

INSOLVENCY JURISDICTION.

Before Mr. Justice Harington.

1911

In re L. KING & CO., BANKRUPTS.*

March 7.

Insolvency—Adjudication in England Trustee in Bankruptcy—Petition to the Indian Court to act in aid of, and to be auxiliary to, the English Court—Examination of Witness—Jurisdiction—Bankruptcy Act, 1883 (46 and 47 Vict. C. 52) ss. 27, 113—Presidency-Towns Insolvency Act (III of 1909) s. 126.

The firm of L. King & Co. carrying on business in London as well as in Calcutta was adjudicated bankrupt in England, and a Trustee in Bankruptcy of the property of the firm was appointed by the English Court. On an application of the Trustee in Bankruptcy to that Court, it was ordered that the High Court of Judicature in Bengal be requested to act in aid of and be auxiliary to it. The Trustee in Bankruptcy, thereupon, petitioned the High Court in Bengal presenting the order of the English Court and seeking the assistance of the High Court in and about the said insolvency. He obtained an order that the High Court of Judicature in Bengal and its officers do act in aid and be auxiliary to the High Court of Justice in England and, further, that James, the manager in Calcutta of the firm of L. King & Co., do personally attend before this Court to be examined before it. Upon James appearing on the date fixed for his examination and objecting that he ought not to be examined, because the order ought not to have been made:—

Held, that to get the jurisdiction to examine James as a witness, there must be a request from the English Court asking this Court to act in aid, and a letter of request from the one Court to the other ought to have been sent, and that the order of the English Court presented by the Trustee in Bankruptcy was not sufficient to give this Court jurisdiction.

A MATTER in insolvency for the examination of one F. S. C. James, the manager in Calcutta of the firm of L. King & Co., adjudicated bankrupts, and carrying on business in London as well as in Calcutta as jute merchants.

The facts were as follows:—By an order made by the High Court of Justice in Bankruptcy in England, on the 19th December, 1910, L. King & Co. were adjudicated bankrupts and

* Insolvency case No. 1 of 1911.

one Charles James Marsh of London, Chartered Accountant, was appointed, on the 20th December, 1910, Trustee in Bankruptcy in the High Court of Justice in England of the property of the bankrupts. On the 22nd December, 1910, Charles James Marsh, as such trustee, applied to the High Court of Justice in England acting in Bankruptcy and obtained an order pursuant to section 118 of the Bankruptcy Act, 1883, that the High Court of Judicature in Bengal having jurisdiction in insolvency and its officers be requested to act in aid, and be auxiliary to, the High Court of Justice in England in the matter of this bankruptcy in regard to, *inter alia*, the taking of examinations under section 27 of the Bankruptcy Act, 1883, of any witness residing or temporarily within the jurisdiction of such Court. Charles James Marsh, thereupon, petitioned the High Court of Judicature in Bengal presenting the order of the English Court, and, on the 9th February, 1911, it was ordered that the High Court of Judicature in Bengal and its officers do act in aid, and be auxiliary to, the High Court of Justice in Bankruptcy in England pursuant to section 118 of the Bankruptcy Act, 1883, in the matters referred to in the order made by the said High Court of Justice on the 22nd December, 1910, with regard to the bankruptcy of the said L. King & Co., and further that F. S. C. James, the manager in Calcutta of L. King & Co., being served with this order do personally attend before this Court to be examined before it.

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On the date fixed for his examination, James appeared and objected to his being examined as a witness, because the order ought not to have been made.

Mr. Avetoom, for F. S. C. James. I appear under protest and submit that as there has been no request made by the Court of Bankruptcy in England to this Court, as provided for under section 118 of the Bankruptcy Act of 1883, this Court should not proceed any further. I rely on section 118 of that Act. In this case the Trustee in Bankruptcy has applied and obtained an order on the 9th February, 1911, that this Court should act in aid, and be auxiliary to, the Court in

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England; but I submit that this Court ought not to have made such an order, having regard to the fact that no request was made to it by the English Court. Unless that order is brought to the notice of this Court by the Bankruptcy Court of England, the Trustee in Bankruptcy has no jurisdiction: see *In the matter of Shrager Bros.* (1), decided by Fletcher J. in 1910.

In the matter of William Watson (2), Henderson J. refused to make an order under similar circumstances in terms of the order made on the 9th February, 1911. The Trustee in Bankruptcy is nobody here. Not being an officer of the Court, but merely a person appointed by the creditors, he has no *locus standi* in this Court. The Court in England must ask the Court here specially to act in aid and be auxiliary to it.

Mr. Buckland, for the Trustee in Bankruptcy (*contra*). The case of *William Watson* (2) differs from the present case. In that case the Trustee in Bankruptcy before moving this Court, had not taken the necessary steps to do so. While in the present case the order was made, signed, sealed and filed in this Court. Therefore, I submit that unless this order is set aside—and there is no application as yet to that effect—this Court will act upon it. All that is necessary is, that there be a request in substance from the English Court to this Court and then this Court will make the order practically of its own motion. It is perfectly immaterial if the request is moved from outside as, for example, by the Trustee in Bankruptcy who has power to move this Court. This Court cannot become seised in this matter until it has first acted under section 126 of the Indian Act, and it is only when it is so seised that section 118 of the English Act will be brought into operation, and the Court will deal with the matter before it. Until then it will not look at anything done by the English Court. The existing order under section 118 of the Bankruptcy Act once brought to the notice of this Court is sufficient to supply the necessary request and this Court will give effect to it under section 126 of the Indian Act. The mode in which the notice has to be brought is not laid down in

(1) (1910) Unreported.

(2) (1904) I. L. R. 31 Calc. 761.

either of the Acts. I submit, therefore, the proceedings are all in order and this Court is bound to Act in aid of, and to be auxiliary to, the Court in England. Furthermore, I submit, that James is a witness and not a party to aid discovery sought by the Trustee in Bankruptcy, and a witness has no *locus standi* to object to this Court acting in aid of, and being auxiliary to, the Bankruptcy Court in England. If there is any substance in the objection it should be made in England by the insolvent himself. James may possibly object to stand for his examination, but he does not say so. I, therefore, submit that the objection to the jurisdiction of this Court cannot be seriously contended.

Mr. Avetoom, in reply. There has been no case in this Court where the Court has acted without a request from the Bankruptcy Court in England. *In the matter of Shrager Bros.* (1), this Court refused to act in conjunction with the Trustee in Bankruptcy until it was requested by the Bankruptcy Court in England.

HARINGTON J. This is a matter in which an order has been made directing a Mr. James to attend here to be examined. The order was made in pursuance of the statute which directs this Court to act in aid of the Bankruptcy Court at home. Mr. James objects that he ought not to be examined because the order ought not to have been made. Inasmuch as the order was made *ex parte*, it is open to him to take the objection that the order ought not to be made, and that this Court had no jurisdiction in the matter before it to direct him to be examined against his will. The question to be considered and which has been argued at some length is whether on the materials before me this Court has jurisdiction to examine Mr. James under the provision of the law directing the English Court to authorise another Court to act in aid. Now the section dealing with this matter is section 126 of the Indian Insolvency Act, which provides that all Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give

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effect to section 118 of the Bankruptcy Act, 1883. It is necessary to refer to the Bankruptcy Act, section 118, to see what it is this Court has to give effect to. Now that section provides "that every British Court elsewhere"—that is, outside the United Kingdom—"having jurisdiction in bankruptcy or insolvency, and the officers of those Courts respectively, shall severally act in aid of, and be auxiliary to, each other in all matters of bankruptcy, and an order of the Court seeking aid, with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either the Court which made the request, or the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdiction." The provision under which Mr. James could have been examined under the English Bankruptcy Act is contained in section 27 of that Act, and it is that jurisdiction that this Court is asked to exercise. The objection taken by the learned counsel for Mr. James is this: to get this jurisdiction there must be a request from the English Court asking this Court to act in aid and a letter of request from the one Court to the other ought to have been sent and that the order of the English Court presented by the Trustee in Bankruptcy is not sufficient to give this Court jurisdiction. On the best consideration I can give to the matter, I think that contention is right. It appears to me that under section 118 the jurisdiction, in respect of which this Court is asked to exercise its powers as a Court in aid, is given on the request of the English Court, and in the absence of a request by the English Court to this Court the jurisdiction cannot properly be exercised. To my mind the presentation, therefore, of a copy of the order of the Court by some other person is not sufficient. The order, therefore, I make is that this matter stand over for two months in order that if the English Bankruptcy Court thinks fit to give a letter of request to act in aid, the application may be renewed.

O. M.

Attorneys for the Trustee in Bankruptcy: *Leslie & Hinds*.
 Attorneys for the witness: *Orr, Dignam & Co.*