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case of *Sykes* v. *Beadon*[1], referred to in argument, shows that a contract entered into for the purpose, or with the necessary effect, of defeating a statute will not be enforced or recognized by the Courts, at any rate where both parties stand *in pari delicto*. The Indian Contract Act, secs. 23, 24, involves the same principle, which may be indeed gathered also from the judgment of Sir R. Couch in *Joseph* v. *Solano*[2] relied on for the appellant. See, too, *Cannan* v. *Bryce*[3]; Story on Bailments, sec. 158 (7th ed.); Story on Partnership, sec. 6 (5th ed.)

The case of *Gordon* v. *Howden*[4] is identical in principle with the one before us, and in that case the House of Lords refused to give effect to a secret partnership for pawnbroking contrary to the terms of the Statute 39 and 40, Geo. III, cap. 99.

We, therefore, confirm the decree of the Subordinate Judge. Each party is to bear his own costs throughout.

Decree confirmed.

(1) L. R., 11 Ch. Div., 170.
(2) 9 Beng. L. R., 441.
(3) 3 B. & Al., 179.
(4) 12 Cl. and Finnelly, 237.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *August* 11.

DA'DA'PA', (ORIGINAL APPLICANT), APPELLANT, *v.* VISHNUDA'S AND OTHERS, (ORIGINAL OPPONENTS), RESPONDENTS.*

Insolvency—Insolvent debtor—Unfair preference—Civil Procedure Code (Act XIV of 1882), Sec. 351.

A creditor can put pressure on his debtor to get payment of his claim, notwithstanding that the debtor may be in embarrassed circumstances. But a debtor, who gives an unfair preference to one creditor by giving him a large proportion of his property, so as to reduce the *aliquot* share of the other creditors, acts fraudulently, and no title is given to that particular creditor as against the assignees who represent the creditors generally.

A. filed a suit and obtained a decree against B. During the pendency of the suit, and only four days before the decree was passed, B. assigned by way of mortgage nearly the whole of his property to one of his creditors C. The assignment was made, not to secure a fresh advance, but in consideration of past debts

* Appeal from Order, No. 2 of 1887.

due to C. C. was aware of B.'s embarrassments. Two years afterwards B. was arrested in execution of A.'s decree. B. thereupon applied to be declared an insolvent.

Held, that the assignment by B. of nearly the whole of his property to C. amounted, under the circumstances, to an unfair preference, within the meaning of section 351, clause (*c*) of the Code of Civil Procedure (XIV of 1882). B. was, therefore, not entitled to be declared an insolvent.

APPEAL from the order of Ráv Sáheb Vyankatráo R. Inámdár, Second Class Subordinate Judge of Bijápur, in miscellaneous application No. 7 of 1886.

The appellant Dádápá was arrested in execution of a decree obtained by one Vishnudás on the 30th May, 1884. Thereupon Dádápá applied to be declared an insolvent under the provisions of Chapter XX of the Code of Civil Procedure (XIV of 1882).

This application was rejected by the Subordinate Judge. He found that in 1879 Dádápá had mortgaged certain property to one Gokuldás for Rs. 800; that when Vishnudás sued Dádápá in 1884, Gokuldás began to press Dádápá for payment of his money; that during the pendency of the suit, and only four days before the decree was passed in favour of Vishnudás, Dádápá transferred nearly the whole of his property to Gokuldás under a mortgage-bond for Rs. 600; and that the consideration for this bond was the balance due to Gokuldás on account of former transactions.

The Subordinate Judge was of opinion that the mortgage by Dádápá of nearly the whole of his property for Rs. 600 amounted, under the circumstances, to an unfair preference within the meaning of section 351, clause (*c*) of the Code of Civil Procedure (XIV of 1882), and as such disentitled him to be declared an insolvent.

Against this decision Dádápá appealed to the High Court.

Shámráv Vithal for the appellant:—On the facts found by the Subordinate Judge the appellant is entitled to be declared an insolvent. There were debts due to Gokuldás. He was pressing hard for payment. The mortgage was effected under this pressure. There is no proof of any intention to defraud the general body of creditors. The transaction, therefore, does not amount to an

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unfair preference—*Joakim* v. *The Secretary of State for India*[1]; *Ex parte Craven*[2].

There was no appearance for the respondents.

WEST, J.:—In this case the Subordinate Judge determined that the transaction on the part of the present appellant amounted to an unfair preference, and as such, disentitled him to the benefit of section 351 of the Code of Civil Procedure (XIV of 1882). The ground for his decision was that the bond for Rs. 600 passed to Gokuldás four days before the decree against the appellant of itself constituted an unfair preference, and was one which put Gokuldás in a more advantageous position as compared with the other creditors.

It is clear that his passing that mortgage-bond to Gokuldás, instead of letting the latter wait for the distribution of his assets under the insolvency rules, gave Gokuldás a preference; and, *primâ facie*, it was an unfair advantage given to him over the other creditors.

It has been argued at much length that there was no unfair or fraudulent preference shown; and Mr. Shamráv Vithal on behalf of the appellant has relied upon a decision in *Joakim* v. *The Secretary of State for India*. This decision appears to be opposed to several English rulings which bear directly upon the question in this case. The general doctrine is that a creditor can put pressure on a debtor to get payment of his claim, notwithstanding that the debtor may be in embarrassed circumstances; but it is also the general doctrine that a debtor who gives an unfair preference to one particular creditor by giving him a large proportion of his property, so as to reduce the *aliquot* share of the other creditors, acts fraudulently, and no title is given to that particular creditor as against the assignees who represent the creditors generally—*Ex parte Halliday*; *In re Liebert*[3]; also *Marks* v. *Feldman*[4] and *Butcher* v. *Stead*[5]. In the last mentioned case Lord Hatherley says: "I think the Legislature intended to say that if you, the debtor, for the purpose of evading the operation of the bankruptcy laws, and in order to give a

(1) I. L. R., 3 All., 530.
(2) L. R., 10 Eq., 648.
(3) L. R., 8 Ch. App., p. 283.
(4) L. R., 5 Q. B., p. 275.
(5) 7 Eng. and Ir. App., p. 839 at p. 849.

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fraudulent preference, make this payment or this charge it shall be wholly done away with except in cases where the person you have so favoured is wholly ignorant of your intention to favour him and receives payment simply for valuable consideration and *bonâ fide*, that is, without any notice of any intention on your part fraudulently to favour one creditor above another." If there had been a new advance given by Gokuldás to the appellant, the conduct of the latter would not, perhaps, have been an act of bankruptcy. In the present case, however, the creditor was aware that the debtor was in embarrassed circumstances, and got an assignment of nearly the whole of his property only four days before a decree was passed against him. There was, clearly, an unfair preference shown to Gokuldás by the debtor, although the latter did not apply to be declared an insolvent for nearly two years afterwards. As a matter of fact, he applied as soon as execution of the decree was sought in the very suit, during the pendency of which he passed the bond charging his property with Rs. 600. This transaction the lower Court held to be a fraudulent preference; and we would not be justified in interfering with the lower Court's decision, unless we were satisfied to the contrary. We must, therefore, confirm the order of the Subordinate Judge.

Order confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887.
August 17.

HARI (ASSIGNEE OF DECREE-HOLDER), APPELLANT, *v.* NA'RA'YAN *alias* SAMBHOJI, A MINOR, BY HIS GUARDIAN CHIMA'BA'I, (JUDGMENT-DEBTOR), RESPONDENTS.*

Execution of decree—Limitation—Application for execution in accordance with law—Limitation Act, XV of 1877, Sch. II, Art. 179—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.

On the 31st July, 1879, a decree was passed against N., a minor, represented by his mother and guardian C. In December, 1880, the first application for execution was made. Through mistake execution was sought against C. herself, as 'widow of B.', and not as guardian of the minor N. That application was granted, and cer-

*Second Appeal, No. 117 of 1887.