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COMMISSIONER OF INCOME TAX v. WESTERN INDIA TURF CLUB, LTD.

When one turns to Part II of the Third Schedule, one finds these rates specified, namely, " In respect of the excess over 50,000 rupees of the total income (1) in the case of every company, one anna in the rupee." Then follow other rates relating to corporations, individuals or associations not being companies, and some of those rates are calculated on a rising scale. What is the effect of that ? It can only be that this particular taxpayer, being a company falling within the first words of Part II of Schedule III, must pay at the rate there specified, namely, at the flat rate of one anna in the rupee.

The argument which has been used in favour of the appeal seems to involve the fallacy that liability to tax attached to the income in the previous year. That is not so. No liability to tax attached to the income of this company until the passing of the Act of 1925, and it was then to be taxed at the rate appropriate to a company.

With regard to the Allahabad case which has been cited (*In the matter of Begg, Sutherland and Co., Ld.*)[1] it is sufficient to say that, if the question there decided should again arise, that decision will require further consideration.

For the reasons which they have given their Lordships are of opinion that this appeal fails, and they will humbly advise His Majesty that it be dismissed with costs.

Solicitor for appellant : *Solicitor, India Office.*

Solicitors for respondents : Messrs. *E. F. Turner & Sons.*

A. M. T.

ORIGINAL CIVIL

Before Mr. Justice Talyarkhan.

In re HYDERBHAI HUSSENBHAI.*

1927

March 8

Presidency Towns Insolvency Act (III of 1909), sections 9 (e) and 12 (1) (c)—Act of insolvency—Attachment for more than twenty-one days—Not continuing act of insolvency—Creditor's petition.

Under section 9 (*e*) of the Presidency Towns Insolvency Act, 1909, the act of insolvency contemplated is committed on the completion of the first twenty-one

* Insolvency petition No. 262A of 1927.

[1] (1925) 47 All. 715.

days. The attachment for more than twenty-one days is not a continuing act of insolvency, nor is there a repetition of the act of insolvency at the expiration of every twenty-one days thereafter.

The period, therefore, of three months within which the insolvency petition should be presented under section 12 (*1*) (*c*) of the Act dates from the completion of the first twenty-one days.

In re Beeston[1] followed.

PETITION in insolvency.

One Hyderbhai Hussenbhai obtained a money decree against Ebhrahim Ismail in Suit No. 3668 of 1922 in the Bombay High Court. In another Suit No. 383 of 1926 of the same Court, a decree was passed against Hyderbhai Hussenbhai. On March 23, 1926, the first decree was attached in execution of the second decree. On February 22, 1927, the creditors of Hyderbhai Hussenbhai applied for an adjudication order against him, on the ground that he had committed an act of insolvency under section 9 (*e*) of the Presidency-Towns Insolvency Act, inasmuch as his decree had remained under attachment for a period of not less than twenty-one days.

Daphtary, for the creditors.

Taraporewalla, for the debtor.

TALYARKHAN, J. :—This is a creditors' petition praying that Hyderbhai Husseinbhai, who is alleged to be indebted to the several petitioners in the various sums set out in the petition, may be adjudicated insolvent. The act of insolvency alleged against the debtor is, that the property of the debtor consisting of the decree of the Bombay High Court passed in his favour in Suit No. 3668 of 1922 against one Ebrahim Ismail and others has been attached for a period of not less than twenty-one days in execution of a decree of this Court in Suit No. 383 of 1926 against the debtor. It is stated in the affidavit in support of the petition that the attachment was levied on or about March 23, 1926, and that the attachment is still subsisting. The petitioners contend that on these facts, which are not

[1] [1899] 1 Q. B. 626.

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disputed, the debtor is guilty of an act of insolvency mentioned in section 9 (*e*) of the Presidency-Towns Insolvency Act, and is liable to be adjudicated insolvent on his creditors' petition.

Section 9 (*e*) provides that a debtor commits an act of insolvency

"If any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money."

It is clear that in this case the debtor committed an act of insolvency for he allowed his property to remain under attachment for a period of not less than twenty-one days.

But Mr. Taraporewala for the debtor has argued that the petition does not comply with the requirements of section 12 (1) (*c*) of the Presidency-Towns Insolvency Act, which provides that

"A creditor shall not be entitled to present an insolvency petition against a debtor unless.....(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition."

It is argued that the attachment having been levied on March 23, 1926, the act of insolvency was committed twenty-one days thereafter, that is, on April 13, 1926, and the petition having been presented in February 1927, the act of insolvency did not occur within three months from the date of the petition—it occurred ten months before that date—and that, therefore, under section 12 (*c*) the petition cannot be entertained.

The decision on this point depends on the question whether the act of insolvency is completed once for all after twenty-one days after the attachment, or whether it is a succession of acts of insolvency after each successive period of twenty-one days during which the attachment continues, or whether the continued attachment for more than twenty-one days is a continuing act of insolvency.

The point raised by Mr. Taraporewala is important both from the point of view of the insolvent and the creditors, and I find that it is not covered by any reported decisions of the Indian High Courts. It is,

therefore, necessary to look to the English decisions under the Bankruptcy Act to see how a similar provision in the English Act has been construed by the English Court, especially as the Presidency-Towns Insolvency Act is based principally on the English Bankruptcy Act. In the case of *In re Beeston*[1] exactly the same question arose under section 1 of English Bankruptcy Act, 1890. Section 1 of that Act, which was similar to section 1 (*e*) of the Bankruptcy Act of 1914, provided that

"A debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any Court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days."

In that case the sheriff took possession in July 1896 and the receiving order was not made until October 1897. It was contended that the continued possession of the sheriff for more than twenty-one days was a continued act of bankruptcy or may be a succession of acts of bankruptcy. But that argument was not upheld, and the Court of Appeal held that his subsequent continuing in possession by the sheriff under the same seizure did not constitute a further or continuing act of bankruptcy, and that consequently there was no act of bankruptcy under the section available against the debtor. Mr. Taraporewala has relied on that case in support of his contention.

Mr. Daphtary for the petitioning creditors argued that *In re Beeston*[1] was not applicable as the wording of the English Act was different from that of the Indian Act inasmuch as in order to constitute an act of bankruptcy, the former Act contemplates holding by the sheriff "*for* twenty-one days," whereas under section 9 (*e*) the attachment is to be for a period of "*not less than* twenty-one days," and that, therefore, under the Indian Act, the act of insolvency is a continuing act. I confess I do not see any distinction between the wording of the Indian

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and English Acts respectively, for the expression "not less than twenty-one days" in plain English can mean nothing but for twenty-one days and not less, exactly as it is in the English Act. Therefore twenty-one days is the period for which the property must remain attached under the Indian Act, twenty-one days is the period for which the property must be held by the sheriff under the English Act, in order to constitute this particular act of insolvency. That being so, the decision in *In re Beeston*[1] is, in my opinion, a decision in point in construing section 9 (*e*) to see whether such an act of insolvency is a recurring or continuing act. In his judgment in that case, Lindley, M.R. says (p. 631):—

"Now I will read the two sections which are important. The first is section 1 of the Bankruptcy Act of 1890, which would avail the trustee if you could read it so as to make the act of bankruptcy come down to October, 1897, or within three months of it. But the dates are important. The fi. fa. was executed and the sheriff took possession in July, 1896, and twenty-one days after that would expire on August 17, 1896, and the receiving order, the title of the trustee, did not occur until October 1897. [The learned Judge read section 1 of the Bankruptcy Act, 1890.] Now, is it possible to fairly construe that section so as to make continued possession for more than twenty-one days either a continued act of bankruptcy, or, if it should be a succession of periods of twenty-one days, a succession of acts of bankruptcy? I do not think that is consistent with the language. We know perfectly well that acts of bankruptcy have to be regarded critically and carefully. There is no such thing as an act of bankruptcy except that which the statute declares to be one, and when the statute says an act of bankruptcy is committed if an execution has been levied by seizure and the goods have been held by the sheriff for twenty-one days, that means that the seizure and holding for twenty-one days together are essential for the consideration of whether there is an act of bankruptcy or not. It seems to me it would be straining this section beyond all reason to say that there was a succession of acts of bankruptcy at the expiration of every period of twenty-one days, or that there has been one continued act of bankruptcy running over a year and a half. That appears to me to be the true construction of the section."

Rigby, L. J. and Vaughan Williams, L. J. concurred in this view of the law.

Having regard to the similarity between the Indian and English sections, in fact they are identically the same as pointed out above, I think that the view of the law taken in *In re Beeston*[1] is the correct view to take in construing

[1] [1899] 1 Q. B. 626.

section 9 (*e*) of the Indian Act, and that is clear if we look to the reason of the rule as regards the period of twenty-one days. The reason appears to be that, if a debtor is unable to satisfy a decree against him, and his property is attached in execution, it shows, *primâ facie*, that he is not in a position to pay his debts, and therefore, is liable to be adjudged an insolvent in order that his property may be distributed rateably amongst his creditors. But the Legislature provides that a certain period, after attachment, should be given to the debtor as an allowance made to him in order to enable him to pay off the debt and redeem both his property and his character, and that period is fixed both in India and England at twenty-one days. It is then provided that if the debtor fails to do so within that period, he will be held to have committed an act of insolvency. It is, therefore, clear that the act of insolvency is committed immediately on the expiry of the definitely fixed period of twenty-one days ; and just as the English section does not say that this becomes a recurring or a continuing act of insolvency if the attachment continues for more than twenty-one days. equally so there is nothing in the Indian section to that effect. It is, therefore, clear that the Legislature intended the act of insolvency to be one act committed on the expiry of twenty-one days after the attachment, and if this is not availed of by the creditor within the time fixed by section 12 (*1*) (*c*) of the Presidency-Towns Insolvency Act his right to proceed against the debtor in insolvency would arise only under a fresh attachment.

Adopting, therefore, the reasoning in the case of *In re Beeston*,[1] I hold that under section 9 (*e*) of the Presidency-Towns Insolvency Act the attachment for more than twenty-one days is not a continuing act of insolvency, nor is there a repetition of the act of insolvency at the expiration of every period of twenty-one days, and that the act of insolvency

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contemplated is committed on the completion of the first twenty-one days.

That being so, it only remains to be ascertained whether this act of insolvency on which the present petition is grounded, "has occurred within three months before the presentation of the petition," as required by section 12 of the Presidency-Towns Insolvency Act. In reckoning the twenty-one days, the day on which the attachment is levied is not to be computed: see *In re North. Ex parte Hasluck.*[1] The act of insolvency in the present case, therefore, was committed on April 13, 1926, but the petition was not presented till February 22, 1927, therefore the act of insolvency did not occur within three months before the date of the petition and, therefore, under section 12 (*c*) the petition cannot be entertained.

I, therefore, dismiss the petition with costs.

Attorneys for debtor: Messrs. *Mulla & Mulla.*

Attorneys for petitioning creditors: Mr. *N. C. Dalal.*

Petition dismissed.

J. S. K.

APPELLATE CIVIL

1927

September 26

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Crump.

HUCHANGOUDA ADOPTIVE FATHER RUDRAGOUDA PATIL AND OTHERS (ORIGINAL DEFENDANTS NOS. 2 TO 4), APPELLANTS *v.* KALLAWA KOM KALLAPPA KITTURAWAR AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Bombay Hereditary Offices Act (Bom. Act III of 1874) section 4—Bom. Act No. V of 1886, section 2—Watan families—Family, definition of—Female heirs—Sisters of propositus—Succession—Common Ancestor—To exclude female heirs common ancestor must be original watandar.

Under section 2 of Bombay Act V of 1886, in order that the female heirs of one branch should be excluded by the male heirs in the other, it is not sufficient to show that there was a common ancestor from whom the two families are descended, but it must be shown that that common ancestor was a holder of the watan, that is to say, that he was an original watandar from whom the two families were descended.

Bai Laxmi v. *Maganlal*[2] and *Balai* v. *Subba*,[3] referred to.

*First Appeal No. 282 of 1926.

[1] [1895] 2 Q. B. 264. [2] (1917) 41 Bom. 677. [3] (1926) 29 Bom. L. R. 246.