

## ORIGINAL CIVIL—SPECIAL BENCH.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Chandavarkar,  
Mr. Justice Davar and Mr. Justice Macleod.

1913.  
January 15.

IN THE MATTER OF THE RIGHT OF AUDIENCE BEFORE THE OFFICER APPOINTED  
UNDER SECTION 6 OF THE PRESIDENCY TOWNS INSOLVENCY ACT.

*In re* THE ADVOCATE GENERAL OF BOMBAY, PETITIONER.

*Presidency Towns Insolvency Act (III of 1909), sections 6, 27, 36 and 121—  
Indian Insolvency Act (11 and 12 Vict., c. 21), section 3—Bombay Insolvency  
Rules under Indian Insolvency Act, Rule 37—Officer appointed by the Chief  
Justice under section 6 of the Presidency Towns Insolvency Act—Attorneys'  
right of audience.*

The petitioner complained that in certain proceedings before the officer appointed under section 6 of the Presidency Towns Insolvency Act, namely, on the holding of the public examination of insolvents under section 27 of the Act and the examination of persons summoned by the Court under section 36, such examinations had been conducted by solicitors. The petitioner submitted that, for reasons set forth in the petition, solicitors had no right of audience before the said officer, and petitioned the Chief Justice of the Bombay High Court to form a Special Bench for the determination of the question whether any legal practitioner except counsel had the right to audience before the officer so appointed.

*Held*, that attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under section 6 of the Presidency Towns Insolvency Act.

THE following petition was presented by the Advocate General of Bombay to the Chief Justice of the High Court of Bombay, with regard to an alleged infringement by attorneys of the right of the counsel of the Bombay Bar to sole audience before the officer appointed under section 6 of the Presidency Towns Insolvency Act :—

1. That Mr. R. B. Patel the clerk of the Insolvent Debtors' Court has been empowered by his Lordship the Chief Justice under section 6 of the Presidency Towns Insolvency Act *inter alia* :—

(1) to hold the public examination of insolvents, and

(2) to examine any person summoned by the Court under section 36,

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2. That your petitioner is informed that in spite of protests made by members of the Bar, who were present at the time, such examinations have been conducted before Mr. Patel by solicitors.

3. That your petitioner submits that solicitors have no right of audience before Mr. Patel in such matters as aforesaid for the following reasons, *viz.*—

(a) That no legal practitioner save counsel had the right to audience before the Court for the Relief of Insolvent Debtors in Bombay.

(b) That the examinations aforesaid are held before Mr. R. B. Patel as a delegate of the Court and no legal practitioner who has not a right of audience before the Court has a right of audience before Mr. R. B. Patel.

(c) That by section 121 of the Presidency Towns Insolvency Act it is provided that nothing contained therein shall take away or affect any right of audience that any person may have had immediately before the commencement of that Act or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Court for the Relief of Insolvent Debtors.

4. That your petitioner as representing the Bar is desirous of having determined the question whether any legal practitioner save counsel has the right to audience before the officer appointed by his Lordship the Chief Justice in the exercise of the powers conferred upon such officer under section 5 of the said Act.

Your petitioner therefore prays :—

(a) That your Lordship will be pleased to form a Special Bench for the determination of the said question set forth in paragraph 4 hereof.

(b) That your Lordship will be pleased to direct that notice of this petition should be given to the solicitors of this Honourable Court and if necessary to the pleaders to enable them to represent their claims in the matter.

The determination of the matters mentioned in the petition was referred to a Special Bench and the case came on for hearing on January 15th, 1913.

*The Advocate General*, in support of the petition :—

As to the right of audience, see section 121 of the Presidency Towns Insolvency Act. No right of audience was conferred on any person who had not previously the right of audience before the Court for the Relief of Insolvent Debtors.

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Attorneys did not have the right under the old Act (Indian Insolvency Act) to address the Court.

In section 3 of the Indian Insolvency Act the words "every . . . . attorney . . . . shall be entitled to practise in the way of his profession" mean practising by instructing counsel.

The term "legal practitioner" in sections 27 and 36 of the Presidency Towns Insolvency Act was used advisedly as before the High Court of Madras, pleaders, and before the Chief Court of Lower Burma, solicitors, have the right of audience, but sections 27 and 36 must be read subject to section 121.

The High Court has provided that on the Original Side attorneys may appear in Chambers (Rule 74) but this rule does not apply to Insolvency proceedings (Insolvency Rules, Rule 199).

Insolvency Rules, Rule 4 (b) provides that the public examination of insolvents may not take place in Chambers, though an examination under section 36 may.

As to clause 9 of the Bombay Letters Patent it is submitted that if no rules are framed under that clause attorneys are not authorised to appear by the clause.

The wording of the Bankruptcy Act, 1869 (32 and 33 Vict., c. 71) is different. The attorney is entitled to "appear and be heard without being required to employ counsel".

As to *Ex parte Broadhouse*<sup>(1)</sup> and *Ex parte Reynolds*<sup>(2)</sup>, these cases only decided that in England, if the attorney had the right of audience before the Bankruptcy Act, 1869, he had it still.

The proceedings before Mr. Patel are to be deemed proceedings before the Court, see section 6 of the Presidency Towns Insolvency Act.

(1) (1867) L. R. 2 Ch. 655.

(2) (1885) 15 Q. B. D. 169.

*Campbell*, for the respondents :—

The Bombay Incorporated Law Society relies on the rules framed under section 76 of the Indian Insolvency Act, Rule 37 (numbered 40 in Millett and Clarke on Insolvency) which recognised the right of attorneys to audience in proceedings as proximate as possible to those before Mr. Patel.

Section 121 of the Presidency Towns Insolvency Act preserves the right given by this rule.

The words “in the way of his profession” in section 3 of the Indian Insolvency Act cannot be read as cutting down the rights of an attorney to instructing counsel.

It has been the practice for attorneys to appear and plead at Calcutta before the Commissioner of Insolvency. Under English and Irish practice attorneys also appear and plead.

The construction sought to be placed on the wording of clause 9 of the Letters Patent is strained. By that clause certain powers are given and then it is provided that these powers may be turned in certain directions.

*The Advocate General*, in reply.

C. A. V.

SCOTT, C. J.:—The question before the Court is whether any legal practitioner save counsel has a right of audience before the officer appointed by the Chief Justice to exercise powers under section 6 of the Presidency Towns Insolvency Act. The officer so appointed is the Clerk of the Court, and he has been appointed *inter alia* to hold the public examination of insolvents and to examine any person summoned by the Court under section 36.

It is provided by section 121 of the Presidency Towns Insolvency Act that nothing contained therein shall take away or affect any right of audience that any

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person may have had immediately before the commencement of the Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the relief of insolvent debtors.

By section 3 of the Indian Insolvency Act (11 and 12 Vict., c. 21), it was enacted that every advocate and attorney of the Supreme Courts at Calcutta, Madras and Bombay respectively should be entitled to practise in the way of his profession in the Court for the relief of insolvent debtors of that presidency, and no other persons should practise as advocates or attorneys in the said Courts for the relief of insolvent debtors.

It is contended by the Advocate General that the words "in the way of his profession" do not cover work in the nature of examination of insolvents or witnesses which would ordinarily be within the scope of an advocate's functions.

When the Statute 11 and 12 Vict., c. 21, was enacted, the Insolvency Jurisdiction in England under the Act for the relief of insolvent debtors, 5 and 6 Vict., c. 116, was exercised by the Judge or Commissioners of the Court of Bankruptcy. That Court was established by 1 and 2 Will. IV, c. 56, by section 10 of which it was enacted that all attorneys and solicitors of any of the superior Courts of Law or Equity of Westminster might be admitted after their names were enrolled in the Court of Bankruptcy and might appear and plead in any proceedings in the said Court without being required to employ counsel except in proceedings before a Court of Review and upon trial of issues by Jury.

The inference is that the words "in the way of his profession" in section 3 of 11 and 12 Vict., c. 21, would be sufficiently wide to cover the exercise by attorneys in matters of insolvency except before Courts of Review

or in Jury trials of the functions ordinarily assigned in litigation to advocates.

In Bombay, so far as we are aware, it has not been the practice to permit attorneys to plead before the Commissioner of the Insolvent Court. But Rule 37 of the Bombay Insolvency Rules, which were approved by Her Majesty in Council on the 14th of July 1870, provided that the examiner appointed by the Court might examine witnesses, and the insolvent or the creditor of the insolvent or assignee of the estate and effects of the insolvent should be at liberty to attend the examiner by himself or counsel or attorney and put all such questions to the witnesses which should be proper and relevant in the matter in issue. The office of the examiner in insolvency was abolished on the 1st of November 1881. In certain correspondence with Government, which preceded the abolition of the office, the Chief Justice Sir Michael Westropp stated on the 20th March 1879 :—“ The office of examiner in the Court for the relief of insolvent debtors has, for the purpose for which it mainly existed, namely, the examination of the accounts of opposed insolvents, of late years fallen nearly into disuse, that task being for the most part performed by the Court itself at the hearing of the case when the opposed insolvent or his clerk are examined as witnesses with books of accounts before them. On the rare occasions on which under the present system it may be necessary to refer the books and accounts to the scrutiny of an officer of the Court, that duty may be performed by the Clerk of the Court.”

It therefore appears that the functions of the examiner were to be discharged by the Clerk of the Court, when necessary, and as the Rule 37 was not rescinded, it must be inferred that the right of audience in such matters as might have been brought before the examiner was not taken away from attorneys.

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In matters other than insolvency, which are conducted before delegates of the Court, it has always been the practice to permit attorneys to appear and conduct examinations. For example, not only since the establishment of the High Court but during the continuance of the Supreme Court, attorneys have always appeared to conduct proceedings in the office of the Master in Equity and the Commissioner for taking accounts, and it is a matter beyond dispute that in all Chamber matters, whether before the Prothonotary or before the Judge sitting in Chambers, attorneys have the same right of audience as counsel.

It is true, as pointed out by the Advocate General, that the express rule relating to the right of audience of attorneys in Chamber matters is confined to the Original Side Jurisdiction. But it is illustrative of the practice of the legal professions in matters which do not come before the Courts. If we were to accede to the contention of the Advocate General, it appears to us that we should be taking away or affecting a right of audience which attorneys had before the delegate of the insolvent Court immediately before the commencement of the Act, and we, therefore, answer the question referred to us as follows :—

Attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under section 6 of the Presidency Towns Insolvency Act.

There will be no order as to costs.

H. S. C.

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