist monk, whether valid—Competency of Buddhist monk to contract—Burma Laws Act (XIII of 1898), s. 13—"Buddhist law" enforceable by the State—Contract law of Buddhists abrogated—Contract Act (IX of 1872), ss. 11, 23—Transactions forbidden or held immoral under rules of a religious order not necessarily void under Contract Act.

Heid, (RUTLEDGE, C.J. and MAUNG BA, J., dissenting) that a sale of immoveable property to a Burmese Buddhist monk is not void on the ground that a monk is prohibited by the rules of the Vinaya from entering into such pecuniary

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Ap. 3 &
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* Civil Reference No. 9 of 1928 arising out of Civil Second Appeal No. 24 of 1928.