

1894
 IMAMBANDI
 BEGUM
 v.
 KAMLESWARI
 PERSHAD.

leases were speculative. Their Lordships are of opinion that the rent was rightly apportioned by his decree, and that the appeals to the High Court ought to have been dismissed. They will humbly advise Her Majesty to reverse the decrees of the High Court and to order the appeals to it to be dismissed with costs, the decrees of the Subordinate Court being thus affirmed. The respondent will pay the costs of these appeals.

Appeal allowed.

Solicitors for the appellant: Messrs. *Broughton, Norton & Broughton.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*
 C. B.

INSOLVENCY.

Before Mr. Justice Sale.

IN THE MATTER OF DE MOMET.

1894
 June 25.

Insolvent Act (11 and 12 Vict., c. 21) s. 60—Trader—Indigo Planter—Statute. 12 and 13 Vict., c. 106, s. 65—Workmanship of goods or commodities.

An indigo planter is a "trader" within the meaning of section 60 of the Insolvent Act.

THIS was an application by the insolvent for his final discharge under section 60 of the Insolvent Act.

The insolvent had for some years prior and down to the commencement of 1893 carried on the business of an indigo planter at the Busharutpore Indigo Concern in the North-West Provinces. His schedule showed the name of only one creditor, a Mr. Legge, who was his partner in the indigo planting business, the partner in fact whose name appeared in the business, and to whom he was indebted to the amount of about Rs. 75,000, a debt incurred in 1870, whilst he was an indigo planter in partnership with Mr. Legge. The original debt was Rs. 60,000, but it had increased by the accumulation of interest. The insolvent had already obtained his personal discharge. The case, so far as it dealt with the jurisdiction of the Court to entertain his petition, as he had only a temporary residence in Calcutta, is reported in I. L. R., 21 Calc., 634. The only point now material was whether the insol-

vent was, or was not, at the time he incurred the debt, a trader under section 60 of the Insolvent Act. 1894

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Mr. *Dunne* in support of the application referred to the case of *In re King* decided by Trevelyan, J. In that case the insolvent was an indigo planter, and he had obtained his final discharge under section 60. He submitted that an indigo planter was a trader within the meaning of that section, and that this case was similar to the case cited, which should be followed. Reference was made to 12 and 13 Vict., c. 106, section 65, and the definition of "trader" there given.

Mr. *T. A. Apcar, contra.*—The question was not actually raised and decided in the case of *In re King*. That case was distinguishable, for there the insolvent was described as an indigo planter and "dealer in indigo." This was not a trading debt, but a debt merely owing to his partner in the indigo factory, in respect of the insolvent's share in the partnership. He submitted that an indigo planter did not come within the definition of "trader" in the Act.

The cases under the English Bankruptcy Acts, as to who were considered or not considered traders, were referred to as being in point. A farmer is not a trader under those Acts. To carry on the "trade of merchandize" there must be buying and selling: *Sutton v. Weeley* (1). The lessee of a coal mine who prepared the produce of the mine for market was held not to be a trader: *Port v. Turton* (2); nor the owner of a stone quarry, *Ex parte Gardner* (3); nor the lessee of an iron mine, *Ex parte Salkeld* (4), *Crawshaw v. Collins* (5); nor a brickmaker, *Ex parte Burgess* (6), *Heane v. Rogers* (7). Reference was made to Shelford on Bankruptcy, 3rd Ed., pp. 123, 124.

Mr. *Dunne* in reply.—An indigo planter is not a farmer or an agriculturist, but he deals in indigo, and is a trader within the meaning of section 60. This was the basis of the decision in *In re King*.

(1) 7 East., 442.

(2) 2 Wils., 169.

(3) 1 Rose., 377.

(4) 3 Mont., D. and D., 125.

(5) 1 Swanst., 495.

(6) 2 Gl. and J., 183.

(7) 9 B. and C., 577.

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IN THE
MATTER OF
DR. MOMENT.

SALE, J.—In this case I think I ought to follow the course adopted in the case of *In re King*, who was described as “ carrying on the trade and business of an indigo factory proprietor and dealer in indigo, lately residing at No. 3, Chowringhee Lane, in the town of Calcutta, but now residing at No. 21, Lindsay Street, in Calcutta, a European British subject.” In that matter the insolvent obtained his personal discharge, and in due course applied under section 60 of the Indian Insolvent Act, first, for an order *nisi*, and, then, for an order absolute, for his final discharge. There being no opposition, the discharge was granted. The question whether he had properly described himself as a trader was not raised nor considered in that case. What constitutes a trader depends upon the definition given to that term in section 65, of the Statute 12 and 13 Victoria, cap. 106, which is rendered applicable to this country by section 9 of the Indian Insolvent Act. In the enumeration of traders given in section 65 of that Act are “ persons using the trade of merchandize * * * * or who seek their living by buying and selling, * * * * or by the workmanship of goods or commodities.” Now it was contended that following the profession of the proprietor of an indigo factory constitutes a person a trader within the words “ persons using the trade of merchandise, or who seek their living by the workmanship of goods or commodities.” It is said that the proprietor of an indigo factory in the ordinary course of his business produces a commodity—namely, indigo—for the purpose of selling it as such, and that he uses the trade of merchandise inasmuch as in the ordinary course of his trade or business he purchases the indigo plant, and then by the ordinary process well known in the indigo industry produces the commodity, indigo, by the sale of which he obtains a profit in his business. It is clear from some of the authorities which have been cited that a manufacturer who purchases the raw material, and then, by a process applied to such raw material, produces a finished article, is a trader ; and I think that the cases cited show clearly that a person who merely produces an article from the soil, as for instance the owner of a stone quarry, is not a trader within the words of the section, because there is not that buying and selling necessary to constitute him a trader ; and also because the

article which he produces and sells is not produced by "the workmanship of goods or commodities" as contemplated by the Act. I think therefore that the case of persons who deal in the natural products of the soil is distinguishable from the present case. It was also said that if the proprietor of an indigo factory be deemed to be a trader within the meaning of the section, so also must the proprietor of a tea garden, whose business it is to manufacture and sell tea. I am not required to decide whether the proprietors of tea estates do or do not come within the class of traders. When the case arises it is quite possible that it may be held that the produce of a tea garden—dried tea leaves—fulfil the description of articles produced "by the workmanship of goods or commodities" within the meaning of 12 and 13 Victoria, cap. 106, section 65, and that therefore such persons would be traders within the meaning of that Act. But whether or not dried tea leaves may or may not be deemed to be the production of "the workmanship of goods or commodities," the article indigo certainly is.

I think, therefore, I ought to hold that the insolvent, at the time he incurred the debt, the subject matter of this insolvency, was a trader within the meaning of section 60 of the Indian Insolvent Act. And I think also that it makes no difference that the business was conducted in the name not of the insolvent but of his partner Mr. Legge. The debt was a trade debt, and the mere fact that it was due to the partner makes no difference. The insolvent will therefore obtain a certificate in the usual form. The costs of the insolvent and of the opposing creditor will be paid out of the estate.

Attorneys for the insolvent : Messrs. *Orr, Robertson & Burton.*

Attorneys for the opposing creditor : Messrs. *Leslie Bros.*

J. V. W.

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