released on furnishing security; but the High Court in making rules for the Presidency Small Cause Courts under section 9 of that Act has not embodied this provision in the rules and I have great doubt whether either section 30 of the latter Act or Order 21, rule 27 empowers the Court to take a bend of the nature.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—I agree that the first question should be answered in the negative. The decree debt of the plaintiff against the insolvent was provable in the insolvency. Hence section 17 of Act III of 1909 took away the jurisdiction of the Small Cause Court to pass any orders in execution without the leave of the High Court after the judgment-debtor had been adjudicated an insolvent. The bond sued on was therefore obtained without jurisdiction and was void. I do not answer the other questions as the answer to the first question is sufficient for the decision of the suit.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Phillips.

KALIANJI SINGJI BHAI (SOLE PARTNER OF THE FIRM OF RAYSEE AMARCHAND)—(COUNTER-PETITIONER), APPELLANT,

v.

THE BANK OF MADRAS (PETITIONER), RESPONDENT.*

1914. November 13, 16 and 17 and 1915. September 9, 10 and 14.

29 M.L.J. 788

Provincial Insolvency Act (III of 1907), ss. 16, 47, 12, cl. (3), and 51—Insolvency Rules XXI, cl. (3) and V, cll. 2 and 3—Civil Procedure Code (V of 1908), O. III, r. 3 and O. V, r. 12—Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent, if sufficient—No notice sent by Court through registered post, effect of—Acts of insolvency committed by agent, if sufficient—Difference between English and Indian Law.

Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under section 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court.

Held, that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post.

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* Appeal Against Order No. 62 of 1914.

KALIANJI v. THE BANK OF MADRAS.

Effect of section 47 of the Provincial Insolvency Act, and Rule XXI, clauses 2 and 3, and Rule V, clause 2 of the Insolvency Rules, considered.

Under section 4 of the Provincial Insolvency Act, a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent.

In the matter of Brijumdhan Dobay (1897), 2 C.W.N., 306, referred to.

Under the English Law, an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent.

Ex parte Blain (1879) 12 Ch.D., 522 and *Cooke* v. *Vogeler* (1901) A.C., 102, referred to.

Though, under section 16 of the Provincial Insolvency Act, an adjudication of the debtor as an insolvent relates back to the date of the petition, the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to stave off bankruptcy orders against the principal.

In re Pollit (1893) 1 Q.B., 455, referred to.

APPEAL against the Order of A. EDGINGTON, the District Judge of South Malabar, in Insolvency Petition No. 7 of 1912.

The material facts of the case appear from the judgment

K. R. Subrahmanya Sastriyar for the appellant.

D. Chamier for the respondent.

OLDFIELD AND TYABJI, JJ.

This appeal came on for hearing before OLDFIELD and TYABJI, JJ., who passed the following ORDER:—The circumstances, in which the learned District Judge held that notice had been duly served on the debtor under section 12 of the Provincial Insolvency Act are not clear. We must therefore call for a finding on the issues :—

1. What notices were served on the debtor directly or on his Agent Visram ?

2. What attempts to serve the former were made by registered letter or otherwise ? and was Rule XXI (3) of the rules framed under the Act complied with ?

3. Was it found impossible to serve the debtor direct ? If so, what were the circumstances in which a valid service was effected on Visram ?

Fresh evidence may be adduced. The findings will be submitted within six weeks from the date of receipt of records. Seven-days will be allowed for filing objections.

In compliance with the above order the District Judge of South Malabar submitted the following FINDING :—

A finding is called for on issues .—

(1) What notices were served on the debtor directly or on his Agent Visram ?

(2) What attempts to serve the former were made by registered letter or otherwise and was Rule XXI (3) of the rules framed under the Act complied with ?

(3) Was it found impossible to serve the debtor direct ? If so, what were the circumstances in which a valid service was effected on Visram ?

1. It is admitted that no notice was served on the debtor directly. But I find that a notice was issued on the 6th December 1912 by the Court addressed to Hirji Visram Sait, muktiar of Kalianji Singji Bhai, sole partner of the firm of Raysee Amarchand of Nagaram Amsom, Desam, Calicut taluk, the address given in the insolvency petition of the counter-petitioner for the service of notice and processes. The copy of that notice was affixed to the outer door of the dwelling house of Hirji Visram because he stated that he was unwilling to sign and accept the notice and that his principal should be added as a party.

2. It is proved by the evidence of Mr. Krishna Ayyar, vakil engaged in the insolvency petition that a registered letter (Exhibit H) was sent by petitioner's vakil Mr. Ramakrishna Ayyar to the insolvent Kalianji Singji Bhai intimating to him the fact that a petition has been presented and accompanied by a copy of the petition. This was addressed to Cutch, Mandavi, and was returned by the postal authorities to the sender with the endorsement "Left. Particulars not known. Returned to the sender" for which the receipt being H2. I find that this was the only attempt made to serve the debtor.

With regard to the latter part of second issue, I find that there was no compliance with Rule XXI (3) of the rules framed under the Act, because as it appeared impossible to serve the debtor in person the Court ordered on the 11th March 1913 that the notice given to the agent should be held to be sufficient with reference to Rule V (2) of the rules under the Provincial Insolvency Act.

3. It appears from the fact that the notice sent to the debtor by post by the petitioner's vakil was returned unserved and from the correspondence (Exhibits D, E, F and G) that the service on the debtor direct was impossible. It was not stated in the objection petition filed by Hirji Visram on the 11th March where the principal was. My finding on the first part of the third issue is

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consequently in the affirmative. With reference to the latter part of the third issue, the muktiarnama (Exhibit J) under which the agent acts gives him sufficient authority to represent the debtor and the vakalath executed by him for the petition was in pursuance of it. The service of the notice already referred to on the agent was service sufficient under Order III, rule 3, Civil Procedure Code and Order V, rule 12, Civil Procedure Code and with reference to rule V (2) of the Madras Insolvency Rules. I find therefore that in the circumstances stated valid service was effected on Visram.

SPENCER AND PHILLIPS, J.J.

This Appeal Against Order coming on for final hearing, the following Judgment of the Court was delivered by SPENCER, J. The appellant is the sole partner of the firm of Raysee Amarchand carrying on a money lending business at Calicut with a head office at Bombay. On December 3rd, 1912 the Agent of the Bank of Madras, the respondent in the case, presented a petition to the District Judge to adjudicate the appellant insolvent and to appoint an *ad interim* receiver. On December 6 a notice signed by the Sarishtadar of the District Court (by order) went to the local agent to inform him that a petition to declare the appellant insolvent was posted for January 21 and that he might appear and show cause against it. The agent, Visram Sait, refused to receive the notice on the ground that his master should be made a party, and it was served on him by affixture. On December 7, a notice of the hearing together with a copy of the petition was sent by the respondent's pleader through registered post to the appellant at Mandavi in Cutch, where he was thought to be residing, but it was returned to the sender as the addressee had "Left, Particulars not known." At the hearing on January 21, notice was ordered by the Court to go to the principal debtor for March 11, but admittedly no further attempt was made to serve a notice of the date of hearing on the debtor in person as it was found impossible to do so. On March 11, the notice given to the local agent was declared by the Court to be sufficient, and on the same date the said agent filed in Court a counter-petition on behalf of the appellant describing himself as his muktiar. The proceedings were fully contested and ended on December 19, 1913, in an adjudication of the debtor under section 16 of the Provincial Insolvency Act as insolvent.

A number of objections have been raised to the sufficiency of the service of the notice on the agent and our attention has been called to the fact that the agent did from the first object to receiving notice for his principal.

These objections may be briefly answered by a reference to the provisions of the Provincial Insolvency Act and the rules framed under the authority of section 51. Section 12 (3) provides that in cases where the petition is by the creditors notice of the date of hearing shall after admission of the petition be served on the debtor in the manner provided for service of summons. Section 47 directs that Courts of Insolvency shall subject to the provisions of this Act follow the procedure followed in regard to original civil suits. Order V, rule 12 of the Civil Procedure Code, declares that wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient. Rule 13 allows service to be made on any agent who at the time personally carries on business or work for a person, who does not reside within the Court's jurisdiction, in any suit relating to business or work. Order III, rule 3 (i), makes service on a recognized agent as effectual as if it was on the party in person unless the Court directs otherwise. A recognized agent includes a person holding a power of attorney authorizing him to make and do such appearances, applications and acts on behalf of such parties (Order III, rule 2). Exhibit J, the power of attorney held by Visram Sait from the appellant, authorizes him "to defend all suits, appeals and actions" in the Courts of this Presidency to which the appellant may be a party and "generally to act for him and to do all things and acts that may be necessary and that the attorney may think fit for the complete discharge of his business effectually, completely and to his benefit"; thus there can be no question that there was a valid service under the Civil Procedure Code on the appellant's agent, and that the Court declared it to be sufficient.

Turning to the rules framed by the High Court under section 51 of the Insolvency Act, we find that clause 3 of rule XXI provides that notice of the date of hearing of an insolvency petition, shall, if the petition is by the debtor, be sent by the Court by registered post to all creditors and if the petition is by a creditor, shall be sent to the debtor, not less than fourteen days

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before the date of hearing. Notice was not sent to the debtor in this case by the Court through registered post, although the Bank's Vakil attempted vainly, as already mentioned, to communicate a notice and a copy of the petition to the appellant in a registered letter. As we read the rules, however, the sending of a notice by registered post is chiefly intended to provide for the information to be given to creditors on a petition by a debtor and to particularize the words "such other manner as may be prescribed" in section 12, clause (2). We are not aware of any practice of sending notices of the hearing to debtors through the post in the first instance upon creditors' petitions. Notice to debtors is otherwise provided for by rule V, clause (2), and by the rules under the Civil Procedure Code. If a debtor gets notice of the hearing served on his authorized agent like a summons, he cannot reasonably complain that he did not also receive a similar notice from the Court through the post, and his objection might be answered by a reference to section 99, Civil Procedure Code. Rule V, clause 2 of these rules, directs that a copy of an insolvency petition presented by a creditor shall be served together with the notice of the date of hearing "on the debtor or the person on whom the Court orders notice to be served." It is not required that such an order should be in writing. In this case the notice was addressed to the agent and was signed by the District Court Sheristadar (by order). It was served under Order V, rule 17, Civil Procedure Code, more than 14 days before the hearing on January 21. Presumably this was a good notice to the agent, and as the agent appeared and filed a counter-petition on March 11 in which he did not raise any objection to the manner or time of service, he must be deemed to have waived any objection that he might have had to any supposed irregularities in the giving of notice.

So much for the question of notice. More substantial objections have been raised to the capacity in law of an agent to represent a debtor in insolvency proceedings, and to the capacity of a debtor to be adjudicated insolvent upon an act of insolvency committed by his agent. It is argued that as orders of adjudication relate back to and take effect from the date of the presentation of the petition on which they are made [vide section 16, clause (6)], and as the agency of Visram Sait terminated under section 201 of the Contract Act by his principal being

adjudicated an insolvent, therefore the agency must be taken to have ceased on the presentation of the petition; and that by the appointment on December 8 of a Receiver, in whom the property of the debtor vested, the business of the firm could no longer be carried on by the agent and *ipso facto* his power of attorney became void. But it is evident from a reading of the whole of this section from clauses 2 to 6 that they all deal with the property of the insolvent. This was made clear in *In re Pollitt*(1) where in treating of the corresponding section of the English Bankruptcy Act, Lord ESHER observed: "The result of the relation back is that all subsequent dealings with debtor's *property* must be treated as if the bankruptcy had taken place at the moment when the act of bankruptcy was committed." The agent's power of attorney in this case empowered him to do other acts besides carrying on the trade and dealing with his property and one of those acts must be taken to be to stave off bankruptcy orders against the firm.

As regards the jurisdiction of the Courts to adjudicate persons insolvent upon acts of insolvency committed by their agents there appears to be a difference in the law as it stands in England and in India.

In *Exparte Blain*(2) it was held that an act of bankruptcy must be a personal act or default and could not be committed through an agent. This principle was followed in *Cooke* v. *Vogeler*(3), another case of a foreigner domiciled and resident abroad having business in England, but in both of these decisions it was conceded that if the law had been different the Courts would have had to take a different view.

In India it has been expressly enacted as an explanation to section 4 of the Provincial Insolvency Act that for the purposes of that section which deals with acts of insolvency committed by a debtor the act of an agent may be the act of the principal. It was accordingly held in *In the matter of Brijmohun Dobay*(4) that the departure of an agent from the place of business did constitute an act of insolvency on the part of the principal.

(1) (1893) I.Q.B., 455.
(2) (1879) 12 Ch. D., 522.
(3) (1901) A.C., 102.
(4) (1897) 2 C.W.N., 306.

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In this case if the fact that the firm at Bombay of which appellant was partner had suspended payment, of which Mr. Lamb states that the agent gave him notice, be taken as the act of insolvency giving rise to these proceedings, there is no need to consider the effect of the agent's act as agent, as the suspension of payment at Bombay was the act of the principal, but if the suspension of payment by the branch at Calicut and the inability of the agent there to meet his bills in Calicut, to which Mr. Deane has testified, be taken into account, then we have no hesitation in applying section 4 of the Act and in holding that the order of adjudication based on such an act of insolvency was a perfectly valid order. We agree in holding that an act of insolvency has been proved. We dismiss the appeal with costs.

Solicitors for respondent.—*Messrs. David, Brightwell* and *Moresby.*

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and Mr. Justice Seshagiri Ayyar.

1915. October 1, 4, 5, 6, 7 and 15 and November 19.

30 M.L.J. 29

T. SITHARAMA CHETTY AND FIVE OTHERS (SECOND PLAINTIFF AND DEFENDANTS NOS. 1 TO 5), APPELLANTS,

v.

SIR S. SUBRAMANIA IYER, K.C.I.E., AND THIRTY-TWO OTHERS.* (FIRST PLAINTIFF, DEFENDANTS, MEMBERS OF THE BOARD OF CONTROL, NEW TRUSTEES, AND NEW TREASURER APPOINTED BY THE SUBORDINATE JUDGE OF TRICHINOPOLY AND SUPPLEMENTAL RESPONDENTS), RESPONDENTS.*

Religious Endowments Act (XX of 1863), sec. 3—Suit for scheme for a temple falling under section 3—Civil Procedure Code (Act V of 1908), sec. 92, jurisdiction of Courts to frame a scheme under—Temple Committee, powers of.

Ever since 1842 when the Board of Revenue handed over the management of the temple of Srirangam to certain trustees, one trustee was chosen hereditarily every year from a certain family in the locality called the "Sthalathars" and two other trustees were appointed till 1863 by the Board and later on by the temple committee formed under the Religious Endowments Act (XX of 1863). In several litigations connected with the temple, the temple was treated as one falling under section 3 of Act XX of 1863:

Held, that the temple was one falling under section 3 and not under section 4 and was thus subject to the control of the temple committee.

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* Appeals Nos. 328 and 355 of 1913.