

Before Mr. Justice Stephen.

IN THE MATTER OF CHUNI LAL OSWAL.

1902

May 7.

Practice—The Insolvent Debtors Act (11 & 12 Vic. ch. xxi) s. 36—Right of witness to be represented by Counsel.

Where witnesses have been ordered to attend Court for purpose of examination under s. 36 of the Insolvency Act:

Held, that on special circumstances being shown, Counsel may properly be allowed to attend on behalf of such witnesses. *In re Nursey Kessonji* (1) followed.

Held, further, that the attending of Counsel includes acting as Counsel in the ordinary way.

DURING the examination of certain witnesses summoned under s. 36 of the Insolvency Act, the question arose as to whether they were entitled to be represented by Counsel.

Mr. Garth (with him *Mr. Knight*) for Amluk Chand Parruck and Guloke Chand.

I submit a witness is entitled to be protected by Counsel. If a witness is cross-examined, it is only fair that he should be entitled to be represented.

A rule was issued against me to show cause, why I should not bring my books of account before the Court, and why I should not attend Court for the purpose of being examined. It was admitted on that occasion that I should be entitled to appear. See *In re Nursey Kessonji* (1). I appear here because the question of costs with regard to the rule was to stand over.

Mr. Jackson (with him *Mr. A. Chowdhuri*) for the opposing creditor.

Counsel comes here and claims a right to protect a witness. He has no better right than an ordinary individual.

In the matter of the petition of Nolitmohan Doss, an insolvent (2), PONTIFEX J. decided that a person from whom property is sought to be taken under s. 36 of the Insolvency Act is entitled to be represented by Counsel. That is not the case here. The opposing party is the insolvent.

As to the question of costs, the Court can determine that at the end of the examination.

(1) (1879) L. J. R. 3 Bom. 270.

(2) (1878) 11 B. L. R. App. 38.

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I have never seen Counsel watching a case take any proceedings in it. Before Mr. Justice Harington last year, in the suit of *Ghosal v. Ghosal* (1), we wanted to appear, but the Court held that, though we could do so, we could not take part in any proceedings.

STEPHEN J. The question now raised is whether witnesses appearing in accordance with an order made under s. 36 of the Insolvent Debtors Act, 1848, are entitled to be represented by Counsel. In an ordinary case a witness has, of course, no right to be represented. The differences, however, between the position of witnesses appearing in an ordinary cause, and the position of those appearing in the present proceedings, seem to me too weak for any sound argument to be based on the analogy between them. Here witnesses have, with perfect propriety, been cross-examined by Counsel to show that they have been guilty of serious fraud and conspiracy. I cannot think that the law intends that they should not have any chance of professional assistance to make an answer to such charges: the more so as it is much harder for the Court to protect their interests than it would be in an ordinary case. I am therefore glad to find that the matter has been already dealt with in the case of *In re Nursey Kessowji* (2), where it is laid down that in proceedings such as these under special circumstances Counsel may properly be allowed to attend on behalf of witnesses.

The charges mentioned above, to my mind, constitute special circumstances within the meaning of this rule, and I take the attending of Counsel to include acting as Counsel in the ordinary way. I therefore hold that the witnesses in the present case may be represented by Counsel with all the powers of Counsel ordinarily appearing in an ordinary case.

Attorneys for opposing creditor: *A. N. Ghose.*

Attorneys for insolvents: *Rutter & Co.*

Attorneys for Amluk Chand Parruck and Guloke Chand: *Orr Robertson and Burton.*

R. G. M.

(1) (1901) Unreported case dated 21 May 1901.

(2) (1879) I. L. R. 3 Bom. 270.