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MACPHERSON, J.

I am satisfied that at the present stage proceedings under section 145 would be entirely inexpedient. The District Magistrate must maintain the peace of his district as between these warring parties until the forthcoming decision of the Civil Court, by the means at his disposal which he shall adjudge most appropriate to and most effective in the circumstances.

The rule is accordingly discharged.

Rule discharged.

APPELLATE CIVIL.

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July, 10, 11, 12.

Before Wort, A. C. J. and Kulwant Sahay, J.

LAKHI PRASAD SINGHANIA

v.

UGRAH MISRA.*

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 6(*g*)—*notice of suspension of payment, what amounts to—statement that the debtor asked the creditor to accept such cash as was in his possession and to take security for the remainder, whether amounts to notice of suspension—test to be applied in construing statements of debtor—authorities under the English Bankruptcy Act, whether apply to Indian law.*

Section 6, Provincial Insolvency Act, 1920, provides :—

" A debtor commits an act of insolvency in each of the following cases, namely :—..

....

(*g*) if he gives notice to any of his creditors that he has suspended or that he is about to suspend, payment of his debt;........................ "

Held, that a mere statement by a debtor that he is unable to pay his debts, however insolvent he may be, is not necessarily a notice, within the meaning of clause (*g*) of section 6, that he is suspending or about to suspend payment.

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* Miscellaneous Appeal no. 309 of 1932, against a decision of R. B. Beevor, Esq., I.C.S., Additional District Judge of Bhagalpur, dated the 20th December, 1932.

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In construing a statement of the debtor one has to ascertain what the words used by the debtor would reasonably and ordinarily mean to the mind of a creditor and whether he has clearly indicated that not only is he not going to pay a particular creditor but that he intends to deal with his creditors collectively.

Clough v. *Samuel*(1) and *Crook* v. *Morley*(2), referred to.

Where, therefore, it appeared from the evidence that the debtor asked the creditor to accept such cash as was in his possession and to take security for the remainder, *held*, that the statement could not be treated as a notice of suspension within the meaning of section 6(*g*) of the Act.

Although no written notice of such suspension is necessary yet it must be in a sense formal and must not merely be the result of a casual conversation.

The provisions of section 6 of the Provincial Insolvency Act are nothing more than a copy of those of the Bankruptcy Act of England on that subject, and that being so, the authorities which have been decided from time to time on this provision in the English Act are necessarily authorities for the Indian Courts.

Appeal by the insolvents.

The facts of the case material to this report are set out in the judgment of Wort, A. C. J.

S. M. Mullick (with him *S. N. Bose* and *K. P. Shukul*), for the appellants.

K. N. Lal, for the respondents.

WORT, A. C. J.—This is an appeal from a decision of the Additional District Judge of Bhagalpore adjudicating the appellants insolvent. Having regard to the conclusion at which we have arrived in the case the only substantial matter which we have to consider is whether the learned Judge was right in coming to the conclusion that the appellants had given

(1) (1905) A. C. 442 (447).
(2) (1891) A. C. 316.

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a notice of suspension of payment within the meaning of section 6(*g*) of the Provincial Insolvency Act. The respondents to this appeal were amongst other persons petitioning creditors against the appellants. The respondents were owed a sum of Rs. 18,500 for money deposited with the appellants in the business of the appellants as Bankers. The appellants carried on business as cloth merchants and bankers and it was in these circumstances, as I have already indicated, that the money was deposited by the respondents and that the debt of Rs. 18,500 was incurred by the appellants. The petition alleged a number of acts of insolvency, the two main ones being, first, that the appellants had been guilty of executing a fraudulent conveyance with intent to defeat their creditors, and, secondly, that they had on the 28th October, 1932, given a notice of suspension of the payment of their debts. The learned Judge heard the evidence of the respondent-petitioners and part of the evidence of the appellants but, as he states in his judgment, he found it unnecessary to allow further evidence to be given after a certain stage in the evidence of the appellants, by reason of the fact that in his opinion the admission made by the second witness Chirinji Lall on behalf of the appellants was sufficient to establish an act of insolvency inasmuch as in his opinion that admission amounted to their having given notice on the 28th October of suspension of payment In these circumstances he refrained from either hearing the evidence or considering whether the other main act of insolvency had been committed, namely, whether the appellants had executed a fraudulent conveyance to defeat their creditors. The evidence related to a mortgage which was executed in April, 1932, in favour of the firm of their father-in-law, Harnath Rai Binjraj. This mortgage was executed in April but not registered until the following July. That evidence, as I have already stated, was the basis of the respondents' allegation that the appellants had committed this further act of insolvency.

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So far as the question of the suspension of payment was concerned the learned Judge makes this statement:—

"In view of the statement made by Chirinji Lal, one of the partners in the firm Baijnath Jodhraj, on the point of notice of suspension of payment on the 28th October, 1932, I have not thought it necessary to take further evidence on the other alleged act of insolvency."

The learned Judge then goes on to state the evidence or admission upon which he relies. It was this:—Chirinji Lall in his evidence in chief states that four persons whom he names who were the petitioners in case no. 61 came on the 28th October and asked for payment of their money. They were told by the witness Chirinji Lall that they could take all the money he had but they asked for payment in full. Then he is supposed to have said

"I said they could take all the money I had and for the rest they could take a mortgage on my dues or properties which they like,"

as the deposition reads but I assume it means "whichever they like". The learned Judge, as I have stated, relied upon that so-called admission by the appellants' witness in coming to the conclusion that this act of insolvency had been committed.

The case is not without some difficulty but in determining this point, namely, whether the appellants had given notice of suspension, it is necessary to have in one's mind certain principles of law which have been laid down from time to time with regard to this matter. It may be said in this connection that the Provincial Insolvency Act is nothing more than a copy of Bankruptcy Act of England in this respect, and that being so, the cases which have been decided from time to time on this provision in the English Act are necessarily authorities for this court. I may add that the English cases to which I shall refer have been relied upon by the Indian High Courts. There are two main authorities which have dealt with

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this question; one is the case of *Crook* v. *Morely*(1) and the other is the case of *Clough* v. *Samuel*(2). Without stating or referring in detail to the judgments of the learned Law Lords in those cases I think it may be stated that two or three principles can be deduced from those judgments. The first is that a mere statement by a debtor that he is unable to pay his debts, however insolvent he may be, is not necessarily a notice within the meaning of the Act that he is suspending or about to suspend payment. The second principle seems to be that one has to ascertain what the words used by the debtor would reasonably and ordinarily mean to the mind of a creditor. The third is that in construing the statement of the debtor it has to be seen whether he has clearly indicated that not only is he not going to pay a paritcular creditor but that he intends to deal with his creditors collectively. It may be added that it has long since been decided that although no written notice of such suspension is necessary, yet it must be in a sense formal and must not merely be the result of a casual conversation. Applying these principles we have to decide whether in the circumstances of this case the learned Judge was right in coming to the conclusion that the statement made by one of the appellants' witnesses was sufficient to enable him to come to the conclusion that they had given notice that they either had or were about to suspend payment. In this case it is in evidence, and I do not think it is seriously disputed by the respondents, and indeed from one point of view it can be seen that the learned District Judge accepted at least a part of the statement, namely, that the appellants offered some sort of payment to the petitioning creditors. In other words, it was not a mere refusal to pay or a refusal to treat with the creditors under any circumstances. In fact the statement which has been accepted by the District Judge is to the effect that the appellants offered such cash as was

(1) (1891) A. C. 316.
(2) (1905) A. C. 442 (447).

in their possession and security for the remainder of their debt and in this connection it was urged by Mr. Sushil Madhab Mullick on behalf of the appellants that not only was it impossible to treat the statement made by the appellants as a notice of suspension but if their evidence was taken at its face value it was a statement which was diametrically opposed to the conclusion arrived at by the learned District Judge, that is to say, the mere offer of the appellants to treat with their creditors and offer them either security, or security and part cash, was an indication that they were not suspending payment. In this connection there is a reference in the case of *Clough* v. *Samuel*(1) by Lord Macnaghten to a statement made previously by Lord Selborne in the case of *Crook* v. *Morley*(2) and the statement which Lord Selborne is supposed to have made is to this effect :—Putting words into the mouth of the debtor he said "I am in a position at the present moment in which it is impossible for me to go on paying my creditors who may apply to me in the ordinary course of trade, and if I pay the first who apply there will be nothing left for the rest." That was construed, as Lord Macnaghten points out, as being a definite notice of suspension but it must be noticed that it was a clear indication that the debtor was paying nobody and if he paid one there would be nothing left for the others; in other words, it was a clear indication in the circumstances which have been stated to be the true test in the case, namely, that there was not only a clear intention to decline to pay one creditor but to treat with the creditors collectively. I am not unmindful of the fact that the words which I have quoted from Lord Macnaghten's judgment are from a dissenting judgment but he was, as I have already pointed out, referring to the words of Lord Selborne in a case [*Crook* v. *Morely*(2)] which was in the House of Lords and the authority of which is not denied.

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(1) (1905) A. C. 442 (447).
(2) (1891) A. C. 316.

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Taking the circumstances into consideration I am quite clearly of opinion that the learned District Judge was not justified in coming to the conclusion that there was an admission of the appellants that they were giving notice either that they had suspended or were going to suspend payment. I wish to be careful in saying that the admission itself is not sufficient and if there was nothing else it would have to be held that that was insufficient to bring it within the meaning of clause (*g*) of section 6 of the Provincial Insolvency Act. There is this to be remembered. The respondents' witnesses had given a somewhat different version of the case. Their witnesses, although perhaps from one point of view, may be considered to have given evidence which was somewhat contradictory, yet made on the whole statements which were largely opposed to that statement or admission to which I have just been referring. Some of their witnesses went so far as to say that the appellants had stated that they were going to suspend payment. There is some difference or some conflict in the evidence as to exactly when they were going to suspend payment as there is also some conflict as to the exact words which were used. But this is a matter, as I shall presently point out, for the learned District Judge.

To sum up that part of the case it is clear, as I have said, that the admission alone is insufficient. The learned Judge has expressed no view as to the value of the evidence given by the respondents. He has relied solely upon the admission of the appellants. That being so and it also being a fact that the learned Judge has not considered the question of whether the other act of insolvency was committed or not, it becomes necessary for the learned Judge to come to a determination on that question. Had the evidence been such that we could have come to the conclusion that the alleged suspension of payment could not have been made out, that part of the case would have been finally disposed of by this court. But having regard

to the circumstances to which I have referred in some detail, it becomes necessary, whilst sending the case back for the learned Judge to determine the question of whether *the other act of* insolvency had been committed, for him also to determine the question of whether the appellants had given notice of suspension. For that purpose he must not only take into consideration the so-called admission of the appellants but also the evidence of the respondents and come to a finding of fact accordingly. The appellants will be entitled to adduce such evidence as they were about to adduce when it appears that they were stopped by the learned District Judge. As far as can be seen from the record, the respondents adduced the whole of the evidence which they thought necessary in the circumstances and if in fact they closed their case, as the order-sheet seems to shew, then they will not be entitled to adduce further evidence in the case. To repeat myself, the appellants will be entitled to adduce evidence as to the alleged act of insolvency based on the alleged fraudulent conveyance; also on the question of whether they are in a position to pay their creditors or not. That being so, the case will go back to the learned Judge to be heard and determined according to law. The order of adjudication will be set aside and necessarily the vesting order will go with it. The costs of this appeal will abide the result of the hearing before the learned District Judge. Let the records be sent down at once.

KULWANT SAHAY, J.—I agree.

Appeal allowed.

Case remanded.