INSOLVENCY JURISDICTION.

Before Rankin J.

A. A. HAILES, *In re.**

1920

April 6.

Adjudication, annulment of—Payment in full of a disputed debt—Judgment-debt carrying interest at 6 p. c.—Interest paid up to the date of adjudication order, if payment in full—Presidency Towns Insolvency Act (III of 1909) s. 21.

On an application by an insolvent for the annulment of adjudication under s. 21 of the Presidency Towns Insolvency Act (III of 1909) on the ground that the debts of the insolvent have been paid in full, it appeared that the insolvent had not paid interest on judgment debts carrying interest at 6 per cent. up to the date of payment, but had paid only up to the date of the adjudication order :—

Held, that the insolvent did not bring himself within the terms of s 21, and that the application must be refused.

This was an application by the insolvent under section 21 of the Presidency Towns Insolvency Act for an order that the adjudication order made against him on the 6th August 1917 may be annulled. The public examination of the insolvent was held and declared to be closed. In his schedule of affairs the insolvent set out the names of Devendra Nath Sen and Trevor Gerald Powell as his creditors, and the insolvent stated in his affidavit that since the time of his public examination he had paid his said two creditors in full and had also paid the commission, costs and charges of the Official Assignee. The application was opposed by the said Trevor Gerald Powell who in paragraph 4 of his affidavit stated :—

"4. That from the statement of account annexed hereto and marked with the letter 'A' it will appear that there is a balance of

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Rs. 1,075-13-10 still due by the insolvent to me on account of interest under the decree of the High Court, dated 17th November 1916, in suit No. 162 of 1916 and under decree dated 15th December 1916 in Small Cause Court suit No. 22817 of 1916."

Babu Subodh Chandra Mitter (attorney), for the insolvent. Upon the making of an adjudication order interest ceases to run. Interest is not a debt. It is only if there is a surplus that the creditor can come in and apply for the payment of interest: *In re McCleans Estate* (1).

Mr. S. N. Bannerjee, for the creditor. Section 21 provides special machinery for the annulment of adjudication. The condition precedent to an annulment is that the debt should be paid in full: *In re Keet* (2). The insolvent is applying for an indulgence, namely, to be restored to his original position as if he had not been adjudicated. He can only do this if he behaves as if he had not been adjudicated an insolvent, that is to say, pays his creditors in full. Interest is part of the judgment debt: *Ex parte Lewis Re Clagget* (3). Interest is provable in insolvency. Section 49, sub-cl. (*5*); Schedule II, rule 24. "Debt" ordinarily means pecuniary liability: *In the matter of Parke Pittar and another, Insolvents* (4). See definition of "debt", s. 2, Insolvency Act. The matter is in the discretion of the Court: *In re Taylor* (5). There is no case directly on the point.

RANKIN J. In this case I think that, as it is admitted that the creditor who appears as respondent

(1) (1861) 1 Mad. H. C. R. 220.
(2) [1905] 2 K. B. 666, 670.
(3) (1888) 36 W. R. 653.
(4) (1871) 6 B. L. R. App. 144.
(5) [1901] 1 K. B. 744.

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to dispute the right of the insolvent to have an annulment of adjudication under section 21, is a creditor upon a judgment which carries interest at 6 per cent., the insolvent has not brought himself within the language of section 21 unless he satisfies me that he has paid to the creditor, being a creditor in respect of a debt which was proved, such sum as would have been a complete discharge to him in respect of that debt, had there been no bankruptcy at all. Under section 21 the position is that an insolvent is entitled to claim a right which the section gives him, if it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full. It is true that the right is not an absolute right because the insolvent may have misconducted himself to such an extent that even then the Court may have a discretion to refuse it. Apart from any such consideration as that, a person who can say that his debts are paid in full ought no longer to be subject to the control and his estate ought no longer to be subject to the administration of the Court. But such a person coming to the Court in the middle of a pending bankruptcy and asking the Court to determine his bankruptcy must show, independently of any rights given to him by the Bankruptcy Act, that he has paid off his creditors as one man pays another, apart from the Bankruptcy Court altogether. He is asking the Court to bring the bankruptcy to a sudden stop because it is no longer necessary. In my opinion the only person who is in that position is the person who has made such a payment as could be pleaded between two ordinary parties as amounting to a complete discharge of the debt. In this case there is a judgment-creditor who has an interest carrying judgment. If there had been no insolvency, it is perfectly clear that the payments made

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would only have been payments on account, and would not have discharged the liability under the judgment. That being so, it does not seem to me that this insolvent has brought himself within the terms of section 21. The matter may be illustrated in this way. For this purpose I know nothing and require to know nothing about the state of the assets in the bankruptcy. There may be a surplus—there might be a very large surplus — capable of being handed over to the insolvent. If there were, that would not be a good reason for refusing to him an annulment of the bankruptcy if, in other circumstances, he would have been entitled to it, yet in such a case it is quite clear that if the bankruptcy goes on, the creditor would get not only interest up to the date of receiving order but interest up to the date of payment and he might even get interest at one of the higher postponed rates right up to the date of payment. That right could be defeated if, by mere paying interest up to adjudication, an insolvent were entitled to have the bankruptcy set aside. That seems to me to be contrary to the principle and intention of the Insolvency Act. I think that, for the present purpose, the man who is claiming to set aside the adjudication altogether, must be taken just as if the onus was on him to show that independently of the insolvency he had cleared off this debt and satisfied the creditor in question in full. I do not think I need consider whether "debts" includes debts other than those which have been proved or whether interest due upon them comes within this section. I am dealing here solely with debts in respect of which proofs have been lodged and admitted. With respect to such debts, I think section 21 involves that complete payment discharging the debt has been made. For these reasons,

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I do not think that this applicant has brought himself under the section.

A. P. B. *Application refused.*

Attorney for the insolvent applicant: *Subodh Ch. Mitter*

Attorneys for the creditor respondent: *Pugh & Co.*

PRIVY COUNCIL.

P. C.*
1920
Feb. 17.

RAMCHAND MANJIMAL

v.

GOVERDHANDAS VISHANDAS RATANCHAND

(AND FIVE OTHER APPEALS CONSOLIDATED).

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.]

Appeal to Privy Council—Order reversing an order to stay suit—"Final order"—Order finally disposing of rights of parties—Contract with arbitration clause—Arbitration Act (IX of 1899) s. 19—Civil Procedure Code, 1908, ss. 109-110—Grant of certificate that value of matter in dispute exceeded Rs. 10,000.

The decision of the Court of Appeal in England as to what is a "final order" is that an order is final if it finally disposes of the rights of the parties.

Salaman v. *Warner* (1) and *Bozson* v *Altrincham Urban District Council* (2) referred to.

In a suit for damages for an alleged breach of contract for the sale of cotton, the contract contained an arbitration clause, and the defendant applied under section 19 of the Indian Arbitration Act (IX of 1899) for a stay of proceedings with a view to the issues being referred to arbitration under that section. The Trial Judge granted a stay, but on appeal the Court of the Judicial Commissioner of Sind reversed that order and refused to stay

*Present: VISCOUNT CAVE, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.

(1) [1891] 1 Q. B. 734. (2) [1903] 1 K. B. 547.