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that the decision must be that the appellant has no *locus standi*. The mere fact that he appeared before the Judge urging the merits of his own candidature, in my judgment, advances his claim in this Court no further.

It seems to me that the learned Registrar was right but the matter may be disposed of on the ground that the present appellant petitioner has no *locus standi*. The cross-objection of Shah Abdul Baqua Mohammad (Respondent no. 3 in the appeal) is rejected. The order of the learned Registrar is upheld with costs: hearing fee one gold mohar to respondent no. 1 and one gold mohar to respondent no. 2.

JAMES, J.—I agree.

Appeal dismissed in limine.

APPELLATE CIVIL.

Before Wort and James, JJ.

JAGGARNATH PRASAD SAHU

v.

GANESH LAL SARAUGI.*

Code of Civil Procedure, 1908 (Act V of 1908), section 135—person taking up temporary lodging in the place where court is situate, how far is entitled to protection.

Section 135, Code of Civil Procedure, 1908, provides :

.....
(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtears, revenue agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process, other than process issued by such tribunal for contempt of court, while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal..... "

* Miscellaneous Appeal no. 255 of 1934, from an order of Babu Bansi Prasad, Deputy Magistrate-Subordinate Judge of Palamau, dated the 6th September, 1934.

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Held, that the principle which applies to a person living in the place where the court is situate must be applied to the person who takes up temporary lodging in that place, that is to say, the protection extends only from his temporary lodging to the court or from the court to his temporary lodging.

Where, therefore, the petitioner, a resident of Haider-nagar took up a temporary residence at Daltonganj where he had gone to attend a proceeding in court and was arrested while he had left his temporary lodging and was taking a walk, *held*, that he was not entitled to the protection of section 135.

Kedarnath Shersingdas v. Nomanbhai Koorban Hoossein(1), not followed.

Persse v. Persse(2), referred to.

Appeal by the judgment-debtor.

The facts of the case material to this report are stated in the judgment of Wort, J.

R. S. Lall and *T. A. D. Sinha*, for the appellant.

B. C. De, *K. K. Banerjee* and *M. Imam*, for the respondent.

WORT, J.—This matter comes before this Court on appeal from the Subordinate Judge, who has decided that the arrest of the appellant at the hands of the decree-holder as a form of execution was a legal arrest. Shortly the contention of the judgment-debtor appellant is that he had protection of section 135 of the Civil Procedure Code which gives protection from arrest in execution to parties, their pleaders, mukhtears and witnesses while going to or attending a tribunal before whom they have business or before whom they have been summoned.

One of the matters in dispute in this case is whether on the evidence it can be held that at the time of the arrest, which was at about 6.30 in the evening of the 4th September of this year, the appellant was returning to his lodgings from Court. A further contention is put forward by the learned Advocate on

(1) (1930) I. L. R. 55 Bom. 612.

(2) (1856) 5 H. L. C. 671.

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behalf of the appellant that as the business upon which he was engaged had not finished and that he was to attend the Court of the Subdivisional Magistrate on the morning of the 5th September, he had protection throughout the night of the 4th September until the business was finished in the Court of the Subdivisional Magistrate and he had returned to his home which was at Haidernagar. The Courts which he attended on the 4th September and which he alleges he had to attend again on the 5th September were at Daltonganj to which he had come on the morning of the 4th September by train. A warrant of arrest had been issued, and the first Court to which the appellant went on the morning of the 4th September was the Court of the Subordinate Judge where he asked for protection from arrest by reason of the fact that he had to attend a case as defendant in the Magistrate's Court. Having petitioned the Subordinate Judge he proceeded to the Court of the Magistrate and was convicted by that Magistrate for an offence under the Indian Penal Code and fined a sum of Rs. 30 or seven days' imprisonment. It would appear from the evidence before us that the Magistrate in that case delivered his judgment, at about 2 to 2-30, on the afternoon of the 4th September. What happened after that was at first in controversy. The appellant attended two Courts. He came back to the Subordinate Judge's Court at which he had attended in the morning and at whose hands the appellant asked for protection. He also attended the Court of the Subdivisional Magistrate with regard to certain proceedings under section 145 of the Criminal Procedure Code. Undoubtedly he had been summoned there and it would appear that the question which was to be determined there was some matter relating to costs. It was contended by the learned Advocate on behalf of the appellant that the Court to which the appellant first went was the Court of the Subordinate Judge and that from there he went on to the Court of the Subdivisional Magistrate. This point is of some importance having regard to

the time at which he was arrested which, as I have already stated, was at 6-30 in the evening. It was contended, as I have said, that the Subordinate Judge was the first Court which the appellant attended. The purpose of his attendance at the Court of the Subordinate Judge was to again petition the Subordinate Judge and to assert that the protection which had been granted by the Subordinate Judge in the morning had not been effective and that he was being harassed by the decree-holder and a large number of persons led by the Nazir. But it does appear to me quite clear from the petition which was filed before the Subordinate Judge from whose order this appeal has been preferred, that what happened was that he first of all attended the Court of the Subdivisional Magistrate and after attendance there he proceeded to the Court of the Subordinate Judge and stated what I have already referred to. At first he suggested that he should himself surrender and be taken under arrest. It appeared to him that that was a better course than to be harassed by the decree-holder and his men. However, he seems to have changed his mind with regard to that and ultimately left the Court of the Subordinate Judge. The time at which he left, as I have already stated, is material. It would appear first of all from paragraph 8 of the petition, which he presented to the Deputy Magistrate Subordinate Judge, that the order of the Subdivisional Magistrate was made at 6-30 in the evening. Having regard to the admitted fact that he was arrested at 6-30 in the evening and at a place which was not the Court of the Subdivisional Magistrate, it is impossible in my judgment to hold that the statement in paragraph 8 is correct, more particularly having regard to what the appellant asserted in paragraph 9 of his petition. He there states (and he is addressing the Subordinate Judge it must be remembered) that he

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" made a submission yesterday before your honour at about 5 P.M. in the presence of the decree-holder's pleader, Babu Bhagwat Sahai, and other men of the decree-holder to the effect that as your petitioner had been detained by the orders of the Subdivisional Officer he still

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claimed exemption from arrest and your petitioner also showed the summons of the Court to the decree-holder's pleader which is attached herewith.'

He expresses himself in the past tense when he refers to the proceedings before the Subdivisional Officer; in other words, he is there asserting before the Court of the Subordinate Judge that he came away from the Subdivisional Magistrate's Court, that no order had been passed and that it was necessary for him to attend the next day. That is the substance of his assertion in paragraph 9 of the petition. It is, therefore, clear that the time when he attended the last Court on the 4th of September was about 5 o'clock. It is an admitted fact that his temporary lodgings with his pleader were situate in the jail compound, a distance of about two to three hundred yards away from the Court. It is clear from his own petition that he had no business in the Court after about 5 o'clock or 5-30, and it will be remembered that he was arrested at 6-30 in the evening. There is only one possible conclusion, in my judgment, which can be gathered from those statements and that was that, as the respondent decree-holder suggests, having left his lodgings he was arrested at 6-30 P.M. which, as I have indicated, clearly shows that he was not returning to his lodgings at the time of his arrest. If that be so, apart from the second question which the learned Advocate on behalf of the appellant has argued, it seems to me quite clear, as the Subordinate Judge himself has found, that the arrest was a legal arrest.

The only question to be determined is whether in spite of the fact which, as I have already stated more than once, seems to have been clearly established that he had left his temporary lodgings and was taking a walk at the time of his arrest, he still had the protection of section 135 of the Code of Civil Procedure. For this proposition the case of *Kedarnath Sherringdas v. Nomanblhai Koorban Hoosein*(¹) is cited. There were certain proceedings which the petitioner

(1) (1930) I. L. R. 55 Bom. 612.

had to attend in the High Court of Bombay. For that purpose he came several days before the case was to come on. As it ultimately appeared the case did not come on for a very long time after his arrival in the city of Bombay, the reason being the illness of the learned Judge who was to try the suit. He had taken up his residence or temporary lodgings in Bombay and was arrested on leaving those lodgings on a certain date. The question there was whether as long as he was in the city of Bombay and waiting for his case to come on he had protection of section 135 of the Civil Procedure Code. Mr. Justice Wadia relying upon a decision in the case of *Persse v. Persse*⁽¹⁾ decided that he had. With great respect to the learned Judge it seems to me that, whether the reasoning which he has given for his judgment is correct or not, no reliance could be placed upon the case to which I have referred for the reason that the Lord Chancellor in that case was dealing with a set of facts entirely different from those which Mr. Justice Wadia was dealing. The Lord Chancellor in that case had observed that some latitude should be allowed in a case where the party was not resident in the city in which his case was heard, and the only point which came up for determination in that case was whether a party, who had come to the city where the case was to be heard some days before the case came on, was entitled to protection during that period. Mr. Justice Wadia refers to a number of cases to which I do not propose to make reference for the simple reason that they are not strictly in point as regards the matter we have to decide. They mostly deal with questions of deviation from the ordinary way from the Court to the home of the witness or party, as the case may be. It seems to me that the case must be decided on what appears, in my judgment, to be the plain construction of section 135 of the Code of Civil Procedure. It is admitted in the first place that had the appellant lived at Daltonganj, the place where the Court was

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situate, he would have protection only during that time in which he was coming from his home to the Court or returning from the Court to his home; but if he left his house in the meantime he was liable to be arrested and would not have protection of section 135. It comes to this, therefore, whether a person who comes from a distance to a place in which the Court is situate has any wider protection than a person who lives in the place where the Court is situate. In my judgment it would be straining the words of section 135 to hold that there was such a right of protection. If the wider protection were given it would mean that the person claiming exemption from arrest during the course of the hearing of the case, however long it may be, was at liberty to do as he pleased: he would have a wider protection than that which the section gives him during his journey from his home to the Court and from the Court to his home. The words of the section are

“while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.”

It seems to me that the principle which would apply to a person living in the place where the Court is situate must be applied to the person who takes up temporary lodgings in that place, that is to say, the protection extends only from his temporary lodgings to the Court or from the Court to his temporary lodgings. On the facts as they appear from the petition to which I have already referred, I have no doubt in my mind that at the time of the arrest the appellant was not returning from the Court to his temporary lodgings and, therefore, for the reasons which I have given on the second point it seems to me that the only conclusion we can arrive at is that the arrest was legal.

The appeal is, therefore, dismissed, but without costs.

JAMES, J.—I agree.

Appeal dismissed.