

THE INDIAN DECISIONS

NEW SERIES.

BOMBAY—VOL. III.

I.L.R., 5 BOMBAY.

5 B. 1.

INSOLVENCY.

Before Mr. Justice Marriott.

IN THE MATTER OF COWASJI EDALJI, *Insolvent*;
THE LONDON, BOMBAY AND MEDITERRANEAN BANK, *Creditor*.
[11th August, 1880.]

Indian Insolvent Act, Stat. 11 and 12 Vic., c. 21, s. 60—Trader—Mukadam.

A mukadam is not a trader within the meaning of the Indian Insolvent Act, 11 and 12 Vic., c. 21, and is not, therefore, entitled to obtain a discharge, in the nature of a certificate, under s. 60 of that Act.

THE insolvent described himself in his schedule as "a mukadam of shipping and landing business." On the 19th May he obtained an order *nisi* for his discharge under s. 60 of the Indian Insolvent Act (11 and 12 Vic., c. 21), and he now applied to have the order made absolute.

Counsel for the opposing creditor contended that a mukadam was not a trader within the meaning of the Act, and that the insolvent was not, therefore, entitled to his discharge under s. 60.

The insolvent was examined, and gave the following evidence as to his occupation:—

"I am a mukadam. I land goods for merchants and ship them. I am paid so much per bale. I employ *ghatis* and labourers, and pay them their wages. I do not buy goods for sale or sell goods. I have no stock in trade. I hire boats and land and ship goods. I enter into contracts with different merchants, and land and ship their goods. The goods are delivered to the merchants at the warehouse. I have no warehouse."

Starling, for opposing creditor.—The insolvent is not a trader, and, therefore, is not liable to become bankrupt so as to enable [2] him to obtain his discharge under s. 60. The English statutes referred to in s. 9 of the Indian Insolvent Act; enumerate the classes who are to be deemed traders. These statutes are 6 Geo. IV, c. 16, ss. 2 and 5, and 6 Vic., c. 122, s. 10; 12 and 13 Vic., c. 106, s. 65; and 32 and 33 Vic., c. 71, sch. I. Neither the occupation of mukadam nor any business analogous to it

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INSOL-
VENCY.

5 B. 1.

1880
AUG. 11.
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is mentioned. The insolvent, therefore, can only protect his after-acquired property by satisfying the conditions of s. 59 of the Indian Insolvent Act, viz., by paying in cash one-third of his debts or obtaining the consent of a majority in number and value of his creditors.

JUDGMENT.

5 B. 1.

MARRIOTT, J.—It appears from the insolvent's own account of himself that the occupation which he followed did not come within the terms of any of the Acts which define and enumerate the classes of persons who are to be deemed traders. He cannot, therefore, obtain a certificate under s. 60 of the Indian Insolvent Act. Neither can he obtain one under s. 59 of that Act, as he has not complied with the provisions of that section by paying the required proportion of his debts or obtaining the assent of his creditors. I must discharge the order.

Order discharged.

Attorneys for the opposing creditors.—Messrs. *Tobin and Boughton.*

5 B. 2.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice Nanabhai Haridas.*

KHEVRAJ JUSRUP, DECEASED, BY HIS WIDOW AND HEIRESS
NANABHAI (*Original Defendant*); *Appellant v. LINGAYA*
(*Original Plaintiff*), *Respondent*.* [29th July, 1873.]

*Mortgage—Execution—Sale—Right of purchaser—Effect of sale—Estoppel—Minor—Act
XX of 1864.*

On 10th September 1863, A. mortgaged a house to B., who registered the deed, but did not obtain possession of the premises. On 2nd July, 1868, A. mortgaged the same house to C., who registered the mortgage deed and took possession of the premises. On 10th October, 1868, B. sued on his mortgage and obtained a decree against A's son who was a minor and who was represented by his mother as his [3] guardian. She, however, had obtained no certificate of administration under the Minors' Act XX of 1864. On 17th December 1869, the mortgaged property was sold by the Court in execution of B's decree. The plaintiff bought it, and obtained a certificate of sale. On the plaintiff's attempting to take possession of the property, the defendant, who was C's widow and heiress, resisted him, and he, thereupon, sued to recover it.

Held, that the plaintiff was entitled to possession. He stood at least in the same position as had been occupied by B., before the sale, and B, as prior mortgagee had a superior title to that of defendant, who claimed under a subsequent deed.

Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage, the interest of the mortgagee, at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale.

[R., 5 B. 5; 5 B. 8; 22 B. 686 (692); 22 B. 945 (948); 35 B. 395 (400) = 13 Bom. L.R. 678 = 11 Ind. Cas. 989; 11 Bom. H.C. 139 (142); D., 20 B. 290 (293).]

SUIT for possession of a house purchased by the plaintiff at a Court sale on the 17th December 1869.

On the 10th September, 1863, the house in dispute with two others was mortgaged by Krishnarav Narayan for Rs. 525 to Lachmandas.

* Special Appeal No. 208 of 1873. See Printed Judgments for 1873, p. 19.