

In Re: Ackrill

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Court : Chennai

Decided On : Oct-29-1894

Reported in : (1895)ILR18Mad24

Judge : Shephard, J.

Appellant : In Re: Ackrill

Judgement :

Shephard, J.

1. The facts giving rise to this application are as follows: Among the assets of the insolvent was a policy of insurance on his own life for Rs. 2,500, which was sold by the Official Assignee and realized Rs. 180. Shortly after the sale the insolvent, who had obtained his personal discharge, died, and the purchaser collected the amount due on the policy. It was then brought to the notice of the Administrator-General by the purchaser himself that he had not bought the policy entirely for his own benefit, but mainly for the benefit of the insolvent, and accordingly the money received on the policy minus the price paid for it and a small sum due by the insolvent to the purchaser was paid over to the Administrator-General. The question is whether the money rightly came to the hands of the Administrator-General or whether it is affected by the vesting order.

2. I think that the money must be treated as after-acquired property. By the sale the Official Assignee parted with all interest in the policy. Under the circumstances,

I think it is clear that the personal representative of the deceased insolvent is entitled to take and to administer the money as the assets of the deceased. This is taken for granted in the cases, and must necessarily be so, seeing that future-acquired property does not vest in the Official Assignee from the date of the filing of the petition. It is only by a proceeding subsequently taken during the lifetime of a discharged insolvent that it may be made available for the scheduled creditors when a judgment is entered up under Section 86 of the Insolvency Act. See *Barton v. Tattersall Russ. & Mylne* 241; *Ward v. Painter* 5 Mylne & Craig 299 Accordingly, if there is a second insolvency, property acquired by the debtor before the date of it, but after the vesting order in the first insolvency, is distributed in the first instance among the creditors in the second insolvency and can only be available to the prior creditors under a judgment in the first insolvency *Curtis v. Sheffield* 8 Sim 176 On the death of the insolvent the Court of Chancery has, notwithstanding the insolvency, jurisdiction to administer his assets see per North, J., in *re Smith* L.R. 24 Ch. D. 672 at page 679, though at the same time in the administration the claim of the schedule-creditors may be admitted without obtaining an execution order under the judgment; see in *re Clagett's Estate* L.R. 20 Ch. D. 637

3. The Insolvency Court has no jurisdiction over the legal representative of the deceased debtor--*Ex parte Welchman* L.R. 11 Ch. D. 48 As compared with that case the present is an a fortiori case, as the provision there discussed (Section 9 of the Act 5 & 6, Vic, c. 116) is not to be found in the Indian Act.

4. In my opinion the Administrator-General is entitled to take possession o and administer the moneys arising from the policy of insurance.

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