

## INSOLVENCY JURISDICTION.

Before Mr. Justice Strachey.

1896.

IN THE MATTER OF RUNCHOD KHUSHAL, AN INSOLVENT.

December 16.

*Insolvency—Insolvent Act (Stat. 11 and 12 Vict., c. 21), Sec. 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt—Transfer of Property Act (IV of 1882), Secs. 135 and 139.\**

An insolvent having filed his schedule in April, 1881, obtained his personal discharge in September, 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under section 86 of the Insolvent Act (11 and 12 Vict., c. 21). The schedule contained the names of thirteen creditors. The insolvent afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to Rs. 1,180-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent. The insolvent contended that under section 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought.

*Held* that they were entitled to be paid the full amount of the scheduled debts. If the debts at the time of purchase were to be regarded as debts in respect of promissory notes, section 139 of the Transfer of Property Act applied, and if the claim was under the judgment entered up against the insolvent, then clause (d) of section 135 applied.

INVESTIGATION of claims to dividends under Rule 36 of the Bombay Rules and Orders under the Insolvent Debtors Act (Stat. 11 and 12 Vict., c. 21).

The insolvent filed his schedule in April, 1881. Thirteen persons were entered in it as creditors, and the total of the debts due to them was Rs. 1,600-7-0.

In September, 1881, the insolvent obtained his personal discharge under section 47 of the Insolvent Act and on the same

Sections 135 and 139 of Act IV of 1882, Chapter VIII —

"135. Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and the incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

"Nothing in the former part of this section applies—

(a) Where the sale is made to the co-heir to, or co-proprietor of, the claim sold ;

(b) Where it is made to a creditor in payment of what is due to him ;

(c) Where it is made to the possessor of a property subject to the actionable claim ;

(d) Where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment."

"139. Nothing in this chapter applies to negotiable instruments."

day judgment was entered up against him for the amount of the scheduled debts, under section 86 of the Act, in the name of the Official Assignee.

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The insolvent subsequently settled with four of the thirteen creditors mentioned in his schedule, but the remaining nine, whose aggregate claims amounted to Rs. 1,180-7-0, assigned over these claims to three persons, *viz.*, Ali Mahomed Vulley, Gordhan Purushotam and Shaik Boolun.

In 1893 the insolvent inherited some immoveable property from his father, and in 1896 the Official Assignee, at the instance of the above mentioned three assignees, caused the right, title and interest of the insolvent in the property so inherited by him to be advertised for sale by auction, in execution of the decree entered up against him as above mentioned.

The sale, however, was stopped by payment to the Official Assignee of the whole amount of the decree held by him, *viz.*, Rs. 1,600-7-0.

The insolvent alleged that the three assignees had bought in the claims of the original creditors for  $4\frac{1}{4}$  annas in the rupee, and he contended that under section 135 of the Transfer of Property Act (IV of 1882) they were not entitled to receive from the Official Assignee more than the sums which they had actually paid, with interest thereon, from the date of their purchase, and that the balance of the amount in the hands of the Official Assignee should be refunded to him (the insolvent).

The Official Assignee did not admit the insolvent's contention, and he, moreover, demanded from the insolvent, in addition to the Rs. 1,600-7-0 already paid to him, a further sum of Rs. 2,186 as interest on the scheduled debts. In default of payment of this additional sum he threatened to proceed with the sale of the property.

In September, 1896, the insolvent obtained a rule calling on the Official Assignee to show cause why he should not be restrained from proceeding with the sale and why satisfaction should not be entered up on the judgment entered up against the insolvent in 1881.

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When the rule came on for hearing it was arranged that the Court should first, under Rule 36 of the Rules and Orders under the Insolvent Act, decide the question as to the amount to which the three assignees of the scheduled debts were entitled. They denied the insolvent's allegation that they had only paid  $4\frac{1}{2}$  annas in the rupee as the consideration for their assignments, but they contended that, in any case, they were entitled to be paid the full amount of the scheduled debts assigned to them, with interest thereon from the date of the entering up of the judgment in 1881.

The matter now came on under Rule 36 for investigation and determination of the claim of the assignees.

*Anderson* for the assignees:—It is unnecessary to inquire into the amount of consideration paid by us for the assignment of the debts. We have bought the scheduled debts, and are entitled to be paid them in full. Section 135, clause 1, of the Transfer of Property Act (IV of 1882) does not apply. What we bought was not an actionable claim; but, in any event, clause (d) of section 135 excludes this case from the operation of the section. Further, the debts we bought were debts due on promissory notes as stated in the schedule, and section 139 of the Act (IV of 1882), therefore, applies. [He was stopped.]

*Davar* for the insolvent:—We contend that section 139 does not apply. For, it is clear that what the assignees bought was something quite distinct from the promissory notes on which the original debts were incurred. These notes had no force and were not in existence when the assignees bought the claims against the insolvent. They were merged in the judgment, which was entered up in 1881. What the assignees bought was the right, title and interest of the Official Assignee under that judgment. It is in virtue of that judgment that the Official Assignee now claims to bring the insolvent's property to sale, not in virtue of the promissory notes. The notes became valueless when judgment was passed.

We contend, therefore, that section 135 applies and that the assignees are not entitled to more than they paid for the claim they bought. Clause (d) of that section does not apply. The judgment there referred to is clearly a judgment of a civil Court.

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in an ordinary suit. The judgment entered up in this case under section 86 of the Insolvent Debtors Act is a judgment of a special kind. It is not one "affirming the claim," nor one that the creditors can individually or collectively enforce. It is a comprehensive judgment comprising many claims, passed under a special provision of a special law.

STRACHEY, J.:—The assignees here contend that they are entitled to receive from the Official Assignee the full amount of the debts entered in the schedule as due to the creditors whose claims they have purchased. The insolvent contends that, under section 135 of the Transfer of Property Act (IV of 1882), they cannot get more than the price they paid for these claims.

It appears that the claims which the assignees have purchased were originally claims against the insolvent in respect of promissory notes passed by him to the several creditors whose names are set forth in the schedule. If, at the time of the purchase, these claims still retained that character, it is clear that section 139 applies, and in that case the insolvent cannot contend that the assignees are not entitled to the whole amount of the scheduled debts, for the operation of section 135 is expressly excluded. Mr. Davar has, therefore, been obliged to argue that what the assignees have purchased is a claim against the insolvent under the judgment entered up against him under section 86 of the Insolvent Debtors Act. If so, I am of opinion that assuming such a claim to be an "actionable claim" within Chapter VIII of the Transfer of Property Act, clause (d) of section 135 applies, and that the insolvent cannot obtain the benefit of the earlier provision of that section. That being so, I must hold that the assignees are entitled to be paid the full amount of the scheduled debts which they have purchased.

The question as to the amount of the interest to be paid on these debts stands over.

Attorneys for the assignees:—Messrs. *Payne, Gilbert and Sayani*.

Attorneys for the insolvent:—Messrs. *Edgelow and Gulabchand*.