1919.

EMPEROR v. DHONDYA DUDHYA.

No doubt if the accused had been charged with an offence under section 126 (*a*) the Magistrate should have committed the case to the Court of Session and left the accused to establish his defence under section 83 of the Indian Penal Code.

But the accused was not prosecuted under section 126 (*a*). The summary register shows that he was prosecuted under section 130 read with section 126 (*a*) of the Indian Railways Act. The prosecution therefore conceded that though the accused had committed the act described in section 126 (*a*) he had not attained sufficient maturity of understanding to judge the nature and consequences of the conduct and elected to proceed under section 130.

The offence with which the accused was charged was therefore under section 130 and this offence the Magistrate had jurisdiction to try: Schedule II, Criminal Procedure Code; and to try summarily: section 260, Criminal Procedure Code.

There is therefore no occasion for our interference and we direct the record and proceedings to be returned to the District Magistrate.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

1919. *March* 18.

ALIMAHMAD ABDUL HUSSEIN VOHORA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* VADILAL DEVCHAND PARIKH (ORIGINAL PLAINTIFF), RESPONDENT.*

Insolvent—Insolvent acquiring property after vesting order but before his final discharge—Insolvent can alienate property bona fide *and for value, before intervention of Official Assignee.*

* Second Appeal No. 917 of 1916.

The property, moveable or immoveable, acquired by an insolvent after the adjudication order but before his final discharge, can be transferred by him, provided the transaction is *bona fide* and for value and is completed before the intervention of the Official Assignee.

Cohen v. *Mitchell*[1], followed.

SECOND appeal from the decision of M. J. Yajnik, Assistant Judge at Ahmedabad, confirming the decree passed by H. R. Mehta, Second Class Subordinate Judge at Kapadwanj.

Suit to redeem a mortgage.

The facts were that one Tyabaji applied to the Court for the Relief of Insolvent Debtors at Bombay to be declared an insolvent; and a vesting order was made on the 10th January 1887. The Court granted a personal discharge to the insolvent Tyabaji on the 17th August 1887; and entered a judgment for all debts due by the insolvent in favour of the Official Assignee, under section 86 of the Indian Insolvency Act (11 & 12 Vic., c. 21). No final discharge was thereafter made.

Tyabaji purchased a house at Kapadwanj on the 9th July 1898. On the same day, he mortgaged the house to one Vajirabu for Rs. 700; and also mortgaged the equity of redemption to one Jamnadas. The amounts raised by the two mortgages were spent in paying off the vendor of the house.

In 1904, Tyabaji died.

Jamnadas filed a suit on his mortgage in 1910 and obtained a decree. Vajirabu was not joined as a party to the suit. In execution of the decree, the house was sold subject to the prior encumbrance of Vajirabu and purchased by the plaintiff on the 12th September 1912.

On the 16th October 1913, the plaintiff sued to redeem the mortgage from Vajirabu's heirs. The trial Court passed the usual redemption decree.

[1] (1890) 25 Q. B. D. 262.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

Vajirabu's heirs (defendants) appealed to the District Court at Ahmedabad. Nearly two years after the filing of the appeal, they applied to the Court stating that they knew about that time that Tyabaji had been adjudicated an insolvent; that though personal discharge was granted, the insolvent was not finally discharged; and that, therefore, Tyabaji's property including the house in dispute vested in the Official Assignee. Tyabaji's insolvency was not known to Jamnadas or to the plaintiff. The learned Judge disallowed the contention on the ground that it was raised at a very late stage of the proceedings; and on the merits confirmed the decree passed by the trial Court.

The defendants appealed to the High Court. More than a year afterwards, they purchased the right, title and interest of the Official Assignee in Tyabaji's property.

The appeal was heard by Beaman and Heaton JJ., on the 23rd January 1918, when their Lordships remanded certain issues for trial to the lower appellate Court, and delivered the following judgment.

BEAMAN, J.:—In 1887 the owner and mortgagor of the property in suit became an insolvent and obtained his personal discharge towards the close of that year. It is alleged, and evidence was offered to the lower appellate Court to prove the allegation, that he never applied for, and did not, therefore, receive his final discharge. In 1898 he appears to have mortgaged the property in suit to the present appellants and he gave one Jamnadas a second mortgage on this and other property: Jamnadas brought a suit and sold, so far as this property is concerned, the mortgagor's supposed equity of redemption to the present respondent. The price paid was Rs. 125. The respondent thereupon brought a suit to redeem the present appellants. The amount of their mortgage of 1898 was Rs. 700, Babashahi. The amount

of the second mortgage appears to have been Rs. 500, Babashahi.

These are the material facts upon which the parties went to trial, and the trial Court held that the respondent was entitled to redeem. After filing an appeal, the appellants were informed that the mortgagor, who had died in 1904, was an undischarged bankrupt. They accordingly applied to the Insolvency Court here for information and obtained a certificate from Mr. Patel, clerk of the Insolvency Court, to that effect. They wished to prove these facts before the lower appellate Court but the learned Judge thought that they ought to have discovered all this in time and he also thought apparently that, inasmuch as they like the respondent derived their title from the undischarged bankrupt, even though he be proved to be so, that fact would make no difference in their legal rights and relations. That is an altogether incorrect view, for if it should turn out that the mortgagor, who started these transactions in 1898, transactions which terminated with the Court-sale at which the respondent purchased in 1912, never had any title whatever to this after-acquired property, it is plain that in a suit to redeem by the present respondent, the present appellants if in possession would be immediately entitled to a decree dismissing the suit. The point, therefore, is one of real importance, and doubtless had the learned Judge of first appeal realised this he would have exercised his discretion differently in rejecting the evidence tendered. It is not really so much a question of refusing to take additional evidence as of refusing to try very material issues. We do not wish to prejudice the decision of the interesting law which may arise upon a finding of fact that the mortgagor in 1898 and thereafter to his death in 1904 was an undischarged insolvent.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

One more fact is to be noted, and that is that since the discovery of these alleged facts the appellants have purchased from the Official Assignee for a sum of Rs. 500 all the right, title and interest of the deceased insolvent in these after-acquired properties.

Now, we think it essential to a proper decision of this case that the lower appellate Court should raise and determine the following issues :—

(1) Whether Tyabaji was from the year 1887 until his death in 1904 an undischarged insolvent ?

(2) If so, what is the effect in law of that fact upon the rights and obligations of the parties to this suit arising out of the mortgages of 1898 and later transactions terminating in the Court sale of 1912 ?

(3) What is the effect in law upon all these transactions of the purchase by the appellants from the Official Assignee of the 7th of January 1918 ?

And for the trial of these issues and their determination, the learned appellate Court will be at liberty to take all such evidence as it deems necessary and proper.

In the event of the decision as a whole being that the respondent has taken nothing by his Court-sale purchase of 1912 and that all the after-acquired properties of Tyabaji have passed under the sale of January 1918 to the appellants, they undertake to repay in this suit to the respondent Rs. 125 with interest at 6 per cent. per annum from the 19th September 1912 to payment.

The findings upon these issues to be certified to this Court within two months from the receipt of this order and the costs of the whole suit will then be finally decided.

On the issues so sent down, the lower appellate Court recorded findings as follows :—

1. The fact of Tyabaji remaining undischarged until his death in 1904 is not legally proved.

2. (*a*) Even if it is held proved, the Official Assignee took the property in suit subject to the mortgage liens and consequently the proceedings terminating on the sale in favour of the respondent in 1912, are binding on him and the appellants.

(*b*) Apart from the above aspect of the case, the possession of the insolvent and his mortgagees was adverse to the Official Assignee as held in I.L.R. 8 Cal. 556. Therefore also the proceedings ending in the sale of 1912 bound all parties concerned.

(*c*) Even apart from this, the Official Assignee's right to the property in suit was limited to the judgment amount mentioned in Exhibit 31 and his remedy to enforce that judgment was barred under Article 183, Schedule 1, Limitation Act.

(*d*) The vesting order under section 7 not having been made in writing the property in suit did not vest in the Official Assignee.

3. In these circumstances, the Official Assignee had no right or title remaining in him which he could legally convey to the appellants and therefore the conveyance, Exhibit 34, confers no title on the appellants.

The appeal was finally heard by Heaton and Shah JJ.

Strangman and *Munshi*, with *G. S. Rao* and *T. T. Parekh*, for the appellants :—The question in this case is whether Tyabaji was an undischarged insolvent and if so, whether the plaintiff acquired any title to the house in question notwithstanding the subsequent sale by the Official Assignee to the appellants. The vesting order being kept in a separate file of all vesting orders could not be produced in the lower Court from the record of Tyabaji's insolvency but it is now forthcoming after further inquiry. The insolvent has not obtained his final discharge and the protection order with the judgment entered in favour of the Official Assignee is the usual *interim* protection order. Since then the insolvent has taken no steps to apply for a final discharge till his death which took place in 1904.

It is true that the mortgages by the insolvent to the predecessors of the plaintiff and of the defendant are valid but the equity of redemption in the after-acquired immoveable property continued to vest in

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

the Official Assignee and that could not be conveyed by the Court-sale of 1912 to the plaintiff when the Official Assignee was not a party to the suit by the mortgagee: vide *In re New Land Development Association and Gray*[1]. The rule in *Cohen* v. *Mitchell*[2] does not apply to personal estate; see *Official Receiver* v. *Cooke*[3]; *Rowlandson* v. *Champion*[4].

Metha with *M. H. Vakil*, for the respondent:—The vesting order refers to section 7 of the Insolvency Act and to the property of the insolvent. There is no reference in the order to the after-acquired property while the words of section 7 make a provision in distinct terms in another part of the section if after-acquired property is also to vest. The alleged protection order does not state under what section it is passed. It also contains the provision for entering judgment in favour of the Official Assignee for all the debts of the insolvent. This is provided for by section 86 prior to a final discharge. The order does not seem to be an *interim* protection order. It looks like a conditional order of discharge, i.e., a final discharge subject to judgment being entered in favour of the Official Assignee. The Official Assignee could under section 86 execute this judgment through the Court. His intervention by merely selling the property by a public auction is not warranted by section 86. He might also have applied to be a party to these proceedings.

The doctrine of *Cohen* v. *Mitchell*[2] ought to be followed in India independently of any restriction to personal property. The distinction between real and personal property does not prevail in Indian law. The Official Assignee did not intervene till after the appellate decree appealed from. Plaintiff is a *bona fide* purchaser for value without notice of insolvency. The

(1) [1892] 2 Ch. 138.
(2) (1890) 25 Q. B. D. 262.
(3) [1906] 2 Ch. 661.
(4) (1893) 17 Mad. 21.

trend of judicial and legislative opinion in England and India is in favour of the rule in *Cohen* v. *Mitchell* [1] being applied to all property: see *Ex parte Beardmore*[2]; *In re Kent County Gas Light and Coke Company, Limited*[3]; (1913) Statute 3 & 4 George V, c. 34; (1914) Statute 4 & 5 George V, c. 59; and *Hill* v. *Settle*[4].

The Official Assignee's intervention is barred by limitation: *Kristocomul Mitter* v. *Suresh Chunder Deb*[5]. He is not a necessary party to the suit by the mortgagee who knew nothing of the insolvency. In *Fatimabibi* v. *Fatimabibi*[6] the plaintiff is *bona fide* purchaser under a sale in execution without notice of insolvency. His title is, therefore, good even against the Official Assignee: see Presidency Towns Insolvency Act (III of 1909), section 53, sub-clause. 3.

C. A. V.

SHAH, J.:—The facts material to the point arising in this second appeal after the remand are briefly these: One Tyabaji Farzullabhai applied to the Court for the Relief of Insolvent Debtors, Bombay, and the usual vesting order was made on the 10th January 1887. Subsequently on the debtor's application a personal discharge subject to any further orders was allowed and, in accordance with the practice that obtained then, a judgment for all the debts was entered against the insolvent in favour of the Official Assignee under section 86 of the Indian Insolvency Act (11 & 12 Victoria, c. 21) on the 17th August 1887. The insolvent did not obtain any final discharge under the Act and in fact nothing was done in the matter of the insolvency up to his death in 1904 or up to November 1917 after his death. Owing to the non-production of

(1) (1890) 25 Q. B. D. 262.
(2) [1894] 2 Q. B. 393.
(3) [1909] 2 Ch. 195.
(4) [1917] 1 Ch. 319.
(5) (1882) 8 Cal. 556.
(6) (1892)16 Bom. 452.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

the necessary papers the lower appellate Court had some doubt as to the existence of the vesting order and as to whether there was a final discharge of the insolvent. In the argument before us the facts as stated above have not been disputed, and the papers relating to this insolvency, which we have seen with the consent of the parties in order to avoid delay and further remand on points capable of being easily ascertained, support the statement. Tyabaji was, therefore, an undischarged insolvent from 1887 to the time of his death in 1904.

In 1898 Tyabaji purchased a house at Kapadvanj and mortgaged it with possession on the same day (9th July 1898) to one Vajiraboo for Rs. 700, Babashahi, and executed a second mortgage in favour of one Jamnadas on the same day. It is found by the lower appellate Court and not contested before us that the house was purchased by Tyabaji with the money borrowed from the two mortgagees.

Jamnadas filed suit No. 93 of 1910 on his mortgage against the heirs of Tyabaji and obtained a decree, in execution whereof the house was sold through the Court subject to the first mortgage and purchased by the present plaintiff, Vadilal, on the 12th September 1912. The plaintiff as auction-purchaser then filed the present suit against the defendants, the heirs of Vajiraboo, for redemption of the first mortgage. The trial Court allowed the plaintiff's claim. The lower appellate Court confirmed the decree. On appeal to this Court certain issues were sent down for findings in connection with the insolvency of Tyabaji. Before the remand the defendants purchased the right, title and interest of the Official Assignee in November 1917.

On these facts it is urged on behalf of the defendants that the plaintiff did not purchase Tyabaji's interest at

the Court-sale as it was vested in the Official Assignee, and that they having purchased that interest from the Official Assignee, are entitled and willing to redeem the mortgage in favour of Jamnadas which is vested in the plaintiff. It is conceded on behalf of the defendants that this mortgage now vested in the plaintiff is binding upon the Official Assignee and the plaintiff is entitled to be redeemed. The plaintiff contends that the after-acquired property of the insolvent cannot vest in the Official Assignee until he intervenes, and that the Court-sale which took place long before his intervention is binding upon him, and conveys to the plaintiff the whole interest of Tyabaji and the second mortgagee subject of course to the first mortgage.

It may be mentioned that the point now made on behalf of the defendants was not urged in the trial Court, and that what is described as the intervention of the Official Assignee really came into existence long after the decision of the lower appellate Court. It involves practically a reconsideration of the rights of the parties on a new basis. This Court has, however, allowed the point to be raised at the time of the remand, and it is clear that the appellants are entitled to have their rights determined on the facts now ascertained.

It must be taken for the purpose of this appeal that the transactions of the insolvent with Jamnadas and Vajiraboo were *bona fide* and for value, that Jamnadas sued the heirs of Tyabaji in complete ignorance of the insolvency proceedings, and that the subsequent proceedings on the suit resulting in the Court-sale were *bona fide* throughout.

It is urged, however, that under section 7 of the Indian Insolvency Act, the interest of Tyabaji was vested in the Official Assignee. No doubt that section applies to after-acquired property of the insolvent,

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

But as pointed out in *Kerakoose* v. *Brooks*[1] the right of the Official Assignee is subject to the qualification that "if the insolvent has acquired property subject to liens and obligations, then any property taken by the Assignee under that state of things is taken subject to those charges and equities which affect the property in the hands of the insolvent". It is not necessary to refer to the other qualification mentioned by their Lordships of the Privy Council. It is conceded in the present case that the Official Assignee would take the property subject to the two mortgages effected by Tyabaji in 1898; and in view of the fact that Tyabaji purchased the property with the moneys received from the two mortgagees, it is indisputable that the insolvent acquired the property subject to those charges.

It is argued, however, that the equity of redemption was vested in the Official Assignee, and that the suit by Jamnadas was not properly constituted as the Official Assignee was not a party to it. It is urged by way of reply, that the suit was properly constituted, that the sale in execution of the decree is binding upon the Official Assignee as a *bona fide* transaction for value, and the equity of redemption would not vest in the Assignee before his intervention according to the rule in *Cohen* v. *Mitchell*[2].

If the mortgage in favour of Jamnadas is good as against the Official Assignee, I do not see how the suit of 1910 can be said to be defective in any way. If Tyabaji or his heirs could have sued Jamnadas to redeem the mortgage in his favour as the Official Assignee had not intervened, Jamnadas could sue the heirs of Tyabaji to enforce his mortgage. It is difficult to see what else Jamnadas could have done to enforce his mortgage, as he was ignorant of Tyabaji's insolvency

(1) (1860) 8 Moo. I. A. 339 at p. 356. (2) (1890) 25 Q. B. D. 262.

and as the Official Assignee had not intervened. The suit and all the subsequent proceedings appear to me to be quite proper on the assumption that at the time it was open to Tyabaji or his heirs to deal with the equity of redemption. The Court purchaser could not be in any worse position than a *bona fide* purchaser for value under similar circumstances from the insolvent or his heirs before the intervention of the Official Assignee; and the learned counsel for the appellants has not suggested that he should be in any worse position.

It is urged, however, that a *bona fide* purchaser for value of the after-acquired immoveable property cannot get a good title against the Official Assignee even though the latter has not intervened as the equity of redemption is vested in the Official Assignee. The plaintiff seeks to meet this contention by relying upon the rule in *Cohen* v. *Mitchell*[1] which is stated by the Court of Appeal in these terms: "Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bona fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee". This rule is stated in perfectly general terms and there is no suggestion in the rule itself that it applies only to personal and not to real property. If this rule applies to after-acquired immoveable property in India, the appellants' contention must fail. The question, therefore, is whether it applies to such immoveable property.

It will be convenient to state briefly how the rule has been applied in England. It has been held that the rule does not apply to real estate: see *In re New Land Development Association and Gray*[2]. In this case the decision of Chitty J. was upheld by the Court of

(1) (1890) 25 Q. B. D. 262 at p. 267.

(2) [1892] 2 Ch. 138.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

Appeal on a different ground, but in the course of argument the Lords Justices expressed a strong opinion in favour of limiting the application of the rule to personal estate. In *Ex parte Beardmore*,[1] Davey L. J. referred to the same rule with approval without any reference to the limitation as to the nature of the after-acquired property. In 1895 Chitty J. refused to attempt to introduce any limitation in the rule beyond that stated by him in the case of *In re New Land Development Association and Gray*[2] and applied the rule to lease-hold property: see *In re Clayton and Barclay's Contract*[3]. In *Official Receiver* v. *Cooke*[4], Neville J. felt himself bound to treat the rule as applicable only to personal estate including lease-holds. The same learned Judge applied it to the after-acquired real estate, which undischarged bankrupts purchased as partners for partnership purposes and sold and conveyed to *bona fide* purchaser for value before the trustee intervened in the case of *In re Kent County Gas Light and Coke Company, Limited*[5]. The rule in *Cohen* v. *Mitchell*[6] received a statutory recognition in section 11 of the Bankruptcy and Deeds of Arrangement Act, 1913 (3 & 4 George V, c. 34) and later in section 47, sub-section (1) of the Bankruptcy Act of 1914 (4 & 5 George V, c. 59). In the recent case of *Hill* v. *Settle*[7], Lord Cozens-Hardy M. R. after referring to *Cohen* v. *Mitchell*[6] and the Bankruptcy Act of 1914 has observed that "the Legislature has plainly recognised the validity and effect of that which is to be found in what is, no doubt, judge-made law as expressed in a series of decisions extending over some 200 years." I have not thought it necessary to refer to the decisions prior to *Cohen* v. *Mitchell*[6].

(1) [1894] 2 Q. B. 393.
(2) [1892] 2 Ch. 138.
(3) [1895] 2 Ch. 212.
(4) [1906] 2 Ch. 661.
(5) [1909] 2 Ch. 195.
(6) (1890) 25 Q. B. D. 262.
(7) [1917] 1 Ch. 319 at p. 325.

Thus it is clear that the rule has always been recognised as a beneficent rule, that though for some years the view that it did not apply to real property prevailed, the tendency was in favour of extending its application and that finally the Legislature has fully recognised the rule both as to the real and personal property, and has applied it retrospectively to all transactions completed before April 1914, subject to the condition that the trustee has intervened before that date.

In India long before the decision in *Cohen* v. *Mitchell*[1] it was held in *Kristocomul Mitter* v. *Suresh Chunder Deb*[2], that so long as the Official Assignee had not interfered, an insolvent who had not obtained his final discharge had power with respect to after-acquired property to buy and sell and give discharge and do all other acts which he could have done before his insolvency. The property in that suit was immoveable property. In *Fatimabibi* v. *Fatimabibi*[3], it was held by Parsons J., that the Official Assignee was not a necessary party to a suit by the heirs of the deceased undischarged insolvent for a share in the after-acquired property, and that such property vested in the insolvent subject to the right of the Official Assignee to intervene and to claim the property. There is no reference to the rule in *Cohen* v. *Mitchell*[1] in the judgment. The Madras High Court declined to apply the rule to dealings by the insolvent with immoveable property: see *Rowlandson* v. *Champion*[4]. It may be noted that Collins C. J. had in the first instance applied the rule to immoveable property. In appeal, however, the learned Judges reversed the order of the Chief Justice and their judgments show that their decision was influenced by

(1) (1890) 25 Q. B. D. 262.
(2) (1882) 8 Cal. 556.
(3) (1892) 16 Bom. 452.
(4) (1893) 17 Mad. 21.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

the case of *In re New Land Development Association and Gray*(1) already referred to. Later on in *Sriramulu Naidu* v. *Andalammal*(2), the decision in *Fatimabibi* was approved, and the learned Judges were content to distinguish *Rowlandson's case*(3) on the ground that there was no question of *contract* or *transfer* by the insolvent relating to his after-acquired immoveable property. The rule in *Cohen* v. *Mitchell*(4) has been referred to in two decisions of this Court. In *Naoroji N. Thoonthi* v. *Kazi Sidick Mirza*(5), it was considered in relation to a special set of facts, and there was no occasion to consider it with reference to the point arising in this case. At page 654 of the report it is pointed out that the rule in *Cohen* v. *Mitchell*(4) could not apply to the agreement with which the Court had to deal in that case. In *Macleod* v. *B. B. & C. I. Ry. Company*(6) it was urged that the doctrine of *Cohen* v. *Mitchell*(4) was limited to those cases where the insolvent's after-acquired property had been the outcome of subsequent trade. The appeal was ultimately decided on a different ground, and the question of law was left undecided. But after referring to certain cases Jenkins C. J. observed as follows:—"In the face of this I hesitate to say that the doctrine on which *Cohen* v. *Mitchell*(4) rests is limited to subsequent acquisitions in trade, though I do not say it may not be the correct view. In this connection I have not overlooked the decision in *Kerakoose* v. *Brooks*(7), but I am not clear that their Lordships intended there to lay down an exhaustive statement of the law as to after-acquired property except so far as was necessary for the purposes of the case then before them." I do not think that there can

(1) [1892] 2 Ch. 138.
(2) (1906) 30 Mad. 145.
(3) (1893) 17 Mad. 21.
(4) (1890) 25 Q. B. D. 262.
(5) (1896) 20 Bom. 636.
(6) (1905) 7 Bom. L. R. 618 at p. 621.
(7) (1860) 8 Moo. I. A. 339

be any doubt as to the trend of the learned Chief Justice's opinion with reference to the scope of the doctrine on which *Cohen* v. *Mitchell*[1] is based. At any rate there is nothing in the judgment, which is opposed to the view that the rule applies to all the after-acquired property, moveable and immoveable, of the insolvent.

On a careful consideration of all the decisions above referred to, it seems to me that the rule in *Cohen* v. *Mitchell*[1] can be, and ought to be applied to all the property, moveable and immoveable, acquired by the bankrupt after the adjudication order, provided that the transaction by the bankrupt is *bona fide* and for value and is completed before the intervention of the Official Assignee. In other words I do not think that the nature of the after-acquired property forms any essential part of the rule: what is essential is that the transactions with reference to the property with third parties must be *bona fide* and for value and that they must be entered into before the Official Assignee intervenes. The reason of the rule does not compel the recognition of any restriction as to the nature of the property in its application: and I do not think that the distinction between real and personal property made in England in applying the rule can be properly applied to immoveable and moveable property in India. The statement of the law as to after-acquired property in *Kerakoose* v. *Brooks*[2] has been held not to be exhaustive in Indian decisions: and the weight of judicial opinion in India seems to favour the view that the rule in *Cohen* v. *Mitchell*[1] applies to the after-acquired property, moveable as well as immoveable. With due respect for the opinion of the Madras High Court to the contrary in *Rowlandson's case*[3], I think that the rule

(1) (1890) 25 Q. B. D. 262. (2) (1860) 8 Moo. I. A. 339.

(3) (1893) 17 Mad. 21.

1919.

ALIMAHMAD ABDUL HUSSEIN v. VADILAL DEVCHAND.

can be properly applied to all after-acquired property, whether moveable or immoveable.

Thus in the present case the property was effectively disposed of before the Official Assignee can be said to have intervened. The conveyance in favour of the appellants by the Official Assignee cannot help them as the Official Assignee had nothing to convey at the date.

For the purpose of this case, I have assumed that the Official Assignee intervened when he sold his right, title and interest to the appellants in November 1917. I am not sure that that amounts to such an intervention on the part of the Official Assignee as is required to vest the property in him. It is not necessary for the purpose of this case to examine the point further, as the transaction was completed long before the alleged intervention; and I express no opinion on the question whether the intervention such as we have here is effective.

I also refrain from expressing any opinion as to whether under the circumstances the Official Assignee should have attempted to enforce the judgment under section 86 of the Indian Insolvency Act or should have himself intervened in these proceedings, if he thought that he had any right to the property in suit, instead of allowing his intervention to be pleaded through the appellants.

The result is that the appeal is dismissed and the decree of the lower appellate Court confirmed with costs.

HEATON, J.:—My learned brother's judgment shows that the only point of interest in the case is whether section 7 of the Indian Insolvency Act, 11 & 12 Vic., c. 21 is to be literally construed or not. If it is, the

words "do vest in the Official Assignee" must be given their full ordinary meaning. If that be done then the entire interest in property acquired by an undischarged insolvent belongs to the Official Assignee. Many years' experience both in India and England has demonstrated that this would be a most undesirable position. The words have not been literally construed either in India or in England. It is therefore established that there is a measure of freedom allowed to us in construing this section. That being so I agree with the method of applying the section to the facts of this case adopted by my learned brother. I agree that the appeal should be dismissed with costs.

Appeal dismissed.

R. R.