

1871 execution of that decree, which the Raja had obtained against the Rani.
 RANI SARAT
 SUNDARI DEBI
 v.
 KUMAR PARES-
 NAB, VAN ROY.

Their Lordships, therefore, are unable to see that the Courts have in any way miscarried in coming to the conclusion to which they have come, and, adhering to their rule, they must humbly advise Her Majesty to dismiss this appeal with costs.

Appeal dismissed.

Agents for appellant : Messrs. J. H. and H. R. Henderson.

Agent for respondent : Mr. Wilson.

[IN THE INSOLVENT COURT.]

Before Mr. Justice Phear.

1872
 January 26.

IN THE MATTER OF PARKE PITTAR AND ANOTHER, INSOLVENTS.
 CLAIM OF THE BANK OF BENGAL.

Insolvent Estate—Claim. Proof of—Dividends already declared—Bills of Exchange.

See also
 13 B. L. R.
 App. 4.

A claim was made against the estate of an insolvent in respect of certain bills of exchange, on which dividends had been declared in favor of the present claimant by the Official Assignee on the estates of two other insolvents, but which bills of exchange were also included in the present claim. *Held* that the dividends declared on the two other insolvencies must be deducted from the amount of the claim, though no payment in respect of the dividends declared had been actually made.

THIS was the hearing of the claim of the Bank of Bengal against the estate of the insolvents who had carried on business in Calcutta, under the name of Charles Nephew and Co. The date of the insolvency was 17th December 1870. The claim which was stated in the schedule as Rs' 2,29,900 arose as stated in the following affidavit of Mr. Hardie, Deputy Secretary of the Bank of Bengal :—“ That at and before the date of the adjudication of insolvency, the insolvents' firm were liable to the bank in the sum of Rs. 2,21,865-3-2 on certain bills of exchange, of which the bank were holders, and which had been dishonored at maturity, and in the sum of Rs. 12,311-8-7,

in respect of the insolvents' over-draft of their account with the Bank of Bengal; that the bank had received a payment of Rs. 4,168, in respect of the bills of exchange, leaving a balance due on the bills of Rs. 2,17,697-3-2; that the insolvents had deposited with the bank, as security for their over-draft and against their general debit balance, bills of exchange which reduced the amount due in respect of such over-draft to Rs. 1,726; that the insolvents had also deposited with the bank, as security for their over-draft and general debit balance, a bill of exchange purporting to be accepted by one Ramjiban Chandra for Rs. 787, and another bill accepted by Shibchandra Mullick and Co. for Rs. 12,500; that the bank had sued on the bill purporting to be accepted by Ramjiban Chandra, but he denied his acceptance, and the action was non-suited; that certain articles of jewellery had been pledged to the bank by the insolvents as security; and that since the date of the adjudication of insolvency, the bank had sold certain of the articles of jewellery amounting to Rs. 1,46,698-7, and the value of the rest remaining unsold amounted to Rs. 23,000, leaving the amount which it was contended, the bank were entitled to prove for, at Rs. 49,724-12-3."

Mr. *Marindin* for the bank submitted that the bank ought to be admitted to prove for that sum.

Mr. *Ingram* (Mr. *Evans* with him) for the Official Assignee objected that, before proof could be admitted, the bill of exchange for Rs. 787, purporting to be signed by Ramjiban Chandra, must be given up, and that credit must also be given for the dividends on certain bills of exchange included in this claim declared in the estates of Shibchandra Mullick, an insolvent, and Dinanath Dey, an insolvent; the former being at the rate of 30 per cent, and the latter at 12½ per cent. [Mr. *Marindin*.—Ramjiban's bill can be given up. As to the dividends, though they have been declared, they have never been received by the bank—*Midland Banking Company v. Chambers* (1).] It is sufficient that the dividends are declared to entitle the Official

1872

 IN THE
MATTER OF
PARKE
PITTAR.

1872
 IN THE
 MATTER OF
 PABEE
 PITTAR.

Assignee to demand them to be credited. [Mr. Marindin referred to—*In the matter of Shibchandra Mullick Ex parte Chartered Mercantile Bank* (1), and cases there cited in support of the claim.] *Ex parte Royal Bank of Scotland* (2).

The Court reserved its decision on the question whether the deduction should be made.

PHEAR, J.—The question of which I reserved consideration in reference to the claim of the Bank of Bengal is whether the dividends, already declared in favour of the Bank of Bengal in the two insolvencies of Shibchandra Mullick and Dinanath Dey, should be deducted from the amount claimed by the bank in this insolvency.

Mr. Marindin for the bank argued mainly on the footing of the decision in *The Midland Banking Company v. Chambers* (3), that even an actual payment of this kind, if it were made, ought not to be deducted. I say mainly on the footing of *The Midland Banking Company v. Chambers* (3), because Mr. Marindin did also refer to other cases which, however, he at the same time acknowledged that I had dealt with adversely to him in a case which lately came before me (1). Now *The Midland Banking Company v. Chambers* (3) is certainly a very singular case. There a surety for the insolvent debtor to the Banking Company, creditor, had paid a sum of £300 on account of the insolvents' debt to the Banking Company, and yet the Court held that the Banking Company was entitled to prove against the debtors' estate to the full extent of the debt, without deducting this sum of £300 so paid to them. I need not read the facts as mentioned in the appeal. Both the Lords Justices Selwyn and Gifford put their judgment on the special ground that the payment of the £300 by the surety was not, and was not intended to be, a general payment in reduction of the debt, but was, by the express terms of the suretyship a payment in reduction of such debt as should remain after the bank had received any possible dividend from

(1) 8 B. L. R. 30.

(3) 4 L. R., Ch. App., 398.

(2) 2 Rosc., 197.

the estate of the debtor. The surety had said in effect this :—
“You get, in the event of your debtors’ insolvency, all possible dividends out of his estate, and I will guarantee you the payment of so much as may remain due after that to the extent of £300.” Now it seems to me that that case in which the argument of Counsel, and the judgment of the Court was placed solely on the express and peculiar terms of the surety’s guarantee, is really an authority against Mr. Marindin’s position, rather than a support to it; because I infer from this that the argument and the judgment would not have been put on those special grounds, if it were a recognized principle in ordinary cases that the payment by the surety should not be taken in reduction of the amount to be proved. This being so, I think that any payments made by Shibchandra Mullick and Dinanath Dey to the bank would certainly have to be deducted; and I am also of opinion that a dividend, actually declared by the Official Assignee, must be taken in this Court to be tantamount to a payment. I come to the conclusion, therefore, that the reduction asked for by Mr. Ingram must be made.

Attorneys for the Bank : Messrs. *Collis & Co.*

Attorneys for the Official Assignee : Messrs. *Carruthers and Dignum.*

1871

IN THE
MATTER OF
I ARKE
PITAR.