

assets of the Bombay Landing and Shipping Company, Limited, before any distribution is made amongst the other creditors of the company. We give no costs of this appeal.

Attorney for the appellants: *R. V. Hearn* (Government Solicitor).

Attorneys for the respondent: *Acland Prentis, & Bishop*.

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 SECY. OF
 STATE FOR
 INDIA
 v.
 BOMBAY
 LANDING &
 SHIPPING Co.

In re MANCHARJI HIRJI READYMONEY.

Jan. 31.

Insolvent—Detaining Creditor—Imprisonment—Execution—Indian Insolvent Debtors' Act.

Where, under Sec. 51 of the Insolvent Debtors' Act (11 and 12 Vict., c. 21), it has been adjudged that an insolvent shall be forthwith discharged from all his debts, &c. except as to certain specified debts, and as to these that he shall be discharged so soon as he shall have been in custody, *at the suit of the person or persons who shall be creditor or creditors for the same respectively*, for such period as the Court shall direct.

Such an order of adjudication does not in itself operate as an order for the imprisonment of the insolvent, but the detaining creditor, if he wishes to arrest or detain the insolvent for such period, must (if he have not already done so) place himself in a position to issue execution against the insolvent.

MANCHARJI HIRJI READYMONEY was brought up in the custody of the Marshal of the County Gaol, under a writ of *habeas corpus* dated the 30th of January 1868.

The Clerk of the Crown (J. Marriott) read a warrant, dated the 30th of November 1867, under which the prisoner had been imprisoned in the County Gaol on the criminal side for two calendar months, for an offence under Sec. 50 of the Insolvent Debtors' Act.

He also read an order of the same date made by Tucker, J., sitting as Commissioner in Insolvency, whereby he directed that the said Mancharji Hirji Readymoney should be discharged forthwith as to all the debts and liabilities mentioned in his schedule, save as to the debt due to H. and A. Berens; and as to that debt, that he should be discharged so soon as he should have been in custody for six calendar months in the County Gaol, on the Civil Side, at the suit of

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the said H. and A. Berens, his opposing creditors, such term of custody to date from the date of the order.

The said H. and A. Berens were not judgment creditors of the insolvent.

McCulloch (with him *Macpherson*) moved that the prisoner should be discharged from custody. The prisoner is now detained in prison not under a warrant, but under an order of the Insolvent Court made under Sec. 51 of the Insolvent Debtors' Act. That order does not justify his detention. The words of Sec. 51 are that it shall be lawful for the Court in the case of debts, contracted within the meaning of that section, "to adjudge that such insolvent shall be so discharged, and so entitled, as aforesaid, as soon as he shall have been in custody at the *suit* of the person or persons who shall be creditor or creditors for the same, for such period or periods not exceeding two years in the whole, as such Court shall direct." The question is whether the word *suit* can mean simple request, or whether it does not rather mean the result of judicial proceedings instituted by the opposing creditor. Was it not the intention of the Act that only a creditor who had sued the insolvent to execution should avail himself of the provisions of that section? Sec. 52 shows that this is so, for it enacts that the insolvent whose complete discharge has been postponed, under Sec. 51, is liable to be arrested and kept in prison at the suit of the opposing creditor, until the period mentioned in the order has arrived, in the *same manner* as he would have been subject and liable thereto as if the Act had not been passed. If the Act had not been passed, the only way the opposing creditor could keep the insolvent in custody would be by obtaining a judgment against him and issuing execution. The concluding proviso of that section also, by stating that even though the insolvent shall not have been in custody he shall be entitled to his discharge at the expiration of the period, plainly indicates that the imprisonment is to be the act of the creditor, not of the court. Under similar words in the English Act (1 & 2 Vict., c. 110, s. 86), it was held that the only way a creditor could avail himself of that section (86)

was by arresting his debtor under a *ca. sa.*: *Samuel v. Nettle-*
ship (a). If the Court should hold contrary to the view we
 contend for, a practical inconvenience would result, as in case
 of the creditor not coming forward, there would be no one
 to provide the "reasonable allowance" contemplated by the
 statute for the support of the prisoner.

A. Marcus, of the firm of H. and A. Berens, appeared in
 person, and objected to the release of the prisoner.

Couch, C.J.:—I am of opinion that no legal ground has
 been shown for the further detention of the prisoner, and
 that he is entitled to his discharge.

The meaning of the words in Sec. 51 of the Indian In-
 solvent Act—"That in case it shall appear to any such Court
 that such insolvent shall have contracted any of his debts
 fraudulently, &c., it shall and may be lawful for such Court
 to adjudge that such insolvent shall be so discharged and
 so entitled as aforesaid forthwith, excepting as to any
 debts, sum or sums of money, or damages, to be specially
 mentioned in the order, and as to such debt or debts, sum
 or sums of money, or damages, to adjudge that such insol-
 vent shall be so discharged and so entitled as aforesaid as
 soon as he shall have been in custody at the *suit* of the per-
 son or persons who shall be creditor or creditors for the
 same respectively, for such period or periods, not exceeding
 two years in the whole, as such Court shall direct"—is ap-
 parent from the provision in the following section, that "in
 all cases where it shall have been ordered that any such in-
 solvent shall be discharged from imprisonment as aforesaid
 at some future period, such insolvent shall be subject and
 liable to be detained in prison, and to be arrested and charged
 in custody, at the suit of any one or more of his creditors
 with respect to whom it shall have been so ordered, at
 any time before such period shall have arrived, in the same
 manner as he would have been subject and liable thereto if
 this Act had not passed." It is also apparent from the pro-
 viso that "when such period shall have expired he shall be

(a) 11 L. J., Q. B. 185.

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entitled to the benefit and protection of the Act, notwithstanding that he may have been out of actual custody during all or any part of the time mentioned in such order, by reason of his not having been arrested or detained during such time."

That provision in Sec. 52 appears to me to make it clear that "at the suit of the person or persons who shall be creditor or creditors," must mean, at their suit by means of their detaining him by the process of the court, and by the power which they might have acquired of detaining or arresting him if this Act had not been passed; and if such proceedings have not been taken, the insolvent, in my opinion, is entitled to his discharge.

I may here adopt a remark, made by Mr. Justice Patteson in the case to which we have been referred, that "I am not prepared to say precisely what was the intention of the Legislature, but the words of the Act are quite clear." We must be governed by the language of the Legislature, without considering what may have been its intention, if the words themselves are clear. The case which has been cited (*Samuel v. Nettleship*) is even stronger than the present, because in that case the order of the Insolvent Court for the prisoner to be kept in custody at the suit of the named creditor was an order made in consequence of misconduct similar to that which is punishable here under Sec. 50 by imprisonment on the Criminal side of the gaol. There is this distinction between the English Act and the Indian Act, that misconduct for which a person may here be sentenced to imprisonment for two years on the Criminal side of the gaol under Sec. 50 is punishable in England by his being made liable to detention by a creditor for the period of three years on the Civil side.

It appears to me that we cannot get over the language of this Act, and that, in order to carry into effect the order of the Insolvent Court under Sec. 51, there must be a detention under the process of the court, by virtue of which alone a creditor can ordinarily detain, and that the order of the Insolvent Court cannot be held to operate as a detention

at the suit of the creditor. If we were to hold otherwise, the difficulty, pointed out by Mr. McCulloch, would arise; that, if the order of the court is to operate as a detention of the insolvent at the suit of the creditor, there is no power of ordering the creditor to maintain the insolvent, because the creditor may say, "I am not seeking to detain him, and I will take no proceedings in order to detain him," and thus the insolvent might be kept in custody without having that provision for his subsistence, which it is clear it was the intention of the Legislature should be made for him if he were kept in prison by virtue of the provisions of Sec. 51.

It is not necessary for us on the present occasion to determine what procedure it would be necessary for the creditor to take, or what he might take, if he were now desirous of keeping the insolvent in prison. It is enough for us that up to the present time, two months having elapsed since the order of the Commissioner was made, he has taken no steps to detain the insolvent, but has left the matter to the operation of the order of the Insolvent Court. I think, therefore, that no legal ground having been shown for the further detention of the prisoner, he must be discharged.

ARNOULD, J.:—I am of the same opinion. Looking at the language of Sec. 51 alone, it would appear to be doubtful whether the words "at the suit" of the creditor mean more than "at the instance" of the creditor; but when we look at the language of Sec. 52 it becomes clear that the words "at the suit" of the creditor mean something more than at his mere instance. They must mean that there shall have been a suit, and that this suit shall have arrived at such a stage that—if the imprisonment is at once to be effected—the creditor might enforce his decree by imprisonment in the same manner as he might have done if this Act had not been passed. What, to my mind, makes the meaning of the section quite clear is this, that at the moment of adjudication under Sec. 51 the insolvent is present in court, and if it had been intended by the Legislature that the order under Sec. 51 should operate as instantaneous

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imprisonment, it would be impossible to attach their natural meaning to the words that occur in Sec. 52, namely, that he should be "liable to be arrested and charged in custody at the suit of any one or more creditors." Those are not the words which one would expect to find if the order of the court was to operate as an instantaneous imprisonment. That conclusion is still further strengthened by the latter part of the section, which provides that when such period shall have expired, the insolvent shall be entitled "to the benefit and protection of this Act, notwithstanding that he may have been out of actual custody during all or any part of the time mentioned in such order,"—contemplating a state of things which would clearly be impossible if the order of adjudication under Sec. 51 operated, as it is contended, as an order for instantaneous imprisonment. It clearly appears that what was contemplated was that there should be a suit, and that upon that suit the creditor, if he is a judgment creditor and has taken out execution upon his judgment, may at once enforce that execution, supposing it not to have been stayed by order of the High Court under Sec. 49. If it has been stayed by order of the High Court under Sec. 49, he will in the first instance have to apply to that court for leave to proceed in carrying out his execution, and upon obtaining such leave he will be entitled to execute his decree in the same manner as he would have been if the Insolvent Act had not passed. Therefore, it appears to me that, looking especially at Sec. 52, there is no reason whatever for saying that this prisoner is not entitled to his discharge forthwith.

Prisoner discharged.

Attorneys for the insolvent: *Hearn, Cleveland, and Peile.*