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make the order, this Court can interfere under s. 15 of the Charter Act. Therefore the only question that we have to consider is whether the order complained of is one which the Magistrate could make under s. 144 of the Code. The section says that: "In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order, stating the material facts of the case and served in manner provided by s. 134, direct any person to abstain from a certain act," &c., &c. Now by the words "a certain act" we understand that it must be a definite act. We have considered the order passed in this case, and we are of opinion that the acts which the petitioner is directed to abstain from are not acts which come within the meaning of the words "a certain act." She is directed not to collect rents from the ryots of two pergunnahs; no particular ryots are mentioned, but the rent is not to be collected from the ryots of two pergunnahs generally. We do not think that such an order as this comes within the words "certain act." Upon this ground alone we set aside the order and make the rule absolute.

H. T. H. *Rule made absolute and order set aside.*

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

PANNA LALL (DECREE-HOLDER) v. KANHAIYA LALL (JUDGMENT-DEBTOR).* 1888 November 19.

Insolvency—Civil Procedure Code, 1882, ss. 336, 337—Act VI of 1888—Debt not in schedule—Execution of decree obtained against insolvent for such debt—Scheduled debts.

A person, who has taken the benefit of the insolvent sections of the Civil Procedure Code, and who is undischarged, but has not inserted in his schedule a debt for which a decree is subsequently obtained, is not protected from arrest in execution of such decree, merely because his property is

* Appeal from Order No. 267 of 1888, against the order of J. F. Stevens, Esq., Judge of Gya, dated the 5th of June 1888.

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in the hands of the Receiver in insolvency. Such a person is liable to arrest under the circumstances and in accordance with the procedure provided for by the Civil Procedure Code Amendment Act (VI of 1888).

ONE Kanhaiya Lall Bhaiya, having been declared an insolvent under s. 351 of the Civil Procedure Code, his property and effects became vested in a Receiver. In his application to be declared an insolvent, Kanhaiya Lall referred to the fact that litigation was then pending between himself as a defendant and one Lutchmi Narain Das as a plaintiff, but his schedule did not show any sum as owing to Lutchmi Narain Das.

Lutchmi Narain subsequently obtained a decree against Kanhaiya Lal, and applied under s. 353 of the Civil Procedure Code to have his name inserted as a creditor in the insolvent's schedule. This application was however refused, and he then took out execution of his decree by attachment of certain monies payable to the Receiver. Subsequently the decree-holder assigned his decree to one Panna Lall, and the attachment referred to was withdrawn.

Panna Lall, on the 4th February 1888, applied in execution to attach the person of his judgment-debtor, and a warrant was issued for his arrest. The judgment-debtor, who had not obtained his discharge under either ss. 351 or 355 of the Code, being brought up before the Court, the District Judge, on the 11th February 1888, released him under s. 336 of the Code on security being found for the decretal amount, giving him liberty to apply within one month's time to be declared an insolvent in respect of the judgment-debt.

On the 5th June 1888 the judgment-debtor applied (during the pendency of the first insolvency) to be declared an insolvent in respect of the judgment-debt; but the District Judge, on reconsideration of the matter, held that no second adjudication in insolvency could be made, and that the original adjudication and declaration being good against all the world, the judgment-debtor could not, pending the insolvency, be arrested.

Mr. *Linton* for the appellant.—The original judgment-creditor not being a scheduled creditor, his assignee should have been allowed to execute the decree, the more so as the original decree-holder had applied to be inserted as a creditor in the schedule

and this application had been refused. The applications in the matter were all made before Act VI of 1888 came into force, and no notice was necessary under the old Act.

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Baboo *Kali Kissen Sen* for the respondent.—The order declaring the insolvency is an order *in rem*, and is good against all the public, and that being so, execution cannot issue against the insolvent.

The judgment of the Court (PETHERAM, C.J., and BANERJEE, J.) was delivered by

PETHERAM, C.J.—This is an appeal from an order of the District Judge of Gya refusing to execute a decree by attachment of the judgment-debtor's person, and the reason which he has given for that is, that the judgment-debtor had filed his petition of insolvency and had given up his property to the Receiver under that petition, and he relies upon the sections of the Code of Civil Procedure relating to insolvency as showing that, after he had done that, he was not liable to arrest at the suit, I suppose, of any creditor whose debt was owing before the time of his petition.

The particular debt in respect of which this applicant had obtained a decree and wished to arrest the judgment-debtor was a debt which the judgment-debtor had not included in his schedule, and we think that the learned Judge was wrong in the view which he took that the judgment-debtor was relieved from the liability to arrest in respect of that debt by the Code of Civil Procedure. The right to arrest or to attach the person of the judgment-debtor in execution of decree is a right which is created by the Code, and was an absolute right, and being created as an absolute right it could only be taken away or qualified by subsequent legislation, and subsequent legislation which was clear in its intention. The only section of the Code which takes away that right is s. 357, and s. 357 says that, where an insolvent has been discharged under the preceding sections, he shall not be arrested or imprisoned on account of any of his scheduled debts. But that qualification is expressly limited to the scheduled debts, and in our opinion the liability to arrest under this Code remained the same as it was before in the case of debts which do not appear in the schedule. It is clear that in this case the debt,

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in respect of which judgment was obtained, did not appear in the schedule, and therefore, in our opinion, the right of the judgment-creditor to attach his debtor by the arrest of his person was not taken away by s. 357, or by any of the insolvency sections, and at that time that right remained the same as it was before; and consequently we think the learned Judge was wrong in the conclusions which he came to that he was prevented from arresting this man under this section. But what escaped the learned Judge's attention, and the attention of both the learned gentlemen who have argued this case here, is the fact that the whole of the law upon this subject has been changed by Act VI of 1888. This Act takes away the right of the judgment-creditor to arrest his debtor and to put him in prison simply for the debt. A right to arrest under certain circumstances is retained, but it is a right to put the man in prison where he has the means of paying and will not pay as a means of compelling him to do that which he could do, and the inference from this provision is, that except for that purpose persons are not to be arrested, and therefore the provisions here have been inserted which provides that the arrest comes in but only under some circumstances.

We think then that the procedure which was adopted in respect of which this order was made is not applicable to the present condition of things, and that if the judgment-creditor wishes to enforce his remedy by proceedings under Act VI of 1888 he must make a new application to the Judge under that Act. At the same time we think that the Judge was wrong in the view which he took of the insolvency sections of the Code of Civil Procedure. Those sections do not afford any answer to an application of that kind in respect of an unscheduled debt; and we think that, if an application of that kind is properly made before him, it ought to be granted, notwithstanding the fact that the debtor has filed his petition, this particular debt not having been inserted in the schedule. With these remarks we decline to interfere, because the law is changed, and under the circumstances we think that there ought to be no costs.

T. A. P. *Appeal dismissed.*