

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Moses Kerakoose v. Benjamin Brooks, as Official Assignee of the Insolvent Estate of of Agapah Cundasawmy Moodelly, from the Supreme Court of Judicature at Madras ; delivered on the 6th of December, 1860.*

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Present :

LORD CHELMSFORD.

LORD KINGSDOWN.

JUDGE OF THE ADMIRALTY COURT.

SIR EDWARD RYAN.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILLE.

UNDER the statute the assignee has a right to the subsequently acquired property of the insolvent, unless the insolvent has obtained a certificate and discharge; but the assignee's right to the subsequently acquired property is subject to two qualifications. In the first place, if the insolvent has acquired property subject to heirs 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. The second qualification is this, that if the insolvent carries on trade at a subsequent period, with the assent of the assignee of the estate under the Insolvent Act, in the first instance the property which is acquired in the subsequent trade will be subject in equity to the charge of the creditors in that trade, in priority to the claim of the assignee under the first insolvency.

Now in this case, when the facts are stated, their Lordships cannot entertain the slightest doubt. It is admitted that what has been done might have

[300]

been done in such a way as to exempt the property from the claim of the assignees. Then what is the transaction which takes place? The insolvent carries on for a certain time the business of a hotel as agent or manager for other persons. On the 7th of February he makes an arrangement with the Appellant, by which he becomes the purchaser of the property now in dispute, and carries on the trade subsequently on his own account, with the knowledge of the assignee under the insolvency. Under what circumstances, then, does he acquire the property by which the subsequent trade is carried on? Does he acquire an absolute right to it, discharged from any lien, or does he acquire a right to it subject to a legal or equitable title on the part of other persons?

Now, it appears that a sum of money was advanced by this Appellant for the purpose of being laid out in the purchase of the property; and at the time it is advanced, it is advanced subject to an agreement, that it is to be laid out in that particular manner, and that the property is to be assigned to the person who advances the money in order to secure the advance. A mortgage is executed accordingly. It is one single transaction by which the insolvent never acquired anything except subject to the lien of the creditor, and the assignee can stand in no better situation.

Their Lordships, therefore, must advise Her Majesty that the judgment of the Court below ought to be reversed.

*Mr. Roundell Palmer.*—The judgment will be reversed with costs, I hope?

*Lord Kingsdown.*—This is a special case which was agreed upon. What was done in the argument upon the special case in the Court below?

*Lord Chelmsford.*—The costs always abide the event.

*Lord Kingsdown.*—Then it must be with costs.

*Mr. Lewis.*—Will your Lordships give the costs of the appeal against the Respondent?

*Lord Kingsdown.*—The rule here is that the costs follow the event, unless the Court make order to the contrary. The Appellant must have his costs both here and in the Court below.

*Mr. Roundell Palmer.*—Your Lordships will declare that the Appellant is entitled to the proceeds?

*Lord Kingsdown.*—Yes, that the Appellant is entitled to the amount claimed.

*Mr. Reeve.*—Their Lordships will declare that the Appellant is entitled to the net proceeds of the sale.

*Mr. Roundell Palmer.*—I do not know whether when a deposit has been made under your Lordships' order for leave to appeal, anything need be said about its return, or whether that follows as a matter of course.

*Lord Kingsdown.*—Yes, I understand so.

*Mr. Reeve.*—That follows as a matter of course; the money is paid into the Registry when deposited, and is paid out to the same party, if he is entitled to it, immediately after the appeal is disposed of.

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