

**(1868) 07 CAL CK 0015**

**Calcutta High Court**

**Case No:** None

In Re: Tietkins, an Insolvent

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** July 1, 1868

**Final Decision:** Dismissed

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### **Judgement**

Markby, J.

I am satisfied that I have no jurisdiction in this case. By 11 and 12 Vic, c. 21, section 5, jurisdiction in insolvency is conferred in two cases: First, in the case of any person who shall be in prison, &c. Secondly, in the case of a person "who shall reside within the jurisdiction of any of the Supreme Courts at Calcutta, Madras, and Bombay, respectively."

2. If, on the 12th May 1868, when his petition was filed, the petitioner was resident in Calcutta, that of course would be quite sufficient to give jurisdiction. I am, however, satisfied on his own evidence that he was not.

3. It is said that in the case of In re Wharton (6th May 1867), unreported, Mr. Justice Phear expressed an opinion that there could be no residence in the case of a person who came within the jurisdiction merely to take the benefit of the Act. What that learned Judge probably did hold was, that when the petitioner comes within the jurisdiction simply for the purpose of filing his petition, his so being within the jurisdiction for such purpose, did not constitute residence. But I do not understand him to have held, nor do I hold, that coming within the jurisdiction for the purpose of taking up his residence and filing his petition, would not constitute residence.

4. The petitioner, in this case, came to Calcutta on purpose to file his petition, but did he also come to reside here? In my opinion, he did not. He had a residence in Cawnpore where he had been living for the last four years. He came down to Calcutta to file his petition, and stayed eight days at a Hotel. But he left his wife at Cawnpore, and does not appear to have, in any way, abandoned his residence at

that place. It is true, he says, that he intended to reside and carry on business in Calcutta, if he got through the Court, and that he never contemplated the possibility of his failing to get through. But intention as to the future will not constitute residence, and he has failed, to my mind, to show that he had taken up his residence here. On the contrary, we find him, a few days after the filing of his petition, leaving Calcutta and taking up a temporary residence elsewhere. This case much resembles that of *In re Dillon* (Unreported), lately decided by me in this Court, where the petitioner intended to reside here in a certain event, but had not yet taken up his residence.

5. But it is contended by the counsel for the petitioner, that according to the true construction of the Act, whether his residence be here or elsewhere, the petitioner does reside within the jurisdiction; that "jurisdiction" must not be taken to mean "original jurisdiction;" that the petitioner is a European British Subject; and that the power of the Court over European British Subjects extends over the whole Presidency of Bengal.

6. I am aware that this view is said to have been held by a late Chief Justice of this Court;<sup>1</sup> but the construction has always appeared to me to be unnatural, and to be one that does violence to the words of the section.

7. If this were the meaning of the section, it would be necessary to add words "who being a European British subject;" otherwise any native resident in the Presidency of Bengal might apply for his discharge. Nor would this be sufficient. Other words would have to be added to include the case of a person not a European British Subject, residing within the original jurisdiction. But even supposing this wide construction could be put upon Section 5, and that at the time the section was passed the Court had this wider jurisdiction, still that jurisdiction would no longer exist under the present Charter.

8. By the Charter of 1862, Section 17, "the High Court and any such Judge" (i. e. sitting in insolvency) "shall have and exercise, whether within or without the Bengal Division of the Presidency of Fort William, such power and authorities with respect to Original and Appellate Jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India." But in Section 18 of the Charter of 1865, the words are different: "the said High Court, and any such Judge thereof, shall have and exercise within the Bengal Division of the Presidency of Fort William," &c. By this section, the jurisdiction is narrowed to the Bengal Division of the Presidency, by which I understand that portion over which the authority of the Lieutenant-Governor of Bengal extends. It should be borne in mind that this alteration was probably made in contemplation of the institution of a High Court of the North-West Provinces, and with a view to giving that Court an insolvency jurisdiction. If, then, the wider jurisdiction (extending over the whole of the Northwestern Provinces) contended for by the counsel for the petitioner, ever existed, it has clearly ceased to exist since the Charter of 1865. It is clear, that the

present jurisdiction does not extend beyond the limits of the Bengal Division of the Presidency, and it is equally clear that Cawnpore (the residence of the petitioner) is out of those limits. I have, therefore, no alternative, but must dismiss the petition for want of jurisdiction.

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<sup>1</sup>The case referred to by the learned Judge is an unreported case which came before fair L. Peel, sitting as Commissioner in insolvency in 1851, in which he admitted the petition of a European British, Subject residing at Intally, beyond the local limits of this Court.