APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

1922.
November 28.

MOSES MENAHIM (ORIGINAL PLAINTIFF), APPELLANT *v.* AHRAIN SOLOMON (ORIGINAL DEFENDANT), RESPONDENT*.

Aden Act (II of 1864), section 15—Decree—Execution—Relief of insolvent debtor—Provincial Insolvency Act not directly applicable—Spirit and provisions to be applied—Registrar appointed Receiver—Order made by Registrar ultra vires*—Remedy.*

A decree was passed against one S in the Assistant Political Resident's Court at Aden. In execution S was arrested but he submitted to the Court that he was unable to pay his debts and asked for relief. The Provincial Insolvency Act not being in operation in Aden, the Court, with the view of applying the spirit and principles of that Act in accordance with the provisions of section 15 of the Civil and Criminal Justice, Aden Act (II of 1864), appointed the Registrar receiver and ordered him to "take all action essential to the settlement of applicant's affairs". Purporting to act under this order, the Registrar, at the instance of the judgment-creditor, issued notices to three other creditors of the applicant and, after hearing evidence, ordered them to deliver up certain goods of the applicant in their possession or to pay the price thereof. The three creditors thereupon filed suits against S and the execution creditor to set aside the order of the Registrar,

Held, that the proceedings taken by the Registrar bore no analogy to any proceedings that a receiver could take under the Provincial Insolvency Act, but that the present suits filed against the execution creditor and the judgment-debtor to set aside the said order were not competent, the plaintiffs' proper course being to appeal.

Per MACLEOD, C. J.:—"We also point out that the action of the Registrar was not warranted by the provisions of the Indian Provincial Insolvency Act, and that if the Resident's Court passes orders based on the spirit of the Indian laws, then it ought to consider what are the provisions of those laws. For instance, if a receiver is appointed he should be given such powers as are given to receivers under the Provincial Insolvency Act."

REFERENCE made by Major-General T. E. Scott, Political Resident, Aden.

The facts which led to the reference were as follows: In Suit No. 97 of 1920 filed in Assistant Resident's

* Civil Reference No. 2 of 1922 (Appeals Nos. 6, 7 and 8 of 1921).

Court at Aden, certain creditors obtained a decree against the defendant Ahrain Solomon for Rs. 2,105-3-0. They enforced the decree on the 21st April 1920, by the arrest of the defendant, and the latter on the 30th April 1920 submitted an application to the judge showing his inability to meet his debts, and the judge, on the 1st May 1920, made the following endorsement on the application:—

"The Insolvency Act not being in operation in Aden but the Court being enjoined to act generally on the spirit of Indian laws, it is ordered that the Registrar be appointed a 'Receiver' in this case and take all action essential to the settlement of applicant's affairs."

The Registrar on the 7th May 1920 issued notices to certain other creditors (the present plaintiffs and appellants) directing them to deliver forthwith to the Nazir of the Court the property mentioned in the notices. The plaintiffs lodged objections and asserted their claims to the property in question as secured creditors but the Registrar after hearing both the sides and the evidence of their witnesses disallowed the plaintiffs' claim, by his order dated the 27th July 1920.

The plaintiffs thereupon brought suits against the judgment-debtor and the execution creditors to set aside the order of the Registrar.

The trial Judge dismissed the suits on the ground that there appeared to be no cause of action as the order dated the 27th July 1920 was passed in accordance with the spirit of the Insolvency Act and under section 75 of the Act an appeal lay to the District Court and not to the Court of the learned Judge.

The plaintiffs appealed to the Resident's Court. The Resident submitted the papers to the High Court for orders stating his reasons as under—

"The main point for determination in this appeal is whether a suit lies for setting aside the order in question.

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It appears to me that the proper course for the plaintiffs was to have appealed if they are not satisfied. The object of these suits is to ask the Court to set aside what might be said to be its own order.

The appellants' contention that Order XXI, Rule 58 of the Civil Procedure Code gave them a right is not correct as the order sought to be set aside was not passed in execution proceedings."

Kemp, instructed by Messrs. *Crawford Bayley & Co.*, for the appellants.

No appearance for the respondent.

MACLEOD, C. J.:—This is a reference under the Aden Jurisdiction Act in the matter of three suits filed by three different plaintiffs against the same defendant Ahrain Solomon to set aside an order passed by the Court of the Registrar dated 27th July 1920. The facts are peculiar. A decree having been passed against Ahrain Solomon in Suit No. 97 of 1920 he was arrested in execution. He submitted to the Court that he was unable to pay his debts and asked for relief. On that application the Court made an order as follows:—"The Insolvency Act not being in operation in Aden but the Court being enjoined to act generally on the spirit of Indian laws, it is ordered that the Registrar be appointed Receiver in this case and take all action essential to the settlement of applicant's affairs."

I presume the Court thought that it was making an order which was something in the nature of an adjudication order with the appointment of a receiver with powers which a receiver would have under the Provincial Insolvency Act. Then, on the 27th July 1920, the Registrar purported to make the order which is now in dispute. I may say at once that the proceedings taken by the Registrar bear no analogy to any proceedings that a receiver could take under the Provincial Insolvency Act. Such a receiver cannot make an order against debtors of the insolvent. He can call upon them to pay

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what they owe to the insolvent, but, if they do not obey the demand, he must seek his remedy by suit. The proper course then for the plaintiffs to have followed was to appeal to the Court which appointed the receiver, or to the District Court, asserting that the receiver had no powers under the order appointing him to take the action which he had done. Whatever the proper course to follow may have been, we think that the present suits were not competent, filed as they were against the execution creditor and the judgment-debtor. There was no cause of action against them, unless these proceedings could be considered as proceedings taken in execution under Order XXI, Civil Procedure Code. But that is a supposition which is excluded by the terms of the order passed by the Assistant Resident. We send back the papers with this expression of our opinion that the Resident was right in thinking that the plaintiffs' suits were not competent. We also point out that the action of the Registrar was not warranted by the provisions of the Indian Provincial Insolvency Act, and that, if the Resident's Court passes orders based on the spirit of the Indian laws, then it ought to consider what are the provisions of those laws. For instance, if a receiver is appointed he should be given such powers as are given to receivers under the Provincial Insolvency Act. We think that the present plaintiffs should be allowed to appeal either to the Assistant Resident or to the Resident against the action of the Registrar, and no doubt effect will be given to our expression of opinion that the action of the Registrar was *ultra vires*. No order as to costs.

J. G. R.