

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Shrager and another v. March, from the
Supreme Court of the Straits Settlements
(Settlement of Singapore); delivered the 21st
May 1908.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from an order of the Supreme Court of the Straits Settlements declaring a post-nuptial settlement made by one Cecil Shrager, a bankrupt, void as against the trustee in bankruptcy.

Cecil Shrager and four brothers of his, who carried on business at Singapore, Calcutta, and elsewhere, under the style of Shrager Brothers, were adjudicated bankrupts in the High Court of Justice in England on the 29th of November 1905. The Respondent March was appointed trustee in the bankruptcy.

The settlement in question was made by deed dated the 2nd of November 1901. By this deed Cecil Shrager declared that he or other the trustees or trustee thereof would stand seised of certain real property in Singapore upon trust for sale, and hold the proceeds when invested as therein directed upon trust to pay the income to the settlor's wife, the Appellant Hermina Shrager during her life, for her separate use, without power of anticipation, and after her death to

the settlor, if he should survive her, during the residue of his life. Then there were trusts in favour of the issue of the marriage, with an ultimate trust in default of issue for the settlor. Until sale the rents and profits of the property were to be held and applied on the same trusts as the income of the proceeds of sale when invested.

It is not disputed that at the date of the execution of this settlement Cecil Shrager was solvent, and able to pay his debts without the aid of the property comprised in the settlement, and that the settlement was made in good faith.

It was, however, contended by the trustee in bankruptcy that, under section 47 of the Bankruptcy Act, 1883, the settlement was void as against him, on the ground that the property comprised in the settlement did not, on the execution thereof, pass from the settlor to the trustee of the settlement.

In the Supreme Court, sitting as a court of first instance, Fisher, J., held that, although there was no actual transfer of the legal title, the declaration of trust was sufficient to pass the interest of the settlor within the meaning of the enactment.

On appeal, it was held by the Supreme Court, consisting of Hyndman Jones, C.J., and Thornton, J., sitting as the Appellate Court in Bankruptcy, that the settlement of the 2nd of November 1901, having been made by the bankrupt, Cecil Shrager, within ten years of his bankruptcy, was void as against the trustee in bankruptcy.

Both the learned Judges expressed an opinion to the effect that the interest of the settlor referred to in section 47 of the Act of 1883 must be the legal estate of the settlor, "for his equitable or beneficial interest," as Thornton J. observed, "could not, under any circumstances, pass to the trustee, but to the *cestuis que trustent*."

Their Lordships are of opinion that the view of Fisher, J., is to be preferred. The words which have given rise to the difficulty are not to be found in the Bankruptcy Act of 1869. They occur for the first time in the Act of 1883. They are certainly not well-chosen. But the meaning is clear. The settlor must on the execution of the settlement divest himself of all interest in the property settled. Their Lordships think that the alteration in the position of the settlor from that of beneficial owner to that of mere trustee, so far as his wife and issue were concerned, was a sufficient compliance with the exigency of the new provision contained in section 47 of the Act of 1883.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal should be allowed and the order of Fisher, J., restored, and that the Respondent should pay the costs of the present Appellants in the Supreme Court.

The Respondent will pay the costs of this Appeal.

