

Before Mr. Justice Norman.

SMITH v. BOGGS.

1870
May 12.

Act VIII of 1859, s. 281—"Bad Faith."

Bad faith in section 281, Act VIII of 1859, means bad faith not only in respect of the application, but includes bad faith on previous occasions.

This was an application for discharge under section 280, Act VIII of 1859.

The defendant was up to 1868 a broker; but, failing in that trade, he had obtained a situation in Messrs Cohn, Feilmann's. It was stated by Mr. Hyde that he was in the habit of drawing his salary, which was rupees 400 a month, in advance, and particularly since the decree had been obtained against him. It was contended that he had done this in order to defeat the execution.

Mr. Ingram for the applicant contended that the bad faith mentioned in section 281 must be bad faith in respect of the application, and would not refer to bad faith in respect of any previous proceedings: *In re a prisoner* (1), *Oriental Bank v. Manimadhab Sen* (2). By section 282, the property of the defendant is still liable after his discharge.

Mr. Hyde, *contra*.—Bad faith means bad faith in respect of previous matters and not only with respect to the application: *In re Soorpersaud* (3), *In re Sibchunder Kurmohar* (4), and *Passmore v. The Calcutta Docking Company* (5).

NORMAN, J., said he was disposed to think that, by the words "bad faith," the Legislature intended something more than bad faith in respect of the particular application, and directed Mr. Hyde to proceed with his evidence.

The petitioner was then examined by Mr. Hyde, and proved that, though he had not paid anything to the plaintiff, he had paid many other creditors. For some time previous to his employment by Cohn, Feilmann, the petitioner had been earning very little.

Upon the facts, NORMAN, J., was of opinion that it was not proved that the petitioner in drawing his salary in advance did so from fraudulent purpose or that he had been guilty of any act of bad faith.

Attorney for the plaintiff: Mr. Dover.

Attorneys for the defendant: Messrs. Carruthers & Co.

(1) 1 I. J., N. S., 8

(4) 2 I. J., NS., 93 note.

(2) 3 B. L. R., App., 14. . . .

(5) Bourke, 75.

(3) 2 I. J., N. S., 91.