

Ganeshnarayan Onkarmal Vs Raja Pratapgirji Narsingirji

Court: Bombay High Court

Date of Decision: Oct. 5, 1937

Acts Referred: Bankruptcy Act, 1883 " Section 4
Presidency Towns Insolvency Act, 1909 " Section 9(a), 9(b), 9(c)

Citation: AIR 1938 Bom 161 : 174 Ind. Cas. 361

Hon'ble Judges: Beaumont, C.J; Rangnekar, J

Bench: Division Bench

Judgement

Beaumont, C.J.

This is an appeal from a decision of Blackwell, J. sitting in bankruptcy. The facts as found by the learned Judge, which are

not in dispute, are these. The debtor is not a British-Indian subject, but is a subject of the Nizam of Hyderabad. He came to Bombay for the first

time about 1926. Thereafter he used to come to and stay in Bombay from time to time at his bungalow "Samudra Tarang" down to about the end

of 1934. Since then he has lived at Hyderabad within the territories of the Nizam, and he has never again been to Bombay. His bungalow

Samudra Tarang" was mortgaged, and in or about August, 1935, the mortgagees entered into and still are in possession. The debtor formerly had

a residence known as "Himat House", but that was at some date, not now material, settled in trust for his children. He has not within a year before

the date of the presentation of the petition ordinarily resided or had a dwelling house within the limits of the ordinary original civil jurisdiction of the

Court. But he has within that period and within those limits carried on business through an agent or agents. He is the sole proprietor of two firms

named Pratapagir Narsingirji and Company, and Himatgir Pratapgir and Company, which were respectively the managing agents and the selling

agents of the Prahlad Mills, Ltd. The mills were closed down about September 16, 1936, and the Company Prahlad Mills, Ltd., was ordered to

be wound up on November 27, 1936. The debtor as sole proprietor was carrying on the business of those two firms by an agent or agents up to

about September 16, 1936. The act of insolvency which is relied upon is that within three months before the date of the presentation of the

petition, April 9, 1937, the debtor committed an act of insolvency in that in execution of a decree dated April 17, 1935, in Suit 1770 of 1934, in

which the debtor and his minor son were defendants, his property, namely a Godrej safe and a Rolls Royce motor car, had been attached for a

period of not less than twenty-one days under an attachment levied on December 22, 1936. Admittedly the petitioning creditors have obtained a

judgment in Bombay against the debtor, and the seizure of the debtor's property in execution of the decree in the other suit is not disputed. Under

the Presidency Towns Insolvency Act, Section 2, Clause (b), debtor includes a judgment debtor. u/s 9 a debtor commits an act of insolvency ""in

each of the following cases"". Sub-para, (e) is the material one which is,

if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the

payment of money.

2. Section 11 provides, so far as material that the Court shall not have jurisdiction to make an order" of adjudication, unless the debtor, within a

year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling house or has carried on business either

in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court, There is no doubt that the debtor in this case is

a judgment debtor, that his property has been attached for a period of not less than twenty-one days in execution of the decree of this Court for

payment of money, and that he has within a year before the date of the presentation of the petition carried on business through an agent within the

limits of the ordinary original civil jurisdiction of this Court, and prima facie the Court would, therefore, seem to have jurisdiction to adjudge him

insolvent. The learned Judge, however, held on the authority of certain English cases that the Court had no jurisdiction. There are four English

cases on the subject, all of which are certainly distinguishable" on the facts, but which discuss the general principles on which a foreigner can be

made liable to the English Bankruptcy Statutes. The first two cases In re Crispin, Ex parte Crispin: (1873) 8 Ch. A. 374 : 42 L.J. Bk. 65 : 28 L.T.

483 : 21 W.R. 491 and In re Sawers Ex parte Blain (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, arose under the English Bankruptcy Act of

1869, which is worded very differently from the Presidency Towns Insolvency Act. In re Crispin, Ex parte Crispin (1873) 8 Ch. A. 374 : 42 L.J.

Bk. 65 : 28 L.T. 483 : 21 W.R. 491. I think does not help very much, but In re Sawers, Ex parte Blain (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28

W.R. 334, was a case in which the alleged act of insolvency committed by a foreigner consisted of levying execution against the goods of a firm in

which the foreigner was a partner, although the foreigner had never actually been to England. It is true, as the Advocate-General points out, that

Brett, L.J., as he then was, based his judgment largely on the consideration that a firm cannot commit an act of bankruptcy, and that an act of

bankruptcy must be committed by the debtor and not by an agent: the latter finding would not apply to a case under the Presidency Towns

Insolvency Act, because Section 9 of the Act has an Explanation which says that

for the purposes of this section, the act of an agent may be the act of the principal even though the agent have no specific authority to commit the

act.

3. But the other two Lords Justices, James L.J., and Cotton, L.J., seem to put the case on a much wider ground. Cotton, L.J., particularly states

the principle in these words. He says (p. 531 Pages of (1879) 12 Ch. D.--[Ed.]):

I take it the limitation [that is, the limitation of the word debtor in the Act with which the Court was dealing] is this, that all laws of the English

Parliament must be territorial,--territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation

of them, and also all aliens who come to this country, and who, during the time they are here, do any act which, on a fair interpretation of the

statute as regards them, come within its provisions.

4. I think the basis of the judgments of James, L.J. and Cotton, L.J. was that the act of insolvency must have been committed by the debtor within

this country, otherwise the debtor would not be a debtor within the meaning of Section 6 of the Act of 1869. The next case is *In re Pearson*, Ex

parte *Pearson* (1892) 2 Q.B. 263 : 61 L.J.Q.B. 585 : 67 L.T. 367 : 40 W.R. 532 : 9 Morrell. 185. The actual decision there was that the Court

had no jurisdiction to allow the service of a bankruptcy notice upon a foreigner out of the jurisdiction. But the Court there accepted and followed

the principles laid down in *In re Crispin*, Ex parte *Crispin* (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, and held that that case applied to an

insolvency under the Bankruptcy Act of 1883, the wording of which resembles that of the Presidency Towns Insolvency Act much more closely

than does the wording of the Bankruptcy Act of 1869. Indeed, there is no doubt that the Presidency Towns Insolvency Act is based mainly on the

English Bankruptcy Act of 1883. The Court in *In re Pearson*, Ex parte *Pearson* (1892) 2 Q.B. 263 : 61 L.J.Q.B. 585 : 67 L.T. 367 : 40 W.R.

532 : 9 Morrell. 185, seems to me to hold that under the Bankruptcy Act of 1883, a debtor means either a British subject or a foreigner who has

committed an act of insolvency in this country. Then the next case which is an important one is the decision of the House of Lords in *Cooke v.*

Charles A. Vogeler Co. (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 : 8 Manson 113 : 17 T.L.R. 153. There the alleged debtor, who was a

foreigner resident abroad, and who had never come to England, but who had a place of business in England, contracted debts and acquired assets,

and he executed abroad an assignment of his property for the benefit of his creditors. The Court held that he was not a debtor within the meaning

of the Bankruptcy Act of 1883, and in so holding, they expressly approved the principles laid down in *In re Crispin*, Ex parte Crispin (1879) 12

Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334. Lord Halsbury states the principles in these terms (1901) A.C.107:

English legislation is primarily territorial, and it is no departure from that principle to say that a foreigner coming to this country and trading here, and

here committing an act of bankruptcy, is subject to our laws and to all the incidents which those laws enact in such a case; while he is here, while

he is trading, even if not actually domiciled, he is liable to be made a bankrupt like a native citizen.

5. And Lord Davey considered that the essential fact to be determined was whether the alleged act of bankruptcy was committed in this country or

abroad, the act of bankruptcy being, as I have said, the execution in a foreign country of an assignment for the benefit of creditors. Notwithstanding

that Section 4, Bankruptcy Act of 1883 provided that an act of bankruptcy included the act of making a transfer in England or elsewhere for the

benefit of creditors, the Court held that a man was not a debtor within the meaning of Section 4 if he had executed abroad an assignment for the

benefit of his creditors. In the present case we are not dealing with what may be called a voluntary act of bankruptcy, the execution of a transfer of

properly falling within Sub-paras, (a),(b) or (c) of ,Section 9, Presidency Towns Insolvency Act. We are dealing with Sub para, (e), under which

the act of insolvency is the seizure in execution of a debtor's property, which is partly an involuntary act. Were it not for the cases to which I have

referred, I should have been disposed to hold that where a man comes to Bombay, incurs debts, emits to pay those debts and leaves property in

Bombay, which is seized in execution for payment of those debts, he has within the jurisdiction of this Court done everything in his power towards

the commission of an act of insolvency, and may, therefore, properly be treated as a debtor within Section 9. It seems to me rather fantastic to

hold that the question whether or not he can be regarded as a debtor depends on the accident of whether or not he happens to be in Bombay at

the moment when his goods are seized. Obviously it is of no practical consequence whether, when his goods are seized, he is in Bombay or not.

The only way in which he can stop his goods being seized in execution is by paying his debts, which he can do as easily from outside Bombay as

within it. However, in my view, so to hold would be in effect to disregard the opinions expressed by the House of Lords in *Cooke v. Charles A.*

Vogeler Co. (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 : 8 Manson 113 : 17 T.L.R. 153. That case definitely approved the principles laid

down in *In re Sawers, Ex parte Blain* (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, which was dealing with an involuntary act of bankruptcy,

and I think the result of those two cases taken together is that we cannot treat a man as being a debtor within the meaning of the Presidency Towns

Insolvency Act unless he is either a subject of British India, or has committed or suffered within British India an act of insolvency, and that we are

bound to hold that as the insolvent was not within the jurisdiction of this Court at the time when his goods were seized in execution, he cannot be

held to be a debtor to whom the Presidency Towns Insolvency Act applies. In my opinion, therefore, the appeal must be dismissed with costs.

Rangnekar, J.

6. This appeal raises an interesting question of law under the Presidency Towns Insolvency Act. The facts are that the appellant obtained a money

decree for Rs. 24,425 against the respondent on December 20, 1935. In execution of another decree obtained by another creditor of the

respondent, certain movable property belonging to the) respondent had been attached for a period of not less than 21 days under an attachment

levied on December 22, 1936. On April 9, 1937, the appellant presented a petition to the Insolvency Judge for an order of adjudication against

the respondent. The respondent appeared under protest and resisted the petition upon the ground that he was a foreigner not subject to the British

Laws as he was a subject of the Nizam of Hyderabad and the Insolvency Court had, therefore, no jurisdiction to make any order of adjudication

against him. The facts found by the learned Insolvency Judge are that although since 1926, the respondent had been sometime staying in Bombay,

he left Bombay towards the end of 1934 and since then he has lived at Hyderabad. It was also found by the learned Judge that although the

respondent had two houses in Bombay, he never resided in these houses from the end of the year 1934. The learned Judge, however, found that

the respondent had, within a year before the date of the presentation of the petition, carried on business through an agent or agents in Bombay.

The appellant, upon this fact finding, claimed that this Court had jurisdiction to make the adjudication order for which he had applied. The learned

Judge, on the authority in *In re Crispin, Ex parte Crispin* (1873) 8 Ch. A. 374 : 42 L.J. Bk. 65 : 28 L.T. 483 : 21 W.R. 491. In *re Sawers, Ex*

parte Blain (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, In *re Pearson, Ex parte Pearson* (1892) 2 Q.B. 263 : 61 L.J.Q.B. 585 : 67 L.T.

367 : 40 W.R. 532 : 9 Morrell. 185, and Cooke v. Charles A. Vogeler Co. (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 : 8 Manson 113 : 17

T.L.R. 153, held that he had no jurisdiction to entertain the petition, and dismissed it. It is from that decision that the present appeal is made. It may

be stated that the respondent appears under protest. The question raised upon these facts, therefore, is whether if a foreigner carries on business

through his agent or agents in Bombay within a year of the presentation of the petition for an adjudication order, he becomes a debtor within the

meaning of the Presidency Towns Insolvency Act, and whether if he has committed or suffered an act of insolvency in Bombay, this Court would

have jurisdiction to grant a declaration of insolvency against him under the Act. The question, of course, must turn upon the true construction of

certain sections of the Insolvency Act, to which I shall refer in a moment. It is necessary, however, to consider the principles laid down in the four

cases, to which I have referred and which have been mainly relied upon on behalf of the respondent. The first two cases turn upon the Bankruptcy

Act of 1869, and the last two upon the Act of 1883. These cases, in my opinion, established the following principles:

7. (1) That the word "debtor" occurring in the relevant sections of those Acts must be construed in a limited sense: that it does not mean a debtor

all the world over; it means only a debtor who is subject to the Laws of England; (2) that a foreigner cannot be adjudicated bankrupt by an English

Court unless the act of bankruptcy was committed by him during his personal residence within the jurisdiction of the Bankruptcy Court; (3) that if

an act of bankruptcy is committed by a foreigner within the jurisdiction of the Bankruptcy Court, then it does not matter if he is not within the

jurisdiction of the Court at the time of the presentation of the petition; (4) that it is the act of bankruptcy and not the petition which gives jurisdiction

to the Court to make the adjudication order; and (5) that the act of bankruptcy must be the personal act or default of the alleged bankrupt. These

decisions are founded upon two rules. The first is laid down in *In re Sawers, Ex parte Blain* (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, by

James, L.J. (1879) 12 Ch. D.526, in these words:

It appears to me that the whole question is governed by the broad, general universal principle that English legislation, unless the contrary is

expressly enacted or so plainly implied as to make it the duty of an English Court to give effect to an English statute, is applicable only to English

subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to

English jurisdiction. Every foreigner who comes into the country, for, however, limited a time, is, during his residence here, within the allegiance of

the Sovereign, entitled to the protection of the Sovereign and subject to all the laws of the Sovereign. But if a foreigner remains abroad if he has

never come into this country at all, it seems to me impossible to imagine that the English Legislature could have ever intended to make such a man

subject to particular English legislation. English legislation has said that, if a debtor allows his goods to be taken in execution, certain consequences

shall follow, and English legislation has a right to say that with regard to an English subject. But what right has it to say so with regard to a Chilian?.

8. These principles were approved by the House of Lords in *Cooke v. Charles A. Vogeler Co.* (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 :

8 Manson 113 : 17 T.L.R. 153 (1901) A.C.107):

I think the judgments of James, L.J. and Sir George Mellish lay down a broad substantial rule in dealing with such questions, which I should be

sorry to see departed from. English legislation is primarily territorial, and it is no departure from that principle to say that a foreigner coming to this

country and trading here, and here committing an act of bankruptcy, is subject to our laws and to all the incidents which those laws enact in such a

case; while he is here, while he is trading, even if not actually domiciled, he is liable to be made a bankrupt like a native citizen. And so, an

Englishman by reason of his nationality is subject to the Laws of Sovereign wherever he may be. But the territoriality, so to speak, of the

bankruptcy law is by necessary inference imported into both of the Acts to which I have referred, by the generality of its phrases. The words

"debtor" and "creditor" certainly cannot be sufficient to give jurisdiction to the English Court of Bankruptcy, because if unlimited they would give

jurisdiction all over the world in respect of debts, petitions, or acts of bankruptcy committed anywhere; and it is a familiar maxim of the law, extra

territorium jus dicenti non impune paretur.

9. The second rule which underlies the four decisions is this, that the act of bankruptcy must be a personal act and cannot be committed by the act

of an agent if the debtor has not authorized the agent to commit it. In *In re Pearson, Ex parte Pearson* (1892) 2 Q.B. 263 : 61 L.J.Q.B. 585 : 67

L.T. 367 : 40 W.R. 532 : 9 Morrell. 185, and later on in *Cooke v. Charles A. Vogeler, Co.* (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 : 8

Manson 113 : 17 T.L.R. 153, a question arose as to whether the Bankruptcy Act of 1883 had made any alteration in the principles laid down in *In*

re Crispin, Ex parte Crispin (1873) 8 Ch. A. 374 : 42 L.J. Bk. 65 : 28 L.T. 483 : 21 W.R. 491, and *In re Sawers, Ex parte Blain* (1879) 12 Ch.

D. 522 : 41 L.T. 6 : 28 W.R. 334, and it was held that those principles would still be applicable under the Act of 1883. The Presidency Towns

Insolvency Act is based--as is well-known--upon the Bankruptcy Act of 1883, and, in my opinion, the principles laid down in the cases to which I

have referred are binding upon us in considering the corresponding "sections of the Presidency Towns Insolvency Act. It appears that after the

Bankruptcy Act of 1883, the English Law was altered to some extent by Sections 8 and 9 of the Act of 1913, which were reproduced in Section

1(2) and in Section 4(1)(d), Bankruptcy Act of 1914. It was suggested that if these provisions of the Bankruptcy Act, 1914, were contained in the

Presidency Towns Insolvency Act, no difficulty would have arisen in deciding the present case. I am unable to accept that contention. Section 1(2),

Bankruptcy Act of 1914 is in these terms:

In this Act, the expression ""a debtor,"" unless the context otherwise implies, includes any person, whether a British subject or not, who at the time

when any act of bankruptcy was done or suffered by him: (a) was personally present in England; or (b) ordinarily resided or had a place of

residence in England; or (c) was carrying on business in England, personally, or by means of an agent or manager or (d) was a member of a firm or

partnership which carried on business in England.

10. On the facts of this case, it would be difficult to hold that the case would fall under these provisions. Rule 68, in Dicey's Conflict of Laws,

(Edn. 5) is as follows (p. 315):

The Court has no jurisdiction on a bankruptcy petition being presented by a creditor or a debtor to adjudicate any person who (1) is not a debtor

as defined in Rule 67(2) ante [i.e. Bankruptcy Act, 1914, Section 1, Sub-section (2)]; or (2) has not committed or suffered any act of bankruptcy

as defined in Rule 67(3) ante Bankruptcy Act, 1914, Section 1, Sub-section (1)].

11. The learned Author then observes as follows:

This rule is most important. It virtually contains or suggests the principle which restricts the jurisdiction of the Bankruptcy Act, 1914, namely that no

debtor should come within its operation who is not a debtor as defined in Rule 67(2) ante [by Section 1, Sub-section (2)], and, therefore, ought to

be legally and morally subject to the English Bankruptcy Law, and next, that no debtor shall be adjudicated bankrupt who has not distinctly

committed an act of bankruptcy as defined in the said rule.

12. The learned Author of ""Williams' Bankruptcy Practice"" (1937) in the commentary to Section 1, Bankruptcy Act, 1914, observes at p. 40 as

follows:

Thus [in the case of aliens] it was held that a foreigner could only be made subject to the English Bankruptcy Law if he committed an act of bank-

ruptcy during his personal residence in England; but this limitation has been done away with in cases where any of the conditions named in Clause

(b), (c) or (d) exist. A corresponding extension [except in the case of a person domiciled in Scotland or Ireland or a firm of partnership having its

principal place of business in Scotland or Ireland] is found in Section 4(1)(d). The capacity to commit an act of bankruptcy, however, must be

measured by this sub-section and not by Section 4(1)(d): see *In re Pearson: Ex-parte Pearson* (1892) 2 Q.B. 263 : 61 L.J.Q.B. 585 : 67 L.T.

367 : 40 W.R. 532 : 9 Morrell. 185, and *In re Clarke; Ex parte Beyer* (1896) 2 Q.B. 476 : 65 L.J.Q.B. 648 : 75 L.T. 304 : 45 W.R. 118 : 3

Manson 203. And it was laid down in *In re Sawers: Ex parte Blain* (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, and appears to be still the

law, that the act of bankruptcy must be a personal act or default, and could not be committed by the act of an agent which the debtor had not

authorized or of which he had no cognizance, nor by a firm as such.

13. Upon these principles, it is clear that before a Bankruptcy Court can assume jurisdiction, it is necessary to see if there is a debtor as defined in

the cases to which I have referred, that is to say, a debtor who is properly subject to the jurisdiction of the Bankruptcy Court; and, secondly if an

act of bankruptcy is committed within the meaning of the Bankruptcy Act. Is there anything in the Presidency Towns Insolvency Act which runs

counter to these principles? I think not. If the Act, in express words or by necessary implication, confers jurisdiction in the Insolvency Court over

foreigners, then, of course, it will be the plain duty of the Court to follow the Act. All legislation is primarily territorial. In general, the laws of a

nation apply to all its subject. But a foreigner owes no allegiance to the Crown, and unless a statute expressly or impliedly confers jurisdiction over

an alien on a British Court, it is difficult to see how the Court can have any. The question then is whether there is anything in the Presidency Towns

Insolvency Act which would entitle us to say in this case that the Insolvency Court has jurisdiction to make an order of adjudication against the

respondent? The relevant sections are, Section 2(b), Sections 9, 10, 11 and 12. u/s 2(b), the word "debtor" occurring in the Act includes a

judgment-debtor. Section 9, lays down what are the acts of insolvency, and the act of insolvency relied upon in this case is that mentioned in

Section 9(e). Section 10, provides that subject to the conditions specified in the Act, if a debtor commits an act of insolvency, the Court has power

to make an order of adjudication against him on a petition presented either by a creditor or by the debtor himself. Section 11 imposes certain

restrictions upon this power of the Court to make an order of adjudication and, so far as material, provides that the Court shall not have jurisdiction

to make such an order unless the debtor within a year before the date of presentation of the insolvency petition has carried on business either in

person or through an agent within the limits of the ordinary original civil jurisdiction of the Court. This section corresponds to Bankruptcy Act of

1883, Section 6(1)(d). Section 12 imposes certain restrictions on; the power of a creditor to petition for an adjudication order, to which no further

reference is necessary as it is common ground that the conditions laid down in that section were fulfilled in this case by the appellant.

14. It will be seen, therefore, that there is no definition of the word "debtor," and there is nothing in any of these sections which would exclude the

general rule, *extra territorium jus dicenti non impune paretur*. It is, however, argued by the learned Advocate-General that the inclusion of the term

judgment-debtor" in the expression, "debtor" marks a most important departure from the English Bankruptcy Law. In my opinion that argument is

untenable. All that Section 2 says is that a judgment-debtor can be proceeded against under the insolvency law, and it merely removes the doubt

as to whether the word "debtor" would extend to judgment-debtors or not; but it does not mean, and cannot mean that the mere fact that the Court

has passed a decree against a person and that person has thus become a judgment-debtor, that the Court, *ipso facto*, will have jurisdiction to make

an adjudication order against him under the Insolvency Act. It is well-known, and this is pointed out by James L.J., in *In re Sawers*, *Ex parte Blain*

(1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, that where as a Court may have jurisdiction against a person under a particular statute expressly

conferring upon the Court jurisdiction to proceed against him under the statute--and it is well-known that there are such statutes in this country

also--it does not mean that jurisdiction would impliedly be conferred upon an Insolvency Court by the mere fact that a person against whom an

order of adjudication is sought happens to be a judgment-debtor. The Presidency Towns Insolvency Act is confined to British India and is an Act

passed by the Indian Legislature. In the absence of an express legislative provision, the Act would apply to British-Indian subjects. A debtor,

therefore, must be a person who is properly subject to the insolvency law. If so, then it follows that a judgment-debtor must be a person who is

subject to the insolvency law. Then, is there anything in Section 9 which would compel us to construe the word debtor occurring in that section as

including a foreigner? This section lays down the particular acts which are acts of insolvency, acts done or suffered by a debtor. The corresponding

section in the English statutes was considered by the English Courts, first in *In re Crispin*, *Ex-parte Crispin* (1873) 8 Ch. A. 374 : 42 L.J. Bk. 65 :

28 L.T. 483 : 21 W.R. 491. Sir J. Mellish L.J. observes (1873) 8 Ch. A.380 as follows:

We think that the Legislature cannot have intended to enact that if a foreigner who is not subject to the Laws of England does something in his own

country which may be perfectly lawful and innocent by the Laws of that country, the effect should be that his property should be vested in a trustee

in England for the benefit of his creditors.

Then we think that a consideration of the particular acts which are made acts of bankruptcy when committed out of England, will confirm this

conclusion. The first is, "that the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee for the benefit

of his creditors generally." This seems clearly intended to relate to a conveyance which is to operate according to English Law, which a

conveyance executed by a domiciled Englishman, although out of England, may do; but a conveyance executed by a domiciled foreigner in his own

country must necessarily operate according to the foreign law, and we think it was never intended that such a conveyance should be an act of

bankruptcy. The second is, "that the debtor has in England or elsewhere made a fraudulent conveyance, etc, of his property or any part thereof."

This clearly means, and has always been interpreted as meaning fraudulent by the Law of England, and therefore cannot properly apply to a

conveyance which is executed in, and is to operate according to the law of a foreign country. The third is the one now in question. "That the

debtor, with intent to defeat or delay his creditors, has, being out of England remained out of England." We think these words imply that the person

who remains out of England, has his home or place of business in England, and cannot reasonably be held to apply to the case of a foreigner

remaining in his own home.

15. These observations were cited with approval by the House of Lords in *Cooke v. Charles A Vogeler Co.* (1901) A.C. 102 : 70 L.J.K.B. 181 :

84 L.T. 10 : 8 Manson 113 : 17 T.L.R. 153. To the same effect are the observations of Cotton, L.J. in *In re Sawers, Ex parte Blain* (1879) 12

Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334 :(1879) 12 Ch. A):

Now we come to the question whether against the respondents there is any jurisdiction under the Bankruptcy Act. They are foreign subjects and

they have never been in England. The question, to my mind comes to the simple one whether or no they are debtors within the meaning of the 6th

Section of the Bankruptcy Act. That section provides that a creditor may present a petition praying that the debtor be adjudged a bankrupt, and

the Court may make the adjudication if the debtor has done, or has suffered some of the various things mentioned in the sub-sections of that

section, or, to put it more correctly, if as regards the debtor, some one of the things mentioned in the sub-sections has happened. When we look at

those Sub-sections, I think it must be obvious, notwithstanding the argument of Mr. Cohen, that the word "debtor" must receive some qualification,

because we find in the second Sub-section "that the debtor has, in England or elsewhere, made a fraudulent conveyance or transfer of his

property." The act there specified as giving the Court a right to adjudicate a person doing it a bankrupt, may have been done not only in England,

but elsewhere, and unless we put some limit on the word "debtor," it will come to this, that any man who has never been in England, a subject of a

foreign state, can be made a bankrupt in England, because in a foreign state he has done a certain act. The argument of Mr. Cohen did not go to

that extent, but that is its logical result.

16. The principle is put by Cotton, L.J. in *In re Sawers, Ex parte Blain* (1879) 12 Ch. D. 522 : 41 L.T. 6 : 28 W.R. 334, in these words (

(1901)A.C.531):

I take it the limitation is this, that all laws of the English Parliament must be territorial--territorial in this sense, that they apply to and bind all the

subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country, and who during the time they

are here, do any act which, on a fair interpretation of the statute as regards them, come within its provisions. Of course it is not necessary that a

person to be subject to an English Act should be domiciled here. If he is resident here temporarily, and does an act which comes within the intent

and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to all the laws of this realm, submits himself to

the law, and must be dealt with accordingly As regards an Englishman, a subject of the British Crown, it is not necessary that he should be here, if

he has done that which the Act of Parliament says shall give jurisdiction, because he is bound by the Act by reason of his being a British subject,

though, of course, in the case of a British subject not resident here, it maybe a question on the construction of the Act of Parliament whether that

which, if he had been resident here, would have brought him within the Act, has that effect when he is not resident here. As regards a British

subject, whether he is here or not, he can be made bankrupt, if the Act of Parliament has declared that, in the events which have happened, he can

be made bankrupt. But, as regards foreigners, there is prima facie no right to bind them if they are not here I think, therefore, that the true

interpretation of the general word "debtor" in the Bankruptcy Act is a debtor subject to the English Bankruptcy law.

17. Lord Halsbury, L.C. in *Cooke v. Charles A. Vogeler Co.* (1901) A.C. 102 : 70 L.J.K.B. 181 : 84 L.T. 10 : 8 Manson 113 : 17 T.L.R. 153,

also laid down the same principle in the passage referred to above. Section 11 is only negative and does not define the meaning of the word

debtor." It does not extend the jurisdiction of the Court but limits it. But before one can come to this section, it is necessary that there is a debtor

who is properly subject to the insolvency law and he must have committed an act of insolvency. Then comes Section 11 which provides that even

if there is a debtor and there is an act of insolvency, still the Court cannot make an order of adjudication unless any of the conditions laid down in

that section are fulfilled. Similarly Section 12 lays down further restrictions on the power of a creditor to present a petition for an order of

adjudication against a debtor. The effect of these provisions then is that the Court cannot adjudicate insolvent any person unless he is a debtor who

is properly subject to the insolvency law and has committed an act of insolvency. Even so, the Court is not entitled to make an order of

adjudication unless any of the conditions specified in Section 11 is fulfilled and a creditor is not entitled to present an insolvency petition unless the

conditions mentioned in Section 12 are fulfilled.

18. It is argued by the learned Advocate-General that the Explanation to Section 9 makes all the difference and that it practically puts the

insolvency law in this country on the same footing as the Bankruptcy Act of 1914, Section 1(2). I have already pointed out that even if we have a

provision in our statute corresponding to Section 1(2), Bankruptcy Act of 1914, it would not have helped the learned Advocate-General. But I am

unable to accept his contention. In the first place, all that the Explanation says is that an act of an agent may be the act of a principal even though

the agent had no specific authority to commit an act. But it does not say that the act of the agent shall be the act of the Principal. All that it says is

that in certain circumstances, the agent's act may be the act of the principal. What these circumstances must be is pointed out by their Lordships of

the Privy Council in *Kastur Chand Rai Bahadur v. Dhanpat Singh Bahadur* 23 C. 26 : 2 I.A. 162 : 6 Sar. 617(P.C.). In that case the Privy Council

suggested an alteration in law, and that suggestion was carried out by the Indian Legislature by enacting the present Explanation. But apart from the

history of the Explanation, it seems to me that unless the principal is a debtor properly subject to the insolvency law, the Explanation does not

come into operation at all. The conclusion therefore which I have reached, is this, that a foreigner cannot be adjudged insolvent by a Court of

British India, unless the act of insolvency was committed by him during his personal residence in British India.

19. It seems to me, however, that this is a matter in which the Legislature should step in. It is well-known that there are many Native States in this

country, and it is also well-known that many of the so-called foreigners come to British India, settle down there, make money whilst they can, and,

when they begin to get into difficulties, run away from the jurisdiction of the Court. There is no reason or principle why the property or the estate of

such persons should not be reached by the Insolvency Court. But our plain duty is to construe the sections of the Act as we find them. I agree,

therefore, that the appeal must be dismissed with costs.