

decisions in *In re Mills*; *Ex parte The Official Receiver*(1), *In re Warren*: *Ex parte Trustees*(2) and *In re The Stenotyper, Limited, Hastings Brothers v. The Stenotyper, Limited*(3), was then remedied by amending the section renumbered 44 so as to include expressly payments made to a creditor with a view to prefer his surety. A similar amendment would no doubt have been made to meet the case of payments to the surety himself with this view, if it had not been considered that they were already within the section as construed in these two cases. Such payments are even more objectionable than payments to the creditor as they do not directly reduce the indebtedness of the estate.

RODRIGUES  
v.  
RAMASWAMI  
CHETTIAR.  
—  
WALLIS, C.J.,  
ABDUR  
RAHIM  
AND  
SRINIVASA  
AYYANGAR,  
JJ.

We accordingly answer the question in the affirmative.

C.S.S.

## APPELLATE CRIMINAL.

*Before Mr. Justice Ayling and Mr. Justice Napier.*

*Re NADDI CHENGADU (ACCUSED).\**

1917,  
March, 12.

*Criminal Procedure Code (Act V of 1898), sec. 565—Notification as to residence or change of residence—Temporary absence for a night not notified—Whether an offence under Indian Penal Code (Act XLV of 1860), sec. 176.*

Where all that was proved was that the accused who had been ordered to notify his residence and change of residence under section 565, Criminal Procedure Code (Act V of 1898), was absent from his house for a single night without notifying his absence,

*Held*, that such temporary absence did not amount to a change of residence and that the accused was not guilty of an offence under section 176, Indian Penal Code (Act XLV of 1860).

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure (Act V of 1898) by H. L. BRAIDWOOD, the District Magistrate of Chittoor, in his letter, dated 17th January, 1917 (Calendar Case No. 277 of 1916 on the file of the Second-class Magistrate of Puttur).

(1) (1889) 5 Morrell, 55

(2) (1900) 2 Q.B., 138.

(3) (1901) 1 Ch., 250.

\* Criminal Revision Case No. 62 of 1917 (Referral Case No. 5 of 1917).

Re  
CHINGADU.  
—  
AYLING AND  
NAPIER, JJ.

The accused was not represented.

*E. R. Osborne, the Public Prosecutor, on behalf of the Crown.*

ORDER.—We agree with the District Magistrate that the conviction in this case is bad and must be set aside. A person against whom an order is passed under section 565 of the Criminal Procedure Code, is merely bound to notify his residence or change of residence after release. As long as he retains his residence in the same place, his temporary absence from home for a day or two does not require notification. Whether he retains his residence must always be a question of fact but provided a man leaves his family and house-hold effects in the house in which he was residing, he would ordinarily be considered to retain his residence there.

In the present case, all that is proved is that accused was absent from what was treated by the Police as his notified residence for a single night. There is nothing to indicate that the residence itself was changed.

We set aside the conviction and sentence and direct that the fine, if paid, be refunded.

O.S.S.

---