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and the complaint of a public servant or Court—a distinction that has already been pointed out in the case of *Gyan Chunder Roy v. Protap Chunder Doss*(1). A sanction is a document to be drawn up and given to a private individual in order that he may file it with the complaint he makes to the Magistrate, and so enable the Magistrate to take cognizance of the complaint. It is to such a document only that the after clauses of s. 195 profess to apply, and to that application alone they must be confined. A complaint, on the other hand, is an allegation made to a Magistrate with a view to his taking action under the Code, that some person has committed an offence (s. 4 (a)).

Under s. 195 a Magistrate can take cognizance of a complaint if made by a public servant or by a Court. Either, therefore, can make a complaint, although a Court is at liberty, if it chooses, to proceed instead in accordance with the provisions of s. 476. When once, however, such a complaint is made, s. 195 does not give to any other Court the power of revoking that complaint, still less can the section be construed as conferring upon a superior Court the power to interfere when a subordinate Court has sent a case for enquiry or trial to a Magistrate under the provisions of s. 476. The provisions of s. 195 relating to the revocation or grant of a sanction given or refused by a subordinate Court can, in my opinion, refer only to a sanction, and cannot apply to a complaint. I am supported [114] in this opinion by a decision of the Full Bench of the Allahabad High Court in the case of *Ishri Prasad v. Sham Lall* (2), where it was held that the proviso in the section that the sanction shall not remain in force for more than six months did not apply to a complaint. If that provision does not apply, it follows that no other similar provision applies to a complaint, and I am of opinion that this is so. Applying, then, this principle to the cases referred to us, I find that the Sessions Judge had power to interfere in Irappa's case, as in that case a sanction only was given and no complaint made. I find that he had no power to interfere in Rachappa's case, since a Court under the powers conferred on it by s. 476 had sent that case to a Magistrate.

*Order in Rachappa's case set aside.*

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### INSOLVENCY JURISDICTION.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Scott.*

IN RE CAWASJI OOKERJI. [27th April, 1888.]

*Insolvency—Indian Insolvent Act 21 and 22 Vict., Cap. 21, s. 58—Jurisdiction—Practice.*

The insolvent filed his petition in December, 1865, and in January, 1866, on his application for his personal discharge under s. 47 he was ordered to be imprisoned. He never applied for his discharge under s. 59 or 60 of the Indian Insolvent Act (Stat. 21 and 22 Vict., cap. 21). When he had completed the term of his imprisonment he left Bombay and went to Morar and ultimately settled at Aligarh in the North-West Provinces. In August, 1886, the Official Assignee was informed that the insolvent was possessed of landed property at Aligarh, and also considerable moveable property. On the 25th August, 1886, the Official Assignee obtained a *rule nisi* calling on the insolvent to show cause why he should not hand over all this property to the Official Assignee for the payment of creditors. On the 10th August, 1887, an order was made by the

(1) 7 C. 208.

(2) 7 A. 871.

Insolvent Court under s. 58 of the Insolvent Act (Stat. 21 and 22 Vict., cap. 21), directing the insolvent to appear before the Court on the 21st September, 1887, to be examined touching his estate and effects and dealings and transactions. The insolvent appealed against this order and contended that the Court had no greater powers than those possessed by the High Court, and consequently could not order the attendance of any person resident more than two hundred miles from Bombay.

*Held*, that the Insolvent Court had jurisdiction to make the order.

[D., 9 Bom. L.R. 1093 (1096).]

[115] APPEAL by the insolvent from an order of Bayley, J., dated 10th August, 1887, made under s. 58 (1) of the Indian Insolvent Act (11 and 12 Vict., cap. 21) directing the insolvent to appear before the Insolvent Court at Bombay on Wednesday, the 21st September, 1887, in order that he might be then and there examined touching his estate and effects and dealings and transactions.

The insolvent had filed his petition on the 4th December, 1865. On his application for a personal discharge under s. 47 of the Act he was, on the 15th January, 1866, ordered to be imprisoned on the criminal side of the jail for a term of three months and on the civil side thereof for a term of twelve months, under ss. 50 and 51 of the Act. The insolvent never applied for his discharge under ss. 59 and 60 of the Act.

Having completed the term of his imprisonment he left Bombay and went to Morar, and ultimately settled at Aligarh, in the North-West Provinces.

In August, 1886, the Official Assignee was informed by a relative, who was also a creditor of the insolvent, that the insolvent was possessed of valuable landed property at Aligarh and also of considerable moveable property.

On the 25th August, 1886, the Official Assignee obtained a *rule nisi* calling on the insolvent to show cause why he should not hand over all his property to the Official Assignee for the payment of the insolvent's creditors.

[116] The insolvent was subsequently requested by the Official Assignee to come to Bombay in order to be examined as to the said property. He refused to come, but stated he had no objection to be examined on commission. The Official Assignee then applied to the Court, and obtained the order of the 10th August, 1887, above set forth. The insolvent appealed against this order.

*Farran and Lang*, for the appellant.—Section 58 gives the Court power to order the insolvent to appear "at such time and place" as may be directed. But the power thus given to the Court must clearly have some limit. The insolvent might be in America or Australia. We find that reasonable limits are prescribed by s. 4, which gives the Judge of the

(1) "Section 58.—And be it enacted, that it shall and may be lawful to and for the Assignee or Assignees from time to time, although an order for the discharge of the insolvent may have been made, to apply to the Court that such insolvent may be further examined as to any matter or things relating to his estate and effects by such Court, and thereupon it shall be lawful for the said Court to order the same: and in case such insolvent shall neglect or refuse to appear before such Court, at such time and place as shall be directed by such order, or shall refuse to be sworn, or to answer to such questions as shall be put to him relating to the discovery of his said estate and effects, then and in any of such cases it shall be lawful for such Court by warrant to commit such insolvent to gaol, there to remain without bail or mainprize until such time as he shall submit himself to the order of such Court in that behalf, and shall answer upon oath, or otherwise, as shall be required, to all such lawful questions as shall be put to him, in pursuance of the same, for the purposes aforesaid."

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Insolvent Court only the powers possessed by a Judge of the Supreme Court. The powers of the Supreme Court are now the powers of the High Court. For the words "Supreme Court" we must now read "High Court": see s. 11 of the Royal Charter Act 24 and 25 Viet., cap. 104; and the Insolvent Court has now the same power of compelling the attendance of parties as are possessed by the High Court. Those powers are prescribed by the Civil Procedure Code (Act XIV of 1882). The insolvent may now be regarded as in the position of a defendant: see s. 67 of the Civil Procedure Code. If in a civil suit the opposite party requires the attendance of the defendant as a witness, he must proceed under ss. 176 and 178 of the Code. Section 267 of the Code, which applies to judgment-debtors, is analogous to ss. 58 and 36 of the Insolvent Act. Sections 383 and 386 provide for a case of this kind. The power of the Court can be just as effectively exercised by issuing a commission as by requiring the insolvent to take the long journey from Aligarh. In *Whaley v. Busfield* (1), Cotton, L. J., says: "Service out of the jurisdiction is an interference with the ordinary course of the law, for generally Courts exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction. If an Act of Parliament gives them jurisdiction over British subjects wherever they may be, such jurisdiction is valid, but apart from statute a Court has no power to exercise jurisdiction over any one beyond its limits: see also *In re Anglo-African Steamship [117] Company* (2). The Court cannot compel the insolvent to come here. The Act limits the jurisdiction of the Court: see ss. 5 and 8. They referred to Stat. 9 Geo. IV., cap. 73.

On the merits we submit that this is a case of extreme hardship, and that as a matter of discretion the order ought not to have been made. They relied on the affidavits.

*Inverarity*, for the Official Assignee.—The insolvent was resident in Bombay and has taken the benefit of the Act in Bombay, and, therefore, is now subject to the jurisdiction of the Insolvent Court:—*Cookney v. Anderson* (3). The power we ask the Court to exercise is a power given by all the English Bankruptcy Acts since Stat. 34 and 35 Henry VIII., cap. 4, s. 2. Section 4 of the Indian Insolvent Act gives the power conferred by Stat. 6 Geo. IV., cap. 106, s. 36, on the Commissioner in Bankruptcy. Section 4 does not limit the power of the Court, which has a personal jurisdiction over the insolvent. Section 36 enables the Court to summon any person before it to give information about the insolvent's estate, and s. 58 empowers the Court to order the insolvent to appear before it. There is no limit of distance mentioned.

#### JUDGMENT.

SARGENT, C. J.—This is an appeal from an order made by Mr. Justice Bayley, the Commissioner of the Insolvent Court, on the application of the Official Assignee. The order directs the insolvent, who has for years been residing at Aligarh in the North-West Provinces and who is residing there at present, to come to Bombay and appear before the Insolvent Court in order that he may be examined with regard to certain property which the Official Assignee believes may be made available for the payment of the insolvent's creditors.

The insolvent has appealed against this order, and two points have been raised on his behalf: first, it has been argued that the Court in

(1) L.R. 32 Ch. Div. 131. (2) L.R. 32 Ch. Div. 348. (3) 1 D.J. and S. 365.

Bombay has no jurisdiction to make such an order against a person resident more than two hundred miles from Bombay; and secondly, that even if it has the jurisdiction, the granting of such an order is a matter of discretion, and that in the present case that discretion has been improperly exercised.

[118] The order in question was made under s. 58 of the Indian Insolvent Act (Stat. 11 and 12 Vict., cap. 21). The provisions of that section are stated in the most general terms (His Lordship read the section). But it has been contended that we must read it with s. 4, and that the combined effect of these two sections taken together is that the Insolvent Court has only the same powers as are possessed by the High Court, and that by the Civil Procedure Code (Act XIV of 1882), the High Court has no power to order the attendance of any person residing at a distance of more than two hundred miles from Bombay. We are of opinion, however, that we cannot thus limit the power of the Insolvent Court. The Act (11 and 12 Vict., cap. 21) confers upon that Court very large powers (e.g., s. 36), and we think that we must give to s. 58 a construction in harmony with the general provisions of the Act. It is to be remembered also that the insolvent has already submitted to the jurisdiction of the Court. He has applied for and obtained the benefit of the Insolvent Act, and we think that he is now bound to submit to any further order which the Court may think fit to make under the Act. We hold that the Judge had power in this case to make the order appealed against.

It has been argued that the discretion of the Judge was improperly exercised. That is a matter, however, with which we should be reluctant to interfere, especially in a case like this. The learned Judge of the Insolvent Court must necessarily have a far greater knowledge of all the circumstances of the case than we have; and he no doubt took them into consideration before making the order.

We must dismiss this appeal with costs.

*Appeal dismissed.*

Attorneys for the insolvent:—Messrs. *Ardesir, Hormusji, and Dinsha.*  
Attorneys for the Official Assignee:—Messrs. *Craigie, Lynch, and Owen.*

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[119] ORIGINAL CIVIL.

*Before Mr. Justice Jardine.*

UMERSEY PREMJI AND ANOTHER (*Plaintiffs*) v. SHAMJI  
KANJIAND BHANJI KANJI (*Defendants*)\*.

[13th August, 1888.]

*Arbitration—Award—Making and filing award—Award made but not filed within the time specified by order of Court—Civil Procedure Code (Act XIV of 1882), ss. 508 514, 521.*

The present suit for dissolution of partnership and all matters in dispute between the parties thereto were by Judge's order dated 18th July, 1887, referred to the arbitration of A. and B. The time for making and filing the award was by subsequent orders extended to the 18th May, 1888. The award was made on that

\* Suit No. 207 of 1886.