

*Before Mr. Justice Macpherson.*

IN THE MATTER OF BUNGSEEDHUR KHETTRY (AN INSOLVENT).  
CLAIM OF RAMLALL BUDREE DOSS.

1877  
April 26 §  
May 2.

*Insolvent Act (11 and 12 Vict., c. 49), s. 24—Order and Disposition.*

On the night previous to *B.*'s being adjudicated insolvent, about 10 P. M., the firm of *R. B. D.*, at their place of business, promised to give *B.* a loan of Rs. 5,000 if he would the next morning deliver to them goods to that amount, and would, in the meantime, satisfy them that he had sufficient goods in his godown, and allow the firm of *R. B. D.* to put their lock on the door of the godown to secure the goods until they had received the value of the loan. Thereupon *B.* took the gomasta of the firm of *R. B. D.* to his godown, let him see that it contained goods worth more than Rs. 5,000, and allowed him to put a lock on the door, *B.* at the same time replacing his own locks. The gomasta and *B.* then returned to the office of *R. B. D.*, where Rs. 5,000 were paid to *B.*, who promised to deliver the next morning Rs. 5,000 worth of goods out of the godown which had been locked up. Having received the money, *B.* absconded from Calcutta that same night and never returned to his place of business. The next day he was adjudicated an insolvent. *Held*, that the goods in the godown were not in the order and disposition of *B.* within the meaning of s. 24 of the Insolvent Act.

THIS was a claim by the firm of Ramlall Budree Doss, carrying on the business of bankers in Calcutta, to the sum of Rs. 5,680-10, being the proceeds of certain goods which were in the godowns of Bungseedhur Khettry when he was adjudicated insolvent, but which the claimants alleged were made over to them previous to the insolvency. The goods had been sold and the proceeds were in the hands of the Official Assignee.

The circumstances under which the goods were alleged to have been made over to the claimant were set out as follows in the affidavits.

The affidavit of Moteeram and Buldeo Doss stated that Moteeram was, on the 20th December, 1876, the head gomasta of the banking firm of Ramlall Budree Doss in Calcutta, and that Buldeo Doss was at that time the cashier of that firm; that about 10 o'clock on the night of the 20th December, Bungseedhur Khettry called at the place of business of Ramlall Budree Doss, and said he was in great need of money and asked for a

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loan from the firm, which, he stated, he wanted to meet a certain hundi held by Ramlall Budree Doss and drawn on himself, which was due on that day, and for other pressing demands; that Moteeram told him he could have a loan if he could give security, to which he replied that he had goods in his godowns which he promised to make over to Ramlall Budree Doss in the morning, but he wanted a loan of Rs. 15,000 at once, which Moteeram refused; that Bungseedhur then requested Moteeram to send some person to take charge of a godown in which, he said, he had goods of considerable value, and place a lock upon it, and asked for an immediate loan of Rs. 5,000 to save his credit, promising to make out a full list and valuation of the goods he had available to give as security in the morning, when he would sign a proper writing to secure repayment of any advances, including the said hundi; that Moteeram knowing that the firm of Ramlall Budree Doss had had other transactions in hundis with Bungseedhur, and being willing to save his credit, directed Buldeo Doss to go with Bungseedhur to ascertain if the godown contained sufficient goods to cover the required advance; that Buldeo Doss taking a lock and key with him accompanied Bungseedhur to his place of business, and Bungseedhur opened the door of a certain godown in which were boxes of cloths, and Buldeo Doss believing and being assured by Bungseedhur that the godown contained goods of considerable value, placed the lock he had brought with him on the door and locked up the godown, and went back to his place of business; that by order and direction of Moteeram the sum of Rs. 5,000 was then paid to Bungseedhur, it being agreed that a full list of the contents of the boxes in the godown should be made in the morning and a further advance made to Bungseedhur according to the amount of security found in the godown, and a proper writing taken from him to secure the same and the amount of the said hundi; that Buldeo Doss, after sending a jemadar, who failed to find Bungseedhur, went later on the same night to Bungseedhur's place of business to get the hundi accepted by him, and he then examined the lock he had put on the godown door and found two other locks there which were not there when he put the lock on as aforesaid; that proceedings were about being

taken to bring a suit against Bungseedhur, who had absconded, in respect of these transactions, but he was adjudicated insolvent, and no suit was therefore instituted; and that the proceeds of the sale of the goods in the godown in the hands of the Official Assignee amounted to Rs. 5,680-10.

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The affidavit of Bungseedhur stated that, on 20th December, he was the managing partner of the business then being carried on, under the style of Nanoo Mull, in Calcutta; that he went, as stated, on the 20th of December, to the firm of Ramlall Budree Doss, but the transactions took place not with Moteeram but with Shah Muttra Doss, the proprietor of the business, and the loan asked for was Rs. 5,000, not Rs. 15,000; that on asking for the loan he offered to hypothecate to Muttra Doss's firm by actual delivery (without writing of any kind) on the following morning such a portion of the goods then in the godown as would be sufficient to cover the loan; that Buldeo Doss went with him to the godown to satisfy himself of the goods being there, and in Buldeo Doss's presence Bungseedhur left his own two locks, which were on the door when it was opened to allow Buldeo Doss to see the goods, on the door, in addition to the one put on by Buldeo Doss; that it was not contemplated that Ramlall Budree Doss were to have exclusive charge of the godown, or that a list would be made out and a writing signed the next morning to secure repayment of any advance, and that there were goods in the godown of the value of Rs. 10,000, and Bungseedhur never intended to withdraw his own possession of the goods in the godown or any separate and distinct part thereof for the loan of Rs. 5,000; that he obtained the Rs. 5,000, and was then obliged to abscond to avoid his creditors.

Bungseedhur was adjudicated insolvent on the 21st December, the day after the above transaction was alleged to have taken place; and the question in this matter was whether the goods were in the order and disposition of the insolvent so as to pass to the Official Assignee, the claimants contending that the goods, or at least a sufficient portion of them to cover the loan, were, under the circumstances, actually delivered to them and for *bonâ fide* consideration, and that therefore they had a lien on the proceeds of sale in the hands of the Official Assignee.

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Mr. *Ingram* for the Official Assignee.—At most the transaction amounted to a mere promise to execute a mortgage of a portion of the goods; no portion of the goods was actually separated specifically. They were still left in the possession of the insolvent, who says that he never made any mortgage of them on that night, and that his own two locks, which had previously been on the door, remained there. Under the circumstances they were in the order and disposition of the insolvent, and the alienation, therefore, is void as against the Official Assignee. The cases on the question of order and disposition are of two classes,—first, where the property was originally that of the insolvent; second, where property of another person is in possession of the insolvent. This is a case of the first kind. The principles are laid down in the following cases and authorities: *Lingard v. Messiter* (1); *Knowles v. Horsfull* (2); *Ex parte Staner* (3); see Tudor's Leading Cases at page 462; *In re Agabeg* (4); *Ex parte Marjoribanks* (5); *Darby v. Smith* (6); and Vol. I, Griffiths on Bankruptcy, ch. 8, s. 5, pp. 444—480. The general rule is that when property is vested in the insolvent, he will be the reputed owner, unless a change of possession be made in as clear and distinct a manner as possible so as to be notorious to the world. Here the transfer was not so made, and, it is submitted, was not sufficient to take the property from the Official Assignee.

Mr. *Jackson* for the claimant.—The validity of the alienation does not depend on its notoriety; it would be impracticable in many cases, as here where it took place at midnight, to make the transfer public; it depends on its being made *bonâ fide*. The test is whether there was any improper dealing or want of *bonâ fides* in leaving the goods in the insolvent's possession, as by letting him have false credit: *Hamilton v. Bell* (7). This test distinguishes *Lingard v. Messiter* (1) and *Knowles v. Horsfull* (2). The principle is the same in both classes of cases mentioned—*Reynolds v. Bowley* (8), *Harman v. Fishar* (9).

(1) 1 B. &amp; C., 308.

(2) 5 B. &amp; Ald., 134.

(3) 33 L. T., 244.

(4) 2 I. J., N. S., 340.

(5) 1 De Gex, 466.

(6) 8 T. R., 82.

(7) 10 Exch., 545.

(8) L. R., 2 Q. B., 474.

(9) Tudor's Leading Cases, 525.

As to *Ex parte Staner* (1) it is contrary to the case of *Ex parte Marrable* (2). On the facts of this case as appearing in the affidavits, the learned Counsel submitted that the goods were not in the order and disposition of the insolvent.

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\* Mr. *Ingram* in reply.—The case of *Hamilton v. Bell* (3) is distinguishable as applying to the second class of cases referred to by me. *Reynolds v. Bowley* (4) is not in point in this case; it refers to the liability of a dormant partner inasmuch as he is just as much in possession as any other partner. In the case of *Ex parte Marrable* (2), the property was set apart and specified so that the bankrupt could not have dealt with it, and the purchaser could have made a good title. It is, moreover, contrary to subsequent authorities. Here neither party could have dealt with the goods.

*Cur. adv. vult.*

MACPHERSON, J.—On these affidavits I find the facts to be, that, about 10 P. M. on the 20th of December, the firm of Ramlall Budree Doss, merchants in the Burra Bazar, promised at once to give Rs. 5,000 to the insolvent if he would next morning deliver to them goods to that amount, and would in the meantime satisfy them that he had sufficient goods in his godown and would allow them (Ramlall Budree Doss) to put their lock on the door of the godown so as to secure the goods therein until they had received the value of their Rs. 5,000. Thereupon the insolvent took the gomasta of Ramlall Budree Doss to his godown, let him see that it contained goods worth more than Rs. 5,000, and allowed him to put his masters' lock on the door, while the insolvent, at the same time, replaced his own locks.

The gomasta and the insolvent then returned to Ramlall Budree Doss' kothi, where Rs. 5,000 were at once paid to the insolvent, who promised to deliver in the morning Rs. 5,000 worth of goods out of the godown which had been locked up. Having got the money, the insolvent absconded from Calcutta that same night, and never returned to his place of business.

Next day he was adjudicated insolvent, and the question

(1) 33 L. T., 244.

(2) 1 Glyn and Jamieson, 402.

(3) 10 Exch., 545.

(4) L. R., 2 Q. B., 474.

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now is, whether the goods in that godown passed to the Official Assignee, as being in the order and disposition of the insolvent.

I have considered the cases to which I was referred in the course of the argument, and certain other cases also, in particular that of *Ex parte Watkins* (1); and I think I am bound to hold that the goods did not remain in the order and disposition of the insolvent within the meaning of the statute.

The goods which were to be given to Ramlall Budree Doss in return for the Rs. 5,000 were, it is true, not actually set apart on that night, and the agreement was that they should not be formally set apart and delivered until next morning. But the godown containing the goods was secured by the lock of Ramlall Budree Doss, and was no longer under the control of the insolvent; and the Rs. 5,000 were paid in consideration of the godown having been so secured. After the locks were put on, the goods could not be dealt with save through the joint action of Ramlall Budree Doss and the insolvent, and they were in fact no longer in his order and disposition, but were subject to the lien of Ramlall Budree Doss. As to the notoriety of the transfer of possession or of the creation of the lien, the transaction was conducted with as much notoriety as was under the circumstances possible.

On the whole I think that Ramlall Budree Doss have established their claim, and are entitled to be paid out of the proceeds of the sale of these goods the sum of Rs. 5,000 and their costs of this application.

The matter is one of some doubt, and the Official Assignee was clearly right in resisting the claim and having the question inquired into and discussed, and his costs must be borne by the estate.

*Claim allowed.*

Attorney for Ramlall Budree Doss: Mr. *Paliologus*.

Attorneys for the Official Assignee: Messrs. *Dignam* and *Robinson*.

(1) 8 L. R., Ch., 520.