

In Re: William Watson and anr.

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Court : Kolkata

Decided On : May-09-1904

Reported in : (1904)ILR31Cal761

Judge : Henderson, J.

Appellant : In Re: William Watson and anr.

Judgement :

Henderson, J.

1. On this Rule Mr. W.B. Keen, the Trustee in Bankruptcy in England of the insolvents Watson, and Fleiderer seeks to set aside two orders made by this Court (sic) the 2nd February last adjudicating the debtors insolvents and (sic) purporting to vest their property in the Official Assignee of this Court.

2. It appears that on the 30th January 1904 a Receiving order was made in England in respect of the estate of the insolvents and an Official Receiver appointed, upon the debtors' own petition. On the 1st February on their own application they were adjudged bankrupts and under Section 54 of the, Bankruptcy Act 1883, the estate of the Bankrupts vested in the Official Receiver.

3. On the 16th February 1904 Mr. Keen was elected Trustee by the creditors and his appointment having been certified by the Board of Trade the property of the Bankrupts vested under Section 43 of the same Act in the Trustee as from the

30th January.

4. It further appears that on the 1st February, admittedly some four to six hours previous to the adjudication in bankruptcy in England, the debtors were upon the petition of their manager and constituted attorney adjudicated insolvents by the Insolvent Court in Bombay and the usual vesting order was made. The adjudication was subsequently set aside on the 13th. April. I am not at present concerned with the grounds upon which it was set aside, but it has been stated and not denied that it was set aside on the ground that the constituted attorney was not empowered by his Power of Attorney to make the application, which he made to the Court on behalf of his principals.

5. On the 2nd February a petition was presented to this Court by a creditor alleging that the debtors through their Manager Mr. A.W. Randle had on the morning of the 1st February suspended payment and had caused a notice to that effect to be affixed on the entrance door of their office and had closed their office and locked the doors and that they had departed from their usual place of business and ceased to continue their business with intent to defeat or delay their creditors; and upon their petition the debtors were adjudicated insolvents and a vesting order was made, vesting their property in the Official Assignee. When this petition was filed Mr. A.W. Randle was aware of the vesting order made by the Bombay Court and it may be assumed that the adjudicating creditor, who was acting in concert with him, was also aware of the fact. Mr. Miller, the Official Assignee, has stated in an affidavit that he had been informed by the solicitor of the adjudicating creditor, who is now his own solicitor, that the fact of a vesting order having been made in Bombay was mentioned to the Insolvent Commissioner of this Court before he made the order of adjudication. It was contended that as the solicitor had not made an affidavit as to the fact, I could not act upon his statement. In this connection, however, I ought to mention, as I mentioned to counsel at the hearing, that before this rule came on to be heard and before any question was raised I had been informed by the Commissioner, who made the order, that he was informed by counsel for the adjudicating creditor that a vesting order had been made in Bombay, but it was understood that the order could not stand as it had been made by the manager of the insolvents merely upon a

general power of attorney. The fact that this Court was aware of the adjudication in Bombay is not, in the view I take of this matter, material.

6. It is now alleged that the statement that the insolvents either by themselves, or constructively through their manager, had departed from their usual place of business in Calcutta with intent to defeat or delay their creditors is untrue, the fact being, it is said, that they had already, with the intention of benefiting all their creditors, presented their petition in Bankruptcy and that so far from having departed from their usual place of business in Calcutta, their manager was in Calcutta and has been here (sic) since, it is said this false allegation was deliberately put (sic) to make it appear that an act of insolvency had been committed whereas no such act had been committed, that the Court had (sic) misled and that the proceedings are therefore bad. On the ground it is asked that the adjudicating order be set aside and (sic) the vesting order discharged; that the Official Assignee be directed to account for and deliver over to the Trustee all the assets come to his hands and that the adjudicating creditor should refund to, the Trustee all costs paid to him out of the assets by the Official Assignee under, as I believe, an order of this Court and lastly that the Official Assignee and the adjudicating creditor should pay the costs of this rule.

7. While the Official Assignee has expressed his willingness to hand over all moneys realized by him as Official Assignee, he submits that no order should be made directing him to do so, except upon payment of his usual commission and costs. At the same time he has, in shewing cause, contended that the Trustee has no locus standi to come to this Court to ask that the adjudicating order should be set aside and the vesting order discharged. He claims that he has acted throughout under the orders of this Court and that the assets realized by him are, as in all other cases, held subject, as to their disposal, to the orders of this Court.

8. I propose to consider, first, the position of affairs at the time the adjudicating and vesting orders were made by this Court. There were then subsisting the adjudicating and vesting orders of the Court in Bombay and also; the adjudicating order in Bankruptcy in England and of the latter the Bombay orders were prior in time.

9. Having regard to the cases of Ex-parte Robinson (1883) L.R. 22 Ch. D. 816; Ex-parte McCulloch (1880) L.R. 14 Ch. D. 716; In re Artola Hermanos (1890) L.R. 24 Q.B.D. 640, I have no doubt that this Court had jurisdiction, notwithstanding the prior adjudication in Bankruptcy in England, to make the order of adjudication and this view was accepted by three Judges of the Bombay Court in re Aranvayal Sabhapathy Moodliar (1897) I.L.R. 21 Bom. 297, 307--'assuming' it was said by Farran C.J., who delivered the judgment of the Court in appeal, 'that the elements necessary to give the Court jurisdiction existed in the case,' Where, however, there is a prior 'bankruptcy insolvency in another country the Court has a discretion allow or refuse an adjudication and the principles upon which that discretion is to be exercised are dealt with in the cases cited. In In re Artola Hermanos 1890 L.R. 24 Q.B.D. 640 where it was sought to set aside a receiving order made in England upon a creditor's petition on the ground that the debtors had already been declared bankrupts in France, Fry, L.J. expressed an opinion that a receiving order ought to be pronounced, where the conditions of the Act have been satisfied, unless there was some valid reason to the contrary and after pointing out that no such reason had been made out in the case before him, he stated that the presence of assets to a large extent in England seemed to him, as it seemed to Baggallay C.J. in Ex-parte Robinson (1883) L.R. 22 Ch. D. 816, to be a strong circumstance in favour of making a receiving order. Now in the present case it is admitted that there were large assets within the jurisdiction of this Court.

10. It was not known in Calcutta on the 2nd February, when the order of adjudication was made by this Court, that either a receiving order or an adjudicating order had been made in England and this Court, therefore, made its adjudicating and vesting orders in ignorance of the proceedings which had been had in England. It is said, however, that before the orders were drawn up, as they were on the 4th February, the Official Assignee had become aware of the receiving order having been made in England. A telegram had been despatched by the Official Receiver, as such, to Mr. C.W. Handle the manager in Calcutta directing him to hold all assets on his behalf, but I am satisfied that that telegram was not received by Mr. Handle or shown by him to the Official Assignee until the 3rd February, by which time the Official Assignee had taken possession. It is said that it was the duty of the Official Assignee to have brought this telegram to, the

notice of the Court and it is suggested that the Court might thereupon have withdrawn the orders. I doubt this very much. Even if the Court had been aware on the 1st February that a receiving order had been made, I doubt whether it would have held its hand. A receiving order does not purport to vest the property of the debtors in the Official Receiver, and may or may not be followed by an order declaring the debtors bankrupts. The telegram did not show more than that an Official Receiver had been appointed. The main object of the Court in interfering in matters of this kind is to preserve the assets for the general body of creditors. An order had been passed by this Court, which would fulfil that object, and in the absence of information, beyond what was contained in the telegram, it is extremely unlikely that any Commissioner would have rescinded his orders and transferred the assets of debtors in the hands of the Official Assignee to Mr. A. W. Randle, merely on the authority of the telegram. It is true that on the 1st February an adjudicating order had in fact been made in England, but this was not communicated to the people here for a considerable time afterwards and then by letter and not by wire. It being represented that there were assets here the mere making of a receiving order, which might possibly, as I have said, never be followed by an adjudicating order, would not in itself have been a sufficient ground for refusing an adjudicating order, or afterwards, where such an order had been made, for setting it aside. Besides the Official Assignee had already taken possession of the assets of the debtors before news of the receiving order was received.

11. Assuming, however, that the adjudication in Bankruptcy in England was no bar to the jurisdiction of this Court to make the order of the 1st February complained of, it has been contended that, inasmuch as the vesting order of the Bombay Court was then subsisting, all the assets of the insolvents had already vested in the Official Assignee of Bombay and therefore there were no assets upon which the vesting order of this Court could operate. The effect of a previous vesting order made in this country was discussed in *In re Aranvayal Sabhapathy Moodliar* (1897) I.L.R. 21 Bom. 297, Strachey J, expressed himself satisfied without any doubt whatever that no subsequent vesting order made 'in India could affect the rights acquired under a previous vesting order made also in India. All that an Official Assignee could obtain by virtue of a subsequent vesting order made in

another Court in India, it was said, would be a sort of contingent or reversionary interest in the assets in the event of the previous order being set aside and the learned Judge proceeded to give reasons why that circumstance in itself was not a ground for setting aside the adjudication. In the Bombay case both Courts on a consideration of the circumstances found that the insolvent there had committed an act of insolvency and that therefore the elements necessary to give the Court jurisdiction existed in the case.

12. Now, assuming for the moment that these elements existed when, this Court made the order of adjudication, it is necessary to ascertain what, having regard to the subsisting adjudication and vesting order of the Bombay Court, is the position now of the Official Assignee of this Court. The adjudication in Bombay was set aside and the vesting order discharged on the 13th April and thereupon, if the view taken by Strachey J. is correct, the contingent or reversionary interest of the Official Assignee here took effect, and, unless the fact that the property of the insolvent had, previously, on the vesting order, in Bombay being discharged, if not before, vested in the Official Receiver as Trustee under Section 54(1) of the Bankruptcy Act 1883 made it impossible, all the assets, future as well as present, in this country became vested in him. But, applying the principle laid down by Strachey, J., in dealing with Courts of admittedly concurrent jurisdiction in this country, that a subsequent vesting order cannot affect rights acquired under a previous vesting order, it is said that the vesting of the property of the bankrupts in the Official Receiver in England, covered all their property whosoever situate, and therefore at no time could the vesting order of this Court operate to vest anything in the Official Assignee or even authorize him to take possession of any property in this country on the ground that it had been the property of the debtors. I am unable to accede to this contention.

13. I have been asked to treat the Official Assignee as a mere trespasser. It has been urged that, whereas the vesting order under which he acted, purported to vest in him the property, of the insolvents, he under colour of that order has taken possession of property which on the previous day had already been vested in the Official Receiver and which is now vested in the Trustee in Bankruptcy. If under the circumstances this be the legal effect of the action of the Official Assignee, it

may lead to very serious results, for in every case where adjudicating orders in England and in this country are made, as in this case, almost simultaneously, neither Court being aware of the petition filed in the other, it would follow that either the Official Receiver or the Official Assignee, accordingly as it turned out which order was made prior in time, would in taking, as it would be his duty to take, possession of the assets of the debtors,' be a trespasser, although, *ex concessis* he was acting by virtue and under the authority of an order of Court.

14. With regard to jurisdiction the relative positions of the Indian Insolvent Courts is very similar to that of the Courts in England having original jurisdiction in Bankruptcy. While the latter have generally speaking concurrent jurisdiction throughout England, the former have concurrent jurisdiction throughout India. But in England provision is made for transferring cases from one Court to another and so all conflict is avoided, while in India, where there is a conflict, one Court will practically always have to yield, having regard to questions of convenience and considerations of a like nature, to the other, as was done in the Bombay case cited. But it seems to me that there is at least one marked difference between a conflict of jurisdiction between Courts of the same country concurrently administering the same law and Courts of different countries administering different laws. In the one case no question of domicile can arise, whereas in the latter such a question may. In *In re Artola Hermanos* (1890) L.R. Q.B.D. 640. Fry L.J. pointed out that the forum, not of the domicile, but of the country in which the debtor might have assets, had no right to claim 'universal obedience to its judgment; it had no right to pronounce a judgment, which will extend beyond the personal assets locally situate within, its jurisdiction. Now in the present case the insolvents are said to have carried on business not only in England and in India, but in other countries, and it has not been shown where they or either of them have or has his or their domicile. I am not to assume that the insolvent Watson or the insolvent Pfeleiderer has his domicile in England rather than in India or elsewhere. For aught that appears, the former may have his domicile in India or in Scotland and the latter in India or in Germany, if it should be suggested that their names are any guide to their domicile of origin. Applying the law as laid down by Fry L.J. to the present case it is impossible to say that the judgment of the Court in England in adjudicating the debtors bankrupts with the resultant vesting of their

property by operation of law in the Official Receiver in the first instance, extended to the personal assets of the debtors in this country in such sense that this Court would be powerless to interfere with the assets in the country (except upon a request of the Trustee made under an order under Section 118 of the Bankruptcy Act 1833) and that no rights under its vesting order could pass to the Official Assignee. I am not prepared, therefore, to say that no rights passed to the Official Assignee under the orders of the Court.

15. In *Ex-parte McCulloch* (1880) L.R. 14 Ch. D. 716 where the Court was asked by a creditor to make an adjudication in England, the debtor having been already on his own petition adjudicated in Ireland, it was held that the creditor had a right to ask that the adjudication should be made and that an adjudication ought to be made for what it was worth, leaving for future determination the question. in which Court the assets ought ultimately to be administered. It was possible, it was said, that one of the two Courts might come to the conclusion that it was better that the proceedings on one of the petitions should be stayed and possibly that one of the adjudications should be annulled and further, it was said, there was no doubt the Irish Court would consider whether, inasmuch as it had control over the proceedings, it should retain or not retain the administration of the assets.

16. In *Ex-parte Robinson* (1883) L.R. 22 Ch. D. 816 it was said that the Court in England would make an adjudication notwithstanding that there had 'been what amounted to a prior adjudication in Scotland, if there were assets in England the reason being apparently that the Court, making the adjudication would be able to lay hold of the assets in England and preserve them for the creditors. In *re Artola Hermanos* (1880) L.R. 24 Q.B.D. 640 the members of the debtors' firm were on the 11th December 1889 declared bankrupts in Paris and a debtors was appointed. On the 30th of January 1890, on a creditor's petitions in Bankruptcy, an interim Official Receiver of the estate of the debtors was appointed in England and subsequently a motion was made on behalf of the syndic that the order appointing the Official Receiver should be discharged and that he should deliver up to the syndic all the estate and effects of the debtors, which had come to his hands and that all further proceedings under the petition should be stayed. The motion was dismissed. There was nothing to show that the bankrupt's property vested (in the

sense in which the term is used in the Insolvent and Bankruptcy laws) in the syndic, but he was treated as being clothed with powers of administration of the property in France and it was pointed out that the English Court having undoubtedly jurisdiction had done nothing more than issue a receiving order to make the assets come into the proper hands. Lord Coleridge C.J., remarked. The question comes back therefore to one of discretion and convenience and I wish to observe that we are not deciding what is to be done with the English assets, when they are collected, nor according to what law, the law of France or of England, they are to be administered. Without therefore determining or even suggesting we may be the governing law of the distribution of these assets it is enough to say that in the present application, which is to stay proceedings and prevent the assets from being collected, there is no ground brought forward to enable me to say that the English proceedings ought at all events at this stage to be in any manner interfered with.'

17. It is sought to distinguish that case and indeed the other cases from the present. The position of the Official Assignee may be somewhat different from that of an Official Receiver, in whom nothing is intended to vest--but in my opinion the difference, so far as his powers and duty in regard to taking possession of the property of the debtors are concerned, is not one of substance. A vesting order, by which the Official Assignee is clothed with authority, does not, except with regard to books, papers, deeds and writings relating to the estate, in so many words direct that possession be made over to him. It merely orders that the real and personal estate and effect of the debtors do vest in him, but it would be idle to suggest that the real intention of the Court in making the order is not that he shall take possession property, that is to say of the assets of the debtors, so vested.

18. Where the estate of a debtor becomes vested in an Official Assignee under an order of Court or in a Trustee in Bankruptcy by operation of law the effect and object of the vesting is, in my opinion, the same in either case. The debtor becomes incapable of alienating the property as from the date from which the vesting operates, while the Official Assignee or Trustee as the case may be becomes competent to deal fully with the estate for the purposes of administration and to pass a title to a purchaser without reference to the debtor himself. But when

property is said to be vested in either of these officers I doubt if it can be said that it is vested for any other purpose than, that of administration or to any greater extent or with any greater effect than I have just stated. If the proceedings are annulled no reconveyance to the debtor is necessary, and if, after due administration, the debts are paid off, any balance that remains, is still, notwithstanding the previous vesting, the property of the debtor, as if nothing had happened. In a sense, therefore, notwithstanding that property may have vested in an Official Assignee or Trustee in Bankruptcy it is still in some sense, the property of the debtor and on this, ground, if on no other, in my opinion the Official Assignee would not only be justified in taking, but would be bound to take possession of the local assets of a debtor declared insolvent by this Court, notwithstanding a previous adjudication. Accordingly in the present case the Official Assignee was fully justified in taking possession and he was bound to hold the assets subject to the order of the Court.

19. It is clear from the cases cited that the reason or one of the reasons, for, as pointed out by Strachey J. there are other reasons, why creditors have a right to ask that, notwithstanding a previous adjudicating order elsewhere, their debtor should be adjudicated, a bankrupt is for the preservation of the local assets, leaving for determination the question in which Court the assets ought ultimately to be administered.

10. In the petition of the Trustee in Bankruptcy it was broadly stated that no proceedings could or could have been taken in this Court in this matter except in aid of and auxiliary to the proceeding in England pursuant to Section 118 of the Bankruptcy Act 1883, but on the hearing of this rule it has not been contended that the prior adjudication in England ousted the jurisdiction of this Court to make an adjudicating order, if in fact the conditions of the Insolvency Act have been satisfied, that is to say, if an act of insolvency has been shown to exist.

20. It is manifest on the authorities that the Trustee in Bankruptcy would have had no locus standi to ask that the adjudication order should be rescinded and the vesting order discharged on the ground that the jurisdiction of the Court was barred by the previous adjudication in England. In *In re Artola Hermanos* (1890)

L.R. 24 Q.B.D. 640 Lord Coleridge C.J. said he had no doubt that the Syndic had no locus standi, so far as the application in that case was to discharge the receiving order, and Fry L. J. expressed a doubt, whether the Syndic had any locus standi whatever, either to oppose the pronouncing of a receiving order in England or to apply for its rescission after it had been pronounced, and in Ex-parte Robinson (1883) L.R. 22 Ch. D. 816 the Court refused to hear counsel for the Scotch Trustee, holding that he had no locus standi.

21. Mr. Garth for the Trustee, however, contends that he is entitled by reason of his position as Trustee, to be heard to show that the statement, upon which the act of insolvency alleged in the creditor's petition was based, is false and that therefore the conditions required by the law and upon which only an adjudication could be made did not really exist. He claims to be interested as representing the creditors and he points out that as the debtors are admittedly insolvents they do not and cannot apply to set aside the adjudication. He urges that the adjudication order prevents, him getting possession of the assets for distribution amongst the creditors. In support of his contention that he is entitled, to be heard in this connection he has referred me to an unreported case In the matter of J. Bell--an insolvent, decided by Wilson J. on the 4th June 1890. In that case the insolvent was adjudicated insolvent as a trader, in his absence. His property in the possession of his wife having been taken possession of under the vesting order an application was made by her, without even a power-of-attorney from her husband (who was still absent), to annul the adjudication and the Court being satisfied that her husband was not, as it had been alleged, a trader, rescinded the order of adjudication. That doubtless was a special case, but the wife had been put to serious inconvenience; she was deprived of possession of property which she held or her husband and she was therefore a person specially interested. The Trustee does not appear to be interested in the same sense. He no doubt represents the creditors, but it has not been alleged that the interests of the creditors are being jeopardized or that the assets in the hands of the Official Assignee are not perfectly safe. If he merely desired to get possession of the assets in the hands of the Official Assignee, his object might have been attained by an application to this Court without, impugning its jurisdiction or the validity of its orders. In the Bombay case the debtor himself challenged the validity of the

adjudication on the ground that he had not brought himself within the statute, but on a consideration of the circumstances it was held that he had in fact committed an act of insolvency.

22. In the present case and in this connection it is difficult to shut one's eyes to the fact that the debtors are admittedly insolvents, but apart from that consideration I am of opinion that the Trustee has no locus standi to ask this Court to rescind the order of adjudication, even on the ground that no prior act of insolvency had in truth been committed.

23. As however the question whether an act of insolvency has been committed, has been discussed, I propose to deal with it.

24. With regard to this matter the facts appear to be these: On the morning of the 1st February the insolvent's manager closed the place of business of the debtors in Calcutta locking the doors and affixing thereto the following notice signed by him: 'I regret to notify that under telegraphic instructions from my London office Messrs. William Watson & Co. have suspended payment.' It is said that he did not leave Calcutta. It does not appear where he resided but it is not suggested that he lived in the office, the doors of which were shut against the world. I assume therefore that physically he departed from the usual place of business. It has to be seen whether under the circumstances it can be said that he departed from the usual place of business with intent to defeat or delay the creditors of the firm within the meaning of Section 9 of the Insolvent Act, 11 and 12 Vict. C. 2. In *In re Hurruck Chand Golicha* (1880) I.L.R. 5 Calc. 605 where the business was carried on for an absent principal by a gomasta, the gomasta shut up the place of business locking the doors and stopped payment. Broughton J. was of opinion that, when a trader has established a business through a gomasta he departs from his place of business, if the gomasta departs, and if he does not come himself or send some one else to carry on the business, and he held that the principal in that case had constructively departed from his usual place of business with intent to defeat or delay his creditors. In the case of *Kustur Chand v. Dhunput Singh* (1895) I.L.R. 23 Calc. 26 Dhunput Singh carried on business through a Monib Gomasta in Calcutta and other places. He was in the habit of taking an

active personal interest in the business, occasionally coming to Calcutta. The house in which the business was conducted then consisted of a ground floor in which were the durwans, a first floor where the guddi and the cash-room were, and a second floor where the gomasta lived and where his master stayed, when he came to Calcutta. On the night of the 6th February the gomasta stepped payment and sent for his master to come. He locked the cash-room door leaving the guddi empty, though open, and he retired to his room on the top storey, where he continued to be accessible to the creditors and ha informed such creditors as came that he was in communication with his master and could do nothing, until his arrival. The Privy Council upon those facts held that there was no departure from the place of business at all, but even if there had been evidence of a departure, it had not been shown how it could have defeated or delayed creditors or how any one of them was debarred from pursuing any process available to him by the fact that the gomasta kept to his own room, instead of sitting in the guddi. Their Lordships, however, stated they were by no means prepared to say that Hurruck Chand Golicha's (1880) I.L.R. 5 Calc. 605 case was wrongly decided though, it was said, the position of the gomasta there was not stated so fully as they would think desirable, if the case were before them for decision. In the case here, so far as it appears, Mr. Randle was not at the office, the door of which was looked and, although he may have been in Calcutta, it is not suggested that he was accessible to the creditors. In this state of things it would have been impossible for any creditors to have served any process upon him in the ordinary way. The natural result, therefore, of Mr. Randle having locked up and left (for it must, I think, be taken that he did leave) the place of business, was to defeat or delay creditors and he must be taken to have intended the natural result of his acts, though it may be that no creditor was in fact delayed. I do not mean for a moment to say that his actual object or intention in doing what he did was either to defeat or delay the creditors, for I will concede that his desire as evidenced by his procuring a friendly creditor to file a petition in insolvency, was to do what he believed would in the end be best for the creditors as a body.

25. The next point to consider is whether the departure of the manager can be taken as being constructively the departure of his principals, Mr. Randle was the constituted attorney of the debtors in Calcutta and as such, I consider, he fully

represented his principals, who were in London. In my opinion, he occupied such a position that his principals must stand or fall by his act, so that his departure must by imputation be the departure of his principals for the purpose of bringing the case within the statute.

26. I hold, therefore, that the facts proved that there was an act of insolvency, upon which this Court could and did adjudicate the debtors insolvents.

27. It appears from an affidavit of Mr. Keen the Trustee that on the 14th March last an order was made, upon his application, by the Registrar of the Bankruptcy Court in England under Section 118 of the Bankruptcy Act 1883 that this Court and its officers, be requested to act in aid of and be auxiliary to the Court-7 of Bankruptcy in the taking possession of, receiving, getting in and realizing by the Trustee of all the property of the insolvents, but so far this Court has not been asked to act under that order.

28. The Trustee has come to this Court in his petition altogether denying its jurisdiction to pass an adjudicating order or a vesting order in this matter, but now, on the hearing of the Rule, only challenging the orders as bad, as having been passed upon allegations, which were untrue. The Court was asked to direct the Official Assignee to account for all the estate and effects of the debtors, which have come to his hands and to make them over to the Trustee on the ground, as I have already stated, that, although the Official Assignee acted under colour of an order of the Court, he was under the circumstances a mere trespasser and has not and never had any right or authority under the order to hold them. The attitude of the Trustee from the first has been to ignore the existence of the orders of this Court and to treat the Official Assignee as wrongfully in possession of the assets in this country. On the 24th February the Official Assignee wrote to the Official Receiver explaining his position, that he was acting under the direct authority of this Court and that it would be his duty as an officer of the Court to collect the outstandings in Bengal and to hold the same subject to the further and final order of the Court as to disposal of such collections and on the 10th March he sent the Trustee a copy of that letter. On the 6th April Mr. Keen's partner, who had just arrived in Bombay for the purpose of representing the Trustee in India, wrote to

the Official Assignee stating that he trusted that he had complied with his partner's request and had handed over the assets to his order. 'Whereupon the Official Assignee wrote a letter dated 19th April again pointing out, as before, what he considered to be his own position in the matter. To this the Trustee's attorneys replied in a very peremptory letter of the same date. In that they said 'Inasmuch as the effect of the Bankruptcy proceedings in England has been to vest in our client the whole of the estate and effects of the said Bankrupts in India our client is advised that you had no right or authority to seize, take possession of and deal with such state and effects and we are now instructed by our client to request you to render full accounts of all the said property, which has come to your hands and of your dealings therewith and to forthwith hand over to our client the assets still remaining in your possession. We trust that you will be good enough to let us know in the course of tomorrow whether you are prepared to comply with our client's request as our client considers that his position as trustee of the Bankrupt's property renders it imperative that he should at once take steps to obtain possession of this property and unless we hear from you tomorrow our instructions are to apply to 'the Court,' In that letter it was also asserted that this Court had acted in disregard of the Bankruptcy proceedings in England in making the vesting order, an assertion which it appears is wholly without foundation.

29. When this Court is asked to act upon the order made by the Bankruptcy Court in England under Section 118 of the Bankruptcy Act, 1888, It would doubtless readily listen to the request and consider not only whether the assets now in the hands of the Official Assignee should not be made over to the Trustee, but whether the order of adjudication should not be rescinded, but I am unable now, on the grounds which have been urged before me to make any order directing the Official Assignee to make over these assets.

30. It may be that, if an application is made under the order of 14th March last by the Bankruptcy Court, this Court on considerations of convenience or other grounds may, instead of rescinding the adjudicating order and discharging the vesting order, keep them alive for the purpose of aiding the Court in England in the matter of proof of claims or otherwise. But if in either case it makes an order directing the Official Assignee to make over the assets in his hands to the Trustee,

I consider, speaking for myself, that it would only make such an order subject to his retaining his usual commission and costs. Section 7 of the Insolvent Act, which provides that in case, after making a vesting order, the petition in insolvency shall be dismissed by the Court, the vesting order shall be null and void, but that all acts theretofore done by any Assignee or other person acting under his authority shall be good and valid and no action or suit shall be commenced against the Assignee or any person duly acting under his authority except to recover any property detained after an order made by the Court for its delivery,' affords the Official Assignee protection from suit by the Trustee. In this application, so far as it seeks to get possession of the assets, the Court was asked to use its authority over its own officer, but the Court is a Court of Equity and it will only act on equitable principles.

31. If I have rightly understood much that was said in argument the Trustee objects very strongly and I am not satisfied that the form of his application has not to some extent been moulded upon this consideration) to the Official Assignee being paid any commission or indeed any remuneration at all. He is apparently anxious in the interests of the creditors to avoid the payment of a double commission. The nature or value of the assets collected or to be collected is not stated in the affidavits used upon the Rule. If I might venture to make a suggestion there is one way by which the payment of a double commission might possibly be avoided, namely by the retention of the assets here in the hands of the Official Assignee and subsequently, when the Court in England shall have determined upon the mode of distribution, by applying them for the purpose of paying off the creditors in India under the directions of the Trustee himself.

32. Any endeavor to preserve as much of the estate as possible for the creditors cannot be too highly commended, but I confess I am unable to understand the objection of the Trustee in this instance to the payment of any remuneration to the Official Assignee. He cannot be ignorant of the facts. The Official Receiver as early as the 4th February addressed a telegram to the Official Assignee officially and, in a letter dated the 5th February addressed to the Official Assignee and enclosing office copies of the receiving order and order of adjudication, he stated 'In the meantime it will be an assistance to me that you will have taken possession

of and preserved the asset's for the creditors.' He has been informed what the Official Assignee has done from the time that he took possession on the 2nd February. The rule must be discharged with costs.

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