

creditors she has been permitted to collect and retain part of the property of the deceased. The Judge finds that she has done so without the knowledge and consent of the executrix. The application must, therefore, be dismissed with costs. We see no grounds, even if we had the power, for directing in what order the decree is to be executed.

1895.

NAVAZBÁI
v.
PESTONJI.

Application dismissed.

INSOLVENCY JURISDICTION.

Before Mr. Justice Strachey.

IN THE MATTER OF JAMES CURRIE, AN INSOLVENT.

Jurisdiction—Insolvent Court of Bombay, jurisdiction of—Indian Insolvent Act (Stat. 11 and 12 Vict., C. 21), Sec. 5—High Court Charter, Clauses 18 and 44—Act V of 1872—Trader at Karachi presenting petition in Bombay—Relation of Insolvent Court to High Court—Acts limiting jurisdiction of High Court limit jurisdiction of Insolvent Court.

1896.

October 12.

J. C., a European British subject residing at Karachi in Sind, failed in business in 1895, and on 11th June of that year he filed his petition in the Court for Relief of Insolvent Debtors in Bombay.

Held that, having regard to Act V of 1872⁽¹⁾ read with clause 18 of the Letters Patent, 1865, the Court had no jurisdiction to entertain the petition.

By section 5 of Statute 11 and 12 Vict., c. 21, the Insolvent Court was given jurisdiction over residents within the jurisdiction of the Supreme Court of Bombay. The jurisdiction of the Supreme Court extended over all inhabitants of the town and island of Bombay and over European British subjects in any of the factories subject to or dependent on the Government of Bombay.

The jurisdiction of the Insolvent Court as defined by the above section remained unaffected by the establishment of the High Court in the place of the Supreme Court except so far as it may be limited by clause 18 of the Letters Patent, 1865.

(1) Act V of 1872 as amended by Act XX of 1872:—

Whereas it is expedient to remove doubts which have arisen as to the jurisdiction of the High Court of Bombay over the Province of Sind; it is hereby enacted as follows:—

1. The High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sindh.
2. Nothing herein contained shall be deemed to affect the Administrator General's Act, 1874.
3. Nothing herein contained shall be deemed to invalidate the grant of any probate or letters of administration heretofore or hereafter made by the High Court of Judicature at Bombay or to affect the rights, powers or duties of any executor or administrator under, or by virtue of, any such probate or letters.
4. Nothing herein contained shall be deemed to affect the Criminal Jurisdiction of the said High Court, so far as regards European British subjects of Her Majesty.

1896.

IN RE
JAMES
CURRIE.

A European British subject residing within the Presidency of Bombay, though outside the town and island of Bombay, may petition the Insolvent Court of Bombay for relief.

The powers and authorities originally of the Supreme Court and now of the High Court given by the Insolvent Act form a branch of the jurisdiction of the High Court and are, therefore, subject to any legislative restriction of that jurisdiction whether imposed by the Letters Patent or by any subsequent enactment.

The power of the High Court and any Judge of it to exercise the jurisdiction of the Insolvent Court, whatever that jurisdiction may be, is locally limited by clause 18 of the Letters Patent, 1865, to the Presidency of Bombay and cannot be exercised outside that Presidency or outside any area within it to which it may by subsequent enactment be restricted.

The effect of clause 41 of the Letters Patent, 1865, which makes the provisions of clause 18 subject to the legislative powers of the Governor General in Council, must be that any Act of the Governor General in Council, still further limiting the jurisdiction of the High Court and excluding it from any place even within the Presidency, must also still further narrow the jurisdiction of the Insolvent Court, for otherwise the Judge of the High Court presiding as Commissioner would be exercising jurisdiction in a place where his jurisdiction under clause 18, by virtue of which alone he could act as Commissioner, had been abolished. Act V of 1872 is such an Act.

THE insolvent was a European British subject who had carried on business at Karachi in the province of Sind. In 1895 his firm failed, and on the 11th June, 1895, he filed his petition in the Court for the Relief of Insolvent Debtors in Bombay.

At the hearing, counsel for the opposing creditor took the objection that the Insolvent Court at Bombay had no jurisdiction to entertain the petition, the insolvent having resided and carried on business at Karachi and not in Bombay.

Russell and Raihes for the opposing creditor :—They referred to the Indian Insolvent Act (Stat. 11 and 12 Vict., c. 21), sec. 5 ; The High Court's Act (Stat. 24 and 25 Vict., c. 104), sec. 11 ; Act V of 1872⁽¹⁾.

Daly and Mankar for the insolvent :—They referred to Letters Patent, 1865, clause 18 ; *In the matter of Candus* ; *Navirahu v. C. A. Turner*⁽²⁾ ; *In re Dorothea Ricks*⁽³⁾ ; *In re Cockburn*⁽⁴⁾ ; *In re Tietkins*⁽⁵⁾ ; *In re George Blackwell*⁽⁶⁾ ; Supreme Court Charter, clause 28 ; Act V of 1872 ; *Empress v. Burah and Book Singh*⁽⁷⁾.

(1) See *ante*, p. 405.

(2) I. L. R., 13 Bom., 520, at p. 532.

(3) 3 Mad. H. C. Rep., 151.

(4) 2 Ind. Jur. (N. S.), 326.

(5) 1 Beng. L. R. (O. C.), 81.

(6) 9 Bom. H. C. Rep., 461.

(7) I. L. R., 3 Cal., 63 at p. 117.

1896.

IN RE
JAMES
CURRIE.

STRACHEY, J.:—This is a petition under section 5 of the Insolvent Debtors' Act (Stat. 11 and 12 Vict., c. 21) for the benefit of the provisions of the Act, by a European British subject residing at Karachi. The question is whether this Court has jurisdiction to entertain the petition.

By section 5 an application for the benefit of the Act may be made by any insolvent debtor "who shall reside within the jurisdiction of any Supreme Courts at Calcutta, Madras, or Bombay, respectively." As regards Bombay, the jurisdiction of the Supreme Court extended, under clause 29 of its charter, to all the inhabitants of the town and island of Bombay, and, under clause 28, to all European British-born subjects residing "within any of the factories subject to or dependent upon the Government of Bombay." Since the replacement of the Supreme Courts by the High Courts established by Stat. 24 and 25 Viet., c. 104, and the Letters Patent issued thereunder, it has been held that the jurisdiction of the Insolvent Court as defined by section 5 of the Insolvent Debtors' Act remains untouched—*In the matter of Dorothea Ricks*⁽¹⁾—except so far as it may be limited by clause 18 of the Letters Patent—*In the matter of Tietkins*⁽²⁾; *In re Cockburn*⁽³⁾; and in Bombay it has always been held that a European British subject residing within the Presidency, though outside the town and island of Bombay, may petition this Court for relief—*In re George Blackwell*⁽⁴⁾.

It has, however, been argued by Mr. Raikes for the opposing creditor that by reason of section 11 of the High Courts Act, the material words in section 5 of the Insolvent Debtors' Act must now be read "who shall reside within the jurisdiction of any of the High Courts at Calcutta, Madras, and Bombay, respectively," so that, since the passing of the statute of 1861 (24 and 25 Viet., c. 104), the jurisdiction of the High Court as defined by that statute and the Letters Patent, and not the jurisdiction of the Supreme Court as defined by its charter, would be the text or measure of the jurisdiction of the Insolvent Court. Whether that construction is correct, and what would be its

(1) 3 Mad. H. C. Rep., 151.

(3) 2 Ind Jur. (N. S.), 326.

(2) 1 Beng. L. R. (O. C.), 84.

(4) 9 Bom. H. C. Rep., 461.

1896.

IN RE
JAMES
CURRIE.

consequences if accepted, I need not now consider. Nor need I consider whether, under clause 28 of the charter, the Supreme Court had jurisdiction over European British subjects in Karáchi, though I may say that no case in which either that Court or the Insolvent Court exercised such jurisdiction has been cited. Whatever view of section 5 of the Insolvent Debtors' Act is adopted, it appears to me that the jurisdiction of this Court to entertain the present petition is excluded by Act V of 1872 read with clause 18 of the Letters Patent of the High Court.

This conclusion is based on the following considerations:— Although it is clear from the whole of the Insolvent Debtors' Act and from sections 2, 3, 4, 73, 76, and 86 in particular that the Insolvent Court was a separate tribunal from the Supreme Court, and is now equally distinct from the High Court—*In re Bhagwandas Hurjivan*⁽¹⁾, it nevertheless stands in such a special relation to the High Court that a limitation or exclusion of the High Court's jurisdiction may indirectly limit or exclude its own. The Insolvent Court is to be held before a Judge of the High Court; the High Court has power to make rules for regulating its proceedings and to appoint and remove its officers; the High Court is a Court of appeal from its decision; and in certain cases the Insolvent Court may direct judgment against an insolvent to be entered up in the High Court and to be executed there in certain events. All the powers of the High Court and its Judges in these respects are included in clause 18 of the Letters Patent, the object of which was to define the jurisdiction of the newly established High Court in relation to the Insolvent Court. It provides that

“The Court for Relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said High Court of Judicature at Bombay, and the said High Court, and any such Judge thereof, shall have and exercise, within the Presidency of Bombay, such powers and authorities with respect to original and appellate jurisdiction, and otherwise as are constituted by the laws relating to insolvent debtors in India.”

This shows, first, that all the “powers and authorities” under the Insolvent Debtors' Act, originally of the Supreme Court and now of the High Court, to which I have referred, and including

(1) I. L. R., 8 Bom., 511 at p. 519.

the power to sit in and hold the Insolvent Court as its Commissioner, form a branch of the jurisdiction of the High Court, just as much as its powers under clause 17, as to infants and lunatics, and are, therefore, subject to any legislative restrictions of that jurisdiction, whether imposed by the Letters Patent themselves or by any subsequent enactment. Secondly, that the power of the High Court or any Judge of it under clause 18 to exercise the jurisdiction of the Insolvent Court, whatever that jurisdiction may be, is locally limited by the clause "within the Presidency of Bombay," and, therefore, irrespective of section 5 of the Insolvent Debtors' Act, cannot be exercised outside the Presidency, nor outside any area within the Presidency to which the scope of the clause may by subsequent enactment be restricted.

This view of the jurisdiction of the High Court as including as one of its branches the power to exercise the jurisdiction of the Insolvent Court is supported by section 638 of the Code of Civil Procedure (Act XIV of 1882), which speaks of "any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court," and by the judgment of the Privy Council in *Navivaku v. Turner*⁽¹⁾ where their Lordships held that the insolvency powers of the High Court under clause 18 formed part of its ordinary civil jurisdiction. *In the matter of Tietkins* Mr. Justice Markby decided that assuming Sir Lawrence Peel to have rightly held in an unreported case of 1851 that the word "jurisdiction" in section 5 of the Insolvent Debtors' Act meant, as regards European British subjects, the whole Presidency, still the effect of clause 18 of the Calcutta Letters Patent of 1865 was to "narrow" the jurisdiction of the Insolvent Court to the Bengal Division of the Presidency of Fort William. He accordingly held that, sitting in the Insolvent Court, he had under clause 18 no jurisdiction to entertain a petition by a European British subject residing at Cawnpore, a place within the Presidency, but outside the Bengal Division of it. Upon the same principle, apart altogether from section 5 of the statute, a Judge of the High Court of Bombay obviously could not, by reason of clause 18, exercise original jurisdiction in insolvency by entertaining a petition by a person residing outside the Bombay Presidency. Upon the same principle the effect

1896.

 IN RE
 JAMES
 CURRIE.

(1) L. R., 16 I. A., 156.

1896.

IN RE
JAMES
CURRIE.

of clause 44 making the provisions of clause 18 as well as the rest of the Letters Patent subject to the legislative powers of the Governor General in Council must be that any Act of the Governor General in Council still further limiting the jurisdiction of the High Court and excluding it from any place even within the Presidency, must also still further narrow the jurisdiction of the Insolvent Court; for otherwise the Judge of the High Court presiding as Commissioner would be exercising jurisdiction in a place where his jurisdiction under clause 18, by virtue of which alone he could act as Commissioner, had been abolished. Now Act V of 1872 is precisely such an Act. As originally passed, it lays down in the most general terms that "the High Court of Bombay has not and shall be deemed never to have had jurisdiction over the province of Sind." Therefore, the High Court, including every Judge of it, has not and must be deemed never to have had, over the province of Sind, that portion of the High Court's ordinary original civil jurisdiction under clause 18 which consists in exercising the powers of a Commissioner in the Insolvent Court. Thus, by Act V of 1872 the jurisdiction of the Insolvent Court was narrowed to the Bombay Presidency, excluding Sind, just as in Bengal it was narrowed by the Letters Patent of 1865 to the Bengal Division of the Presidency of Fort William. That this is the necessary result of Act V of 1872 is further shown by the amending Act XX of the same year. In the course of a few months it was discovered that the absolute exclusion of the High Court's jurisdiction from Sind effected by the earlier Act was too sweeping; and hence it was in substance provided that nothing in that Act should be deemed to exclude that jurisdiction from Sind in three classes of cases—cases under the Administrator General's Act, grants of probates and letters of administration, and criminal jurisdiction over European British subjects. The necessary inference from this is that, in the opinion of the Legislature, all these specified kinds of jurisdiction of the High Court would have been excluded from Sind by Act V of 1872 as originally passed, and that all other kinds, including insolvency, not specified and so not saved by Act XX fall within the general exclusion. Assuming, for the sake of argument, that but for Act V of 1872 a Judge of the High Court would, under

1896.

 IN RE
 JAMES
 CURRIE,

clause 18 of the Letters Patent, have had power to exercise original jurisdiction in the Insolvent Court over Sind as well as over the rest of the Bombay Presidency, the effect of Act V is exactly as if the following proviso had been added to the clause :—“ Provided that the said High Court, and any such Judge thereof, shall not have or exercise, and shall be deemed never to have had, any such powers and authorities within the province of Sind.” That would as effectually prevent a Judge of the High Court from entertaining in the Insolvent Court a petition by a European British subject residing at Karáchi as the clause, apart from Act V of 1872, would undoubtedly prevent him from entertaining a petition from such a subject residing outside the Presidency.

In any question relative to the jurisdiction of this Court, it is necessary, in my opinion, to have regard not only to that jurisdiction as defined by section 5 of the Insolvent Debtors' Act, but to the powers of the High Court and its Judges to exercise that jurisdiction under clause 18 of the Letters Patent and any enactment affecting that clause. In this view of the case I need not decide any of the other matters which were argued at the Bar regarding section 5 of the Insolvent Debtors' Act and various provisions of the Supreme Court Charter, the High Court Act, and the Letters Patent. It must not be inferred from anything in this judgment that I dissent from the decision in *In re George Blackwell*⁽¹⁾—which is distinguishable on the ground that there the petitioner resided at Poona—or desire to throw doubt on the jurisdiction of this Court, where not excluded as in the case of Sind, to entertain petitions by European British subjects residing anywhere within the Presidency. This petition must be dismissed for want of jurisdiction, with costs.

Petition dismissed.

Attorneys for the opposing creditor:—Messrs. *Bland* and *Noble*.

(1) 9 Bom. H. C. Rep., 461.