
(1898) 01 CAL CK 0004
In the Calcutta High Court
Case No : Appeal No. 20 of 1897

Brijmohun Dobay, Insolvent

APPELLANT

Vs

Bungsidhur and Fatik Chand, Adjudicating Creditors

RESPONDENT

Date of Decision : 21-01-1898

Acts Referred:

Citation : (1898) 01 CAL CK 0004

Final Decision : Dismissed

Judgement

Maclean, C.J.—The question for our decision is, whether the Appellant has committed an act of bankruptcy by assigning the whole of his property for the benefit of his creditors generally. The question turns upon the construction of sec 9 of the Insolvency Act in India, which is an Act of the Imperial Parliament, 11 & 12 Vic., Ch. 21. The language of that section is, for all practical purposes identical with the language of sec. 4 of 6 Geo. IV, Ch. 16 and of the corresponding section in the Bankruptcy Act, 12 & 13 Vic, Ch. 106. There is a current of decisions in the English Courts to the effect that an assignment of the whole of a debtor's property, even if made for the benefit of his creditors, is an act of bankruptcy. Seeing then that that is the construction which the English Courts have, for a series of years, put upon the Bankruptcy Acts in England to which I have referred, the language of which is substantially identical with that of the Act which we have now to consider, I can see no good reason for not applying the same rule of construction to the Indian Act.

2. It has been contended for the Appellant that the decision in the English Courts, upon the construction of the Acts I have referred to, were based upon sec. 4 of the Act of Geo. 4, Ch. 6, under sec. 68 of the Act of 12 & 13 Vic, Ch. 106, the effect of those two sections being that in case of an assignment by a debtor of the whole of his property for the benefit of his creditors, that does not constitute an act of bankruptcy unless a commission of bankruptcy be issued within the period referred to in the section.

3. It is said that those sections indicate that an assignment of all the debtor's

property for the benefit of his creditors was an act of bankruptcy within the meaning of the previous sections in these Acts, but that, inasmuch as there is no such section in the Indian Act, the same construction cannot apply, and that, without such sections it ought not to apply. I do not see that cases in the English Courts have proceeded upon that footing, on the contrary, the observation of Lord Justice Turner in the case of *ex parte Alsop*; *In re Rees* L.J. 29 Ch. & Bk. 7 rather tends in the contrary direction. Again the subsequent sections, viz., sec. 4 of the Act of Geo. 4 and sec. 68 of the Act of Victoria, appear to me to presuppose that an assignment of all the debtor's property for the benefit of his creditors is an act of bankruptcy within the meaning of the language of the immediately preceding section.

4. I may point out that in the case of *In re Wood* L.J. 7 Ch. App. 302, Lord Justice Mellish says that the intent is not a matter of fact but a conclusion of law. In my opinion the assignment in question did constitute an act of bankruptcy within the meaning of sec. 9 of the Indian Insolvency Act and I agree with Mr. Justice Sale, and the appeal must be dismissed with costs, the adjudicating creditors being at liberty to add the costs of this appeal to their claim and apply for payment thereof out of any property of the Appellant in the hands of the Official Assignee.