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since the amount or value of the subject-matter in dispute is Rs. 10,000 or upwards. I think probably the case also falls within the second paragraph of section 110 since the order involves directly a claim or question respecting property of the value of over Rs. 10,000.

The Advocate General has also contended that the order of this Court from which it is sought to appeal is not a final order within section 109. But, in my opinion, it is a final order within that section because it finally disposes of the applicant's right to occupy these premises.

That being so, I think, we have no option but to give leave to appeal to the Privy Council. Costs costs in the appeal.

BROOMFIELD J. I agree.

Attorneys for applicant: Messrs. *Khanderao, Laud & Co.*

Attorneys for executors: Messrs. *Payne & Co.*

Leave granted.

B. K. D.

ORIGINAL CIVIL.

INSOLVENCY JURISDICTION.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Mirza.

UDERAJ BODURAM (OPPOSING CREDITOR), APPELLANT v. CLEMENT
GRIFFITH HALL (INSOLVENT), RESPONDENT.*

1932
March 29.

Presidency-towns Insolvency Act (III of 1909), sections 11, 15—Insolvent—“Personally works for gain”—Engine-driver—Place of residence—Place of payment of salary.

A person who was working as an engine-driver on the G. I. P. Railway, and who was residing at Bhusawal, was adjudicated an insolvent on his own petition by the High Court. In the course of his duty as engine-driver he had occasionally to go to Bombay. The head office of the Railway in whose employment he was, was in Bombay and the pay-sheets in respect of his pay were prepared in Bombay, but he ordinarily received his pay at Bhusawal. A creditor of the insolvent applied to the Court for an annulment of the adjudication order on the ground that the insolvent

*O. C. J. Appeal No. 52 of 1931: Insolvency No. 603 of 1931.

was neither residing nor working for gain within the territorial limits of the Original Civil Jurisdiction of the Bombay High Court. He also urged that all the creditors of the insolvent except one were residing at Bhusawal, and that there was no creditor in Bombay. The Court (Wadia J.) dismissed the application. On appeal:

Held, that as the debtor could not be said to be working for gain within the meaning of section 11 (c) of the Presidency-towns Insolvency Act within the limits of its Original Civil Jurisdiction the Bombay High Court had no jurisdiction to entertain his petition and to adjudicate him an insolvent.

That for purposes of section 11 (c) of that Act a person may be said to be working at more places than one, but there must be some degree of permanency in the relation between the debtor and the places where he is alleged to work for gain. The place where payment is made to the debtor is not the test, but it is one of the ingredients which has to be considered in determining where a person works for gain, and in that connection the important point is the place where the money is actually paid, and not the place where the pay-sheets are made out, or where payment may be regarded as notionally made.

The words "ought to have been presented before some other Court" in section 15, clause (1) of the Presidency-towns Insolvency Act, mean "ought as a matter of convenience to have been presented before some other Court."

APPLICATION for annulment of an order of adjudication.

One Hall, who was an engine-driver in the employment of the Great Indian Peninsula Railway, presented a petition on August 28, 1931, to the Bombay High Court for being adjudicated an insolvent. He resided at Bhusawal and he ordinarily received his salary at Bhusawal. He said that the head office of the Railway in whose employment he was, was situated in Bombay and that the pay-sheets of all the employees of the Railway were prepared in Bombay. He further alleged that in the course of his duties he had also to come to Bombay and that on some occasions he received his salary in Bombay. The Court passed the order of adjudication.

One of his creditors, Uderaj Bodumal, took out a notice of motion on September 23, 1931, for an order that the said order of adjudication be annulled on the ground that the Bombay High Court had no jurisdiction to make that order.

Wadia J., before whom the notice of motion was heard, dismissed the notice.

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The opposing creditor appealed.

Sir Jamshed Kanga, Advocate General, for the appellant.

M. M. Thakor, for the respondent.

BEAUMONT C. J. This is an appeal from a decision of Mr. Justice Wadia in insolvency. The insolvent is a man named Hall, who is an engine-driver employed by the G. I. P. Railway. On August 20, 1931, he presented his petition in insolvency to this Court. There are twelve creditors all of whom reside outside the original jurisdiction of this Court. On September 23, 1931, the appellant, who is a creditor, applied for annulment of the adjudication, but that application was dismissed on October 6, 1931, by Mr. Justice Wadia. From that dismissal this appeal is brought with leave of the learned Judge.

The first question is whether this Court has jurisdiction to entertain the petition, and that depends upon whether the debtor personally works for gain within the limits of the original jurisdiction of this Court within the meaning of section 11, sub-section (c), of the Presidency-towns Insolvency Act. The facts as found by the learned Judge are that the insolvent resides in Bhusawal and starts his work from there, and in the course of his employment he sometimes comes to Bombay, and of course goes to other places. With regard to payment the learned Judge says that the head office of the G. I. P. Railway company is in Bombay, the pay-sheets of the employees are drawn up in Bombay, and payment must really be deemed to be made to the insolvent in Bombay, though for the sake of facility and the convenience of its servants payment is actually made by the railway company to its servants at the place where they are for the time being stationed. The insolvent actually receives his pay in Bhusawal, though he stated in his affidavit that he sometimes gets it in Bombay. He has not elaborated that statement, and I take it when he received his salary in Bombay he was probably working there because the

railway company presumably prepares its pay-sheets on certain principles, and would not be likely to pay a particular individual in different places.

The question whether the insolvent personally works for gain in Bombay is of course primarily a question of fact, but it involves the construction of section 11, sub-section (c), of the Presidency-towns Insolvency Act. The question has been considered by this Court before, and has been the subject of unreported decisions by Mr. Justice Marten (*In re Dobson and Gibbs*⁽¹⁾), as he then was, and by Mr. Justice Wadia (*In re S. DeSouza*⁽²⁾). It is not possible, I think, to lay down any principle which will govern all cases, the question, as I have said, being one of fact. It is, I think, clear that a person may be working for gain in more than one place. He may, for instance, be working in Bombay during the cold weather, and in Poona during the rains. Again, the place where payment is made to the insolvent is not the test, but it is, I think, one of the ingredients which has to be considered in determining where a person works for gain, and in that connection the important point seems to me to be the place where the money is actually paid, and not the place where the pay-sheets are made out, or where payment may be regarded as notionally made. The Insolvency Act is concerned with where the assets of the debtor are, and where his creditors are. The important thing in point of view of payment is where the money is actually received by the debtor, and therefore available for the creditors. In the case of a man like an engine-driver, who in the course of his employment necessarily travels about, it seems to me impossible to say that he is working for gain in every place which his engine may pass through. That would seem to be the logical result of the reasoning in the unreported cases which I have mentioned. A man driving an engine or a

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⁽¹⁾ (1922) Insolvency Nos. 676 and 691 of 1921, decided by Marten J., on July 31, 1922 (Unrep.).

⁽²⁾ (1931) Insolvency No. 235 of 1931, decided by Wadia J., on July 29, 1931 (Unrep.).

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motor-car is no doubt earning his salary during the whole course of his employment, but it seems to me impossible to say that for that reason he is personally working for gain within the meaning of the Presidency-towns Insolvency Act in every place where his engine or car may be. There must be some degree of permanency in the relation between the debtor and the places where he is alleged to work for gain. It may be that an engine-driver driving his engine between two places, say from Bhusawal to Bombay one day and from Bombay to Bhusawal the next, can be said to be working for gain in both places. In the present case there is no evidence that the debtor goes to Bombay except occasionally. It may be three or four times a month, but there is nothing to show that his connection with Bombay is in any way permanent. He resides in Bhusawal, actually receives his pay there, and takes his orders there. He may or may not be ordered to go to Bombay. In my opinion, on the facts of this case, the debtor cannot be said to be working for gain within the limits of the original jurisdiction of this Court, and I think on that ground the appeal must be allowed.

The learned Advocate General has argued a second point, that even if this Court has jurisdiction to make an order, it ought, in its discretion, to refuse to make it, and he relies on section 15 of the Act. That section provides that a debtor's petition shall make certain allegations and if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction. The words "ought to have been presented" seem to suggest an obligation, but they cannot, I think, mean "ought as a matter of law to have been presented", because if that be the meaning, the provision would have no operation. Obviously the Court cannot make an order if it has no

jurisdiction to do so since the application as a matter of law ought to have been made in another Court. I think the words "ought to have been presented before some other Court" must mean "ought as a matter of convenience to have been presented before some other Court." If this point had been taken before the learned Judge, he might well have come to the conclusion that having regard to the fact that all the creditors, except one, reside in Bhusawal and the debtor also resides there and there are no assets, the Court of Bhusawal would be a more convenient tribunal than the Bombay High Court. However, that point was not taken in the insolvency proceedings before the learned Judge and we do not know his view of the matter. In the view I take of section 11, it is not necessary to base our decision on section 15.

I think the appeal must be allowed with costs, the adjudication annulled, and the notice of motion made absolute with costs.

MIRZA J. The evidence put in on behalf of the insolvent before the learned Judge seems to me to be very unsatisfactory. The insolvent admitted that he was residing with his family at Bhusawal. The opposing creditor by paragraph 6 of his affidavit alleged that the insolvent was posted as an engine-driver at Bhusawal, was running between Igatpuri and Bhusawal and had no occasion to come to Bombay for the purpose of his duties. The insolvent replied to this allegation by paragraph 3 of his affidavit in reply. In that affidavit the insolvent states:—

"It is not correct that I have been an engine-driver between Igatpuri and Bhusawal. It is untrue that on no occasion I have come to Bombay for the purpose of my duty. I can produce the evidence from my office showing that I have come to Bombay very often in the course of my duties."

He has given no particulars as to when he was in Bombay and for what particular purpose. In the circumstances

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of this case it can only be inferred that the insolvent may have occasionally come to Bombay in the course of his duties. Such occasional visits, in my opinion, would not constitute what is required under section 11 (c) of the Presidency-towns Insolvency Act as personally working for gain. I agree that the appeal should be allowed.

Attorneys for appellant : Messrs. *Vaidya & Joglekar*.

Attorneys for respondent : Messrs. *Rele & Co.*

Appeal allowed.

B. K. D.

APPELLATE CRIMINAL.

Before Mr. Justice Baker and Mr. Justice Broomfield.

SORABJI M. SHROFF v. ERACHSHAW B. KATRAK.*

1932
 April 12.

Criminal Procedure Code (Act V of 1898), sections 344, 526—Adjournment of case—Absence of accused—Costs of adjournment to be borne by accused—Costs of previous adjournments cannot be awarded—Transfer of case—Application—Adjournment—No costs of such adjournment can be allowed.

During the progress of a trial the accused was absent and was granted adjournments on several occasions, on two occasions adjournment was granted without any conditions but on the third occasion when an adjournment was given, the accused was ordered to pay the costs not only of this adjournment but also of the two previous adjournments :

Held, that the Magistrate was not competent at a subsequent date to award the costs of the previous adjournments which had been granted without any conditions.

An order requiring the accused to pay the costs of an adjournment is one which a Magistrate in his discretion may make under section 344 of the Criminal Procedure Code and the High Court will not interfere with such an order if not found to be unreasonable under the circumstances of the case.

Sew Prasad Poddar v. The Corporation of Calcutta⁽¹⁾; *Matham Prasad v. Basant Lal*⁽²⁾ and *In re Abdul Rahiman*⁽³⁾ followed.

When the hearing of a case is adjourned owing to an application for transfer of the case, it is not open to the Magistrate to award costs of the adjournment.

*Criminal Applications for revision Nos. 9 and 10 of 1932.

⁽¹⁾ (1904) 9 Cal. W. N. 18.

⁽²⁾ (1917) 42 Bom. 254.

⁽³⁾ (1905) 28 All. 207.