

In re MA'NIKJI SHA'PURJI KA'KA.1868.
Feb. 3.*Insolvency—Criminal Sentence—Adjournment of Hearing—11 & 12 Vict.,
c. XXI., ss. 47 and 50.*

A Commissioner sitting in Insolvency, while sentencing an insolvent to imprisonment on the Criminal side, under Sec. 50 of the Insolvent Debtors' Act, has power, in addition, to order that the further hearing of the insolvent's petition be adjourned, with or without protection, under Sec. 47, beyond the expiration of such term of imprisonment.

THIS was an appeal, under Sec. 73 of the Indian Insolvent Debtors' Act (11 & 12 Vict., c. XXI.) from an order made by Tucker, J., sitting as Commissioner in Insolvency. The judgment of the learned Commissioner, after setting out at length the facts of the case, concluded as follows:—

“The result of this investigation is that I convict this insolvent ~~of~~ having fraudulently discharged the debt due by Mr. Stewart to the insolvent's firm, and of false and fraudulent entries in his accounts in several instances, with intent to diminish the sum to be divided among his creditors; and that I likewise find that he has traded recklessly, and has contracted debts without reasonable or probable expectation of paying the same, and under circumstances which amount to gross misconduct, and that he has been extravagant in personal expenditure; and on the two first charges on which a conviction has been recorded, I adjudge that the insolvent, Mánikji Shápurji Káká, be imprisoned for three months, under Sec. 50 of the Insolvent Act, and on the remaining charge, that his discharge be adjourned without protection for one year from the present date.”

The order was drawn up accordingly.

From this order the insolvent appealed, upon the ground (*inter alia*) that “the Commissioner, having adjudged that the insolvent should be imprisoned for three months under Sec. 50, ought to have declared him entitled to his discharge at the expiration of such term of imprisonment, and had no power to order the discharge of the insolvent to be still further suspended after the expiration of the said term of imprisonment.”

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S. KA'KA'.

The appeal was argued before COUCH, C.J. and ARNOULD, J.

Pigot and Dunbar for the insolvent.

The Honorable L. H. Bayley (Advocate General) and *Mayhew* for Kávasji Jehángir, opposing creditor No. 1.

McCulloch and Green (with them *White*) for Hirji Jehángir, opposing creditor No. 2.

Cur. adv. vult.

COUCH, C. J. (After reviewing the facts of the case, upon which the finding of the Commissioner was confirmed), proceeded:—It was also argued before us that the Insolvent Court had no power to make an order adjourning the discharge of the insolvent, and at the same time to make an order under Sec. 50; and it was strongly contended that if an order was made by the Court under Sec. 50, adjudging the insolvent to be imprisoned, the Court was bound to declare the insolvent entitled to his discharge at the end of the term of such imprisonment. That is not, in my opinion, the true construction of Sec. 50.

The words “and declare him entitled to his discharge,” which occur in that section, I look upon, not as imperative or directory, but as permissive, and enabling the Court to declare that at the termination of the imprisonment the insolvent shall be entitled to his discharge without the necessity of a further hearing, but not directing the Court to do so. Looking at the many inconveniences which would result if a different construction were adopted, and considering that in many cases it would operate most mischievously if the Court had no power, while making an order under Sec. 50, to deal with the other matters in the case as law and justice require, and seeing also that the words are capable of bearing this construction, I think we are bound so to construe these words. I think, therefore, that it is competent for the Court, if the circumstances of the case require it, to make an order under Sec. 47, adjourning the further hearing of the petition, and at the same time to adjudge that the insolvent shall be imprisoned, under Sec. 50.

There is, however, a verbal inaccuracy in the order, which requires alteration. Under Sec. 47, speaking strictly, it is

not the discharge of the insolvent that is adjourned, but the further hearing of his petition. The order must, therefore, be amended by substituting in the latter portion of it the words "further hearing" for "discharge."

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ARNOULD, J., concurred.

Appeal dismissed with costs.

Attorneys for the insolvent: *Acland, Prentis, and Bishop.*

Attorneys for the opposing creditors: *Hearn, Cleveland, and Peile.*

In re LAKHMIDA'S HANZRA'J.

Jan: 31.

Insolvency—Practice—Notes of Evidence—Appeal—Time for Appealing—Vacation.

In order to enable an insolvent to appeal from an order passed in the matter of his petition, notes of the evidence *must* be taken at the hearing by an officer of the court.

In the time allowed for appealing, the vacation is to be computed, unless such time expire during the vacation, in which case the petition of appeal must be presented to the Court or a Judge on the first day after the vacation.

PIGOT moved for leave to file a petition of appeal against an order made by Tucker, J., sitting as Commissioner in Insolvency, whereby he sentenced the insolvent to be imprisoned on the Criminal side for six calendar months, and adjourned the hearing of his petition for twelve calendar months.

The order of the Commissioner was made on the 23rd of December 1867, and was sealed on the 24th of January 1868. The calendar month allowed for appealing under Sec. 73 of the Insolvent Debtors' Act had, therefore, expired, from the time of the making of the order. It also appeared that no notes of the evidence had been taken at the hearing by the officer of the court, but notes of the evidence had been taken by the Commissioner.

Pigot contended that the days of vacation should not count (in which case the petition would have been in time). He further contended that the time allowed for appealing should date from the sealing of the order.