

1894

BEJOY
CHAND
MAHATAB
BAHADUR
v.
KRISTO
MOHINI
DASE.

adoptive mother having been a minor, and the plaintiff being himself still a minor, the suit is in time. If, on the other hand, it be held that the Commissioner's order is void for want of jurisdiction, then the Collector's order of 1882 must be regarded as inoperative for the same reason. I can make no distinction between the two orders as regards validity,

I therefore concur in allowing this appeal with costs.

Appeal allowed.

H. T. H.

INSOLVENCY.

Before Mr. Justice Sale.

1894
April 11.

IN THE MATTER OF F. DE MOMET, AN INSOLVENT.

Insolvent Act (11 & 12 Vic., c.21), s. 5—Jurisdiction—Residence—Insolvency.

There is nothing to show that the residence contemplated by section 5 of the Insolvent Act must necessarily be a permanent residence; the object of that section being to extend the benefit of the Act to those who could be said to be *bond fide* residents, for the time being, within the jurisdiction of the Court at the time they filed their petitions.

APPLICATION for personal discharge.

It appeared that the insolvent, who described himself as "at present residing at the Great Eastern Hotel in Old Court House Street in the town of Calcutta, who for some years prior and down to the commencement of the year 1893 resided and carried on the business of an indigo planter at the Busharutpore Indigo Concern in the District of Jaunpore in the Benares Division of the North-Western Provinces, and from that time down to 1893 resided at and worked as Superintendent of the Dooteriah Tea Gardens in the District of Darjeeling, at present out of employ," filed his petition in insolvency on the 8th January 1894. His schedule showed the name of one creditor only, such creditor having obtained a decree against the insolvent on the 1st June 1888 for Rs. 75,000. The hearing of the insolvent's petition came on before Mr. Justice Sale.

Opposition to the discharge of the insolvent was entered

by the sole creditor on, amongst other grounds, the ground that the Court had no jurisdiction, inasmuch as the insolvent was not a British subject, and was not resident in the town of Calcutta, but had merely come there for the purpose of filing his schedule. On this point the insolvent being examined by Mr. *Dunne* gave the following evidence: "I went to England last year. I was Manager of a tea garden in the Doocars belonging to the estate of the late Mr. Brougham. In November last I received notice of dismissal, and left England to return to India, where I arrived on the 28th December 1893. On arrival I put up at the Great Eastern Hotel, having no other residence, and having no work, nor any promise of employment on arrival. I filed my schedule on the 8th January 1894 after consulting my attorney. I remained at the Great Eastern Hotel till the 16th January, and then went up to the Doocars, returning to Calcutta again on the 6th of February, and remaining there till the 14th March. I then went back to a friend who offered me board and lodging in return for my looking after a portion of his work, and I have been working in that way ever since. Beyond this I have received no promise of any work from any body. My object in returning to Calcutta was to look out for work in tea. I did not come to Calcutta merely for the purpose of filing my schedule. I was born in India, my father having been in India for many years in the indigo line. I was married here and my daughter was born here; she is now in England."

To Mr. *T. A. Apcar* the insolvent said: "I put up at the Great Eastern Hotel, knowing that it was the most likely place to meet planters, and that I should have thus a chance of obtaining employment."

Mr. *T. A. Apcar* for the opposing creditor.—On this evidence it is clear that the Court has no jurisdiction. The reported cases have never gone the length of laying down that a stay in Calcutta for ten days to look out for employment amongst tea planters constituted "residence" within the meaning of the Insolvent Act so as to give the Court jurisdiction. There must be shown an intention to remain in the place for a time; in this case the insolvent had never intended to remain in Calcutta, but had merely come to obtain employment. I refer

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Mr. Dunne for the insolvent.—Section 5 of the Act uses the word “reside.” The insolvent was residing in Calcutta when he filed his petition, therefore *primâ facie* the Court has jurisdiction. It is for the other side to show that what was residence *primâ facie* was not really residence at all within the meaning of the Act. The ground on which the cases have gone is that owing to want of *bona fides* or on some such cause, that which was *primâ facie* residence was not residence at all within the meaning of the Act. The decision of Broughton, J., in *Ram Paul Singh’s case* proceeds on the ground that there was some other Court which had jurisdiction in insolvency to which the petitioner could have and ought to have applied. If the decision is not put on that ground, the decision is clearly wrong. In this case this Court is the sole Court to which the application could be made. It is clear that the petitioner has no other residence in India. Section 5 does not mean that the residence must be of a permanent nature; and the intention of the insolvent as to residence cannot affect the matter: see *In re Tietkins* (2). It is clear that the insolvent was acting entirely *bonâ fide*, and though the actual time of his residence in Calcutta before filing his petition was only eleven days, still such a residence is quite sufficient under the circumstances of the case.

SALE, J.—I think I must hold that this Court has jurisdiction to entertain this petition. The insolvent was an indigo planter for many years and subsequently a tea planter. Some time in 1879 a decree was obtained against him for a large sum of money. It was provided in that decree that a certain sum should be paid by him towards satisfaction of the decree. Every month the amount payable under that decree has been paid in, and payments were continued till the end of December 1893. Early in 1893 the insolvent, then Superintendent of a garden in Darjeeling District, went to England on leave accompanied by his daughter. The family of the insolvent consists of himself, daughter and wife. The wife appears to be mentally affected and has been for some time past

(1) 9 Bom. H. C., 461.

(2) 1 B. L. R. O. C., 84.

(3) 8 C. L. R., 14.

in St. Vincent's Home. While in England the insolvent obtained the information that the garden which formed part of the estate of Doctor Brougham was to be sold in course of administration, and accordingly on 1st November 1893 he communicated with the Bank in this country to transfer a sum of Rs. 5,000 odd, which stood to credit of his account with the Bank, to the name of his daughter. He was then purposing to return to this country and leave his daughter behind in England, and his object in making the transfer was to provide for his daughter who was left in England, and also to enable her to support the mother in this country. Very shortly afterwards he was dismissed by the proprietors of the garden, inasmuch as it appeared there was some question as to how long the garden was to be carried on, and he was offered either payment of three months' salary in lieu of notice, or the option of returning to this country and rejoining his appointment for that period. He accepted the former and accordingly his connection with this country entirely ceased on the 11th November 1893. He then determined to come out to this country to seek for employment in tea in which his experience had been gained. He came out, and on arrival at Calcutta he took up his abode at the Great Eastern Hotel, intending to stay there till he obtained employment. His object, he says, in going to the Great Eastern Hotel was that it was a place much frequented by persons interested in tea, and he would be more likely to hear of employment likely to suit him at that place. He made enquiries of various persons of whom he had knowledge, but was unable to obtain any offer or promise of work. Then, he says, finding there was no prospect, the season being advanced, of obtaining any work, and seeing no possibility of paying the moneys due under the decree, he was compelled to seek the assistance of the Insolvent Court. He went to his attorneys, and on the 8th January his petition was filed. On the 16th January he left Calcutta on a visit to the Dooars, returning again to Calcutta in February, and after a short stay in Calcutta obtained the offer of work on a tea estate in the Dooars on the terms of obtaining his board and lodging. That offer he accepted, and that post he still holds. The question is whether at the time of his filing his petition here on the 8th January he was residing within the jurisdiction of this Court within the meaning of section 5

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of the Insolvent Act. I am quite satisfied on the evidence of Mr. De Momet that his conduct has been *bonâ fide* throughout. The sum transferred was the savings between the amount he was by the decree ordered to pay to his creditor, Rs. 300 a month, and the full amount of his salary, and he considered he was entitled to deal with this amount in the way he did. The question as to what is a sufficient residence to give jurisdiction to this Court has been the subject of judicial determination more than once. As far as I understand no case goes to the length of holding that residence under section 5 must be a permanent residence. It seems to me the object of the section is to extend the benefits of the Insolvency Act to those who are *bonâ fide* residents within the jurisdiction at the time of the filing of the petition. The term is used to distinguish the position of such persons from that of a person who merely comes in and uses his presence within the jurisdiction as the means of obtaining the benefit of the Act, and it also has the effect of excluding persons merely in the position of visitors. The cases show moreover that great stress is laid upon the fact as to whether or not the person said to reside within the jurisdiction had at the time any other residence elsewhere. It is quite clear from the facts of this case that the insolvent had no place of residence outside the jurisdiction of this Court, and if the insolvent was not residing within the jurisdiction at the time he filed his petition it is difficult to say he was ~~residing~~ outside the jurisdiction.

Moreover, under sections 16 and 17 of the Code of Civil Procedure a very short period of actual living or dwelling within the jurisdiction of a Civil Court has been held sufficient to constitute residence so as to give such Court jurisdiction in suits by or against persons said to be residing within its jurisdiction. Under all these circumstances I think the facts here show that the insolvent was residing within the jurisdiction of this Court at the time when his petition of insolvency was filed. The cases which have been cited, *viz.*, *In re Tietkins* (1) and *In the matter of Ram Paul Singh* (2) are I think distinguishable. In the first case the insolvent had a permanent residence outside the

(1) 1 B. L. R., O. C., 84.

(2) 8 Cal. L. R., 14.

jurisdiction, and in the second case the insolvent was a native of this country who had his family residence at Bhaugulpore. His dwelling house had been sold no doubt, but still his wife and family were residents of that place. It would seem in that case the insolvent's coming down to Calcutta was only for the purpose of filing his petition in this Court, and the fact of residence in Calcutta was not made out.

I do not think either of these cases affects the conclusion I come to on the present facts.

Personal discharge granted.

Attorneys for the Insolvent : Messrs. Orr, Robertson & Burton.
Attorneys for the opposing creditor : Messrs. Leslie Bros.

F. A. P.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

TINCOURI DEBYA (JUDGMENT-DEBTOR) v. SHIB CHANDRA PAL
CHOWDHURY AND OTHERS (DECREE-HOLDERS).^c

1894
Feb. 20.

Execution of decree—Property outside jurisdiction of Court—Jurisdiction—Mortgage decree—Attachment, Absence of, on sale of mortgaged property—Civil Procedure Code, 1852, ss. 19, 22.

A Court that has jurisdiction to pass a decree for the sale of property comprised in a mortgage has also power to carry out its decree by selling the property, even though a portion of the property be situate outside the local limits of its jurisdiction.

Gopi Mohan Roy v. Dojbaki Nundun Sen (1) followed ; *Prem Chand Dey v. Mohkodu Debi* (2) distinguished.

The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage debt does not affect the validity of a sale of the mortgaged property in execution of such decree.

THIS was an appeal from an order passed by the Subordinate Judge of Nuddea on the 14th January 1893, refusing to set aside the sale of certain mortgaged properties held in execution of a decree, dated the 9th February 1880. Some of the properties

* Appeal from Original Order No. 98 of 1893, against the order of Babu Gopaul Chunder Banerjee, Subordinate Judge of Nuddea, dated the 14th of January 1893.

(1) I. L. R., 19 Calc., 13.

(2) I. L. R., 17 Calc., 699.