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under which it is contended that the Local Government has power to frame this rule, is paragraph (*c*), *viz.*, "the constitution of the Bench for conducting trials." When power is given to provide for the constitution of the Bench, we think that ordinarily means to provide for the persons who are to constitute it, that is to say, what individuals or what classes of individuals. In the ordinary acceptation of the term, it has nothing to do with the powers which that Bench can exercise, and we think it clearly cannot give the power sought for in this case, *viz.*, a power to decide a case upon evidence taken by other Magistrates. This is not a question of the constitution of the Bench. It is a question as to what are the powers of the Bench. It is a power which is only given in an extreme case in consequence of the necessities of this country, and is a power the exercise of which may frequently prejudice an accused person. Such a power would not be given by implication, and even if it could be, there is nothing in the words "constitution of the Bench" which implies such power. We think that Rule 8 is clearly *ultra vires*. We accordingly set aside the conviction and direct that the fine, if paid, be refunded and a new trial held in the cases.

Rule made absolute and conviction quashed.

H. T. H.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

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July 26.

IN THE MATTER OF BOLYE CHUND DUTT.

Arrest—Arrest in execution of decree—Civil Procedure Code (Act XIV of 1882), s. 341—Writ of attachment—Arrest and commitment—Release—Insolvency proceedings—Protection order, withdrawal of—Re-arrest under same decree.

The Civil Procedure Code contemplates as immaterial the circumstances under which a judgment-debtor imprisoned in execution of a decree obtains his release from prison, and there is no power in the Court to order the arrest of such judgment-debtor a second time under the same decree.

The Secretary of State for India in Council v. *Judah* (1) followed.

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IN 1892 a decree was passed in the High Court in favour of the defendant in the suit of *Bolye Chund Dutt* v. *Money Lall Dutt*. In execution of this decree, and under an order of attachment of the High Court made on the 19th December 1892, the plaintiff was arrested at the instance of Money Lall Dutt, and, after notice, on the 10th January 1893 was committed to prison. The plaintiff subsequently filed his petition in insolvency, was declared an insolvent, and obtained an *ad interim* protection order, and was thereupon on the 24th January 1893 discharged from jail. On the 8th April 1893 the hearing in the insolvency came on before the Court, and at such hearing the discharge of the plaintiff was postponed for twelve months without protection. On the 26th July the judgment-creditor took out a fresh writ of attachment under the same decree and re-arrested his judgment-debtor, and on bringing him up before the Court applied for an order re-committing him to prison.

Mr. *T. A. Apcar* for the judgment-creditor.—The case is distinguishable from that of *The Secretary of State for India in Council* v. *Judah* (1), for in that case the judgment-debtor was liberated by reason of the non-attendance of the jailor in Court who had brought him up from jail, Judah being allowed to leave the witness-box without interference. There is no provision in the Procedure Code to the effect that a judgment-debtor cannot be re-arrested, the only case in which he could not be re-arrested would be on obtaining his discharge under section 341. If a judgment-debtor could not be re-arrested, the effect would be absurd, as all that a judgment-debtor need do, on being arrested and committed, is to file his petition in insolvency, obtain an *ad interim* protection order, and thereon be absolutely released from re-arrest and re-commitment under the same decree. Supposing the judgment-debtor had escaped from custody, could it be said that he could not be re-arrested on the same writ? or supposing he was rescued, or that the writ which by a rule of this Court ran only for a month, had expired, what would then be the judgment-debtor's position? There is nothing in the Code to show that

(1) I. L. R., 12 Calc., 652.

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there is to be only one application for arrest or one application for attachment of property.

Mr. *Sinha* for the judgment-debtor.—The judgment-debtor cannot be re-arrested on a fresh warrant under the same decree under which he was previously arrested. The case of *The Secretary of State for India in Council* v. *Judah* (1) is in point; *Blackburn* v. *Stupart* (2) and *In re Dwarka Lall Mitter* (3) are also somewhat in point. The arguments used by Mr. Apcar were used in that case. The tendency of the Legislature in this country, as in England, is to abolish imprisonment for debt. The means by which the judgment-debtor obtained his release are immaterial.

SALE, J.—This is an application which is made to commit a judgment-debtor to prison under an order of attachment made by this Court on the 25th of April 1893. The circumstances, as appears from the tabular statement under which that order of attachment was made, are as follow:—Plaintiff was arrested under an order dated 19th December 1892, after notice to him, and on the 10th of January 1893 he was committed to prison. Subsequently he applied for the benefit of the Insolvent Act, and on the 24th January he was released from custody and obtained an *ad interim* protection order. On the 8th April 1893 the hearing in the insolvency came on, and the discharge of the plaintiff was adjourned for twelve months without protection. The defendant has incurred costs of execution, a sum of Rs. 48 besides the costs of the commitment, and the Sheriff's fees. The attachment of this debtor under this order is now brought before me on the application of the judgment-creditor to re-commit him to prison under the same decree under which he was committed to prison on a former occasion. The objection is taken by Mr. Sinha, on behalf of the judgment-debtor, that the Court, under the Civil Procedure Code, has no power to make an order for the arrest of the judgment-debtor a second time under the same decree, and he has referred to the decision of the learned Chief Justice in the case of *The Secretary of State for India in Council* v. *Judah* (1). In that case the head-note runs as follows:—"A

(1) I. L. R., 12 Calc., 652. (2) 2 East, 242.
(3) Bourke, O. C., 109.

judgment-creditor once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree." Mr. Apear, who appears on behalf of the judgment-creditor in this case, points out that the circumstances under which the judgment-debtor in the case of *The Secretary of State for India in Council* v. *Judah* obtained his release are entirely different from the circumstances under which the judgment-debtor obtained his release in the present case. It is said that the judgment-debtor in the case by the Secretary of State obtained his release by means of a default on the part of the plaintiff in not providing for his re-arrest after the application which he had made to be declared an insolvent under the section in the Civil Procedure Code had been refused. It seems that after the enquiry provided for by the section of the Civil Procedure Code, which at that time applied to the High Court, but which does not now apply, the application of the judgment-debtor was refused, and thereupon the Advocate-General, on behalf of the plaintiff, applied for the re-commitment of the judgment-debtor. The Court declined to make the order, and the result was that in the absence of the bailiff the judgment-debtor walked out of the Court. Subsequently an application was made for a fresh order of attachment on the judgment-debtor, and it was contended on his behalf that there could be no re-arrest under the same decree.

The learned Chief Justice deals with that argument in this way. He says:—"Now, what the rights of the plaintiff are with reference to the existing warrant it is not for me to say. Having regard to the provisions of section 341 and subsequent sections, I am clearly of opinion that the Code only contemplates one arrest, and if the defendant is to be remitted to jail, or if he is in custody now, he is in custody under the original arrest, and he can be in custody under no other." Then the learned Chief Justice further down goes on to say that "section 341 provides that a man should be discharged from prison in various ways; that is to say, upon the money being paid, upon the decree being satisfied in full, the creditor consenting to his release, non-payment of the allowance by the judgment-creditor, the insolvency of the judgment-debtor, and the term of his imprisonment having expired. Now all these

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things obviously deal with one imprisonment only, and one arrest under section 254, which is the arrest to enforce payment of the money." Then the learned Chief Justice says :—"I am of opinion that the defendant having been once arrested, there can be no other writ which can issue from this Court. Whether the party has the right to re-arrest him under the original writ, or what are those rights or what his liabilities may be, is a totally different matter. As I have said before, I think that this Court, having once granted an order for the defendant's arrest, and he having been arrested under that order, it is not open to it to grant another order, and therefore this application must be refused." While I fully assent to the argument which has been put forward by Mr. Apear that a very great difference may exist as regards the circumstances under which a judgment-debtor obtains his release, whether the circumstances show that it was by reason of a default on the part of the judgment-creditor or by reason of his own conduct, yet I can only read the observations of the learned Chief Justice in one way, and that is that the Civil Procedure contemplates as immaterial the circumstances under which the judgment-debtor obtains his release, and that, as a fact, under the Civil Procedure Code, there is no power whatsoever in the Court to order a second arrest under one and the same decree. That, in my opinion, is a fair and plain construction of the judgment of the learned Chief Justice, and where a question has concern with the liberty of the subject, I think I am bound to read it in a way tending rather to a liberal construction than to a restricted one. I think, therefore, that I am governed in this matter by this decision in the case of *The Secretary of State for India in Council* v. *Judah*, and I must hold that the Court, having regard to the section of the Civil Procedure Code, has no power to order the arrest of a judgment-debtor a second time on the same decree. Mr. Apear has very properly pointed out that the circumstance under which the judgment-debtor in this case obtained his release was by reason of the provisions of the Insolvency Act (section 13) which gives the Court power to grant *ad interim* protection under certain circumstances, and that in this case the judgment-debtor, having obtained his release by virtue of that section of the Insolvency Act, the circumstances do not fall within the grounds

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of the decision of the case which has been cited. As I think the learned Chief Justice's view was that the circumstances were absolutely immaterial as to whether the discharge was obtained by default of the judgment-creditor or in any other way whatsoever, I am unable to give effect to Mr. Apcar's argument. The result is that the judgment-debtor must be discharged, but I do not think, under the circumstances, I shall make any order as to costs.

Application refused.

Attorney for the Plaintiff: Baboo *Gokul Chunder Dhur*.

Attorneys for the Defendant: Messrs. *Beeby & Rutter*.

T. A. P.

Before Mr. Justice Sale.

IN THE GOODS OF E. McCOMISKEY, DECEASED.

1893 *August* 1.

Practice—Petition by Administrator-General for Letters of Administration—Prayer for remission of Court fees where estate is of small value—Rule of High Court, 697—*Verification of petition—Administrator-General's Act* (*II of* 1874), *ss.* 12, 16, *and* 17.

A petition by the Administrator-General for letters of administration containing a statement as to the value of the estate, followed by a prayer for the remission of court fees under rule 697 of the Rules of the High Court (Belchambers' Rules and Orders, page 278), is sufficiently verified by the signature of the Administrator-General in accordance with section 12 of Act II of 1874. The effect of that Act is to do away with the requirements of the rule in such a case, so far as it makes verification by affidavit necessary as to the value of the assets.

IN this case a petition was presented on behalf of the Administrator-General for letters of administration to the estate of the deceased, when a question arose as to the practice for verification of the value of the estate when accompanied by a prayer for remission of court fees. The facts material to the point appear in the note made by the Registrar, which was as follows:—

"The Administrator-General has presented a petition for letters of administration, stating that the total value of the estate will not exceed Rs. 1,842-3-3, and praying for remission of the fees of Court under rule 697, Belchambers' Rules and Orders, page 278.