

1894.

PÁRVATI-
SHANKER
v.
ISHVARDÁS
JAGJIVANDÁS.

Banking and Trading Company Limited—Lallah Barroomul v. The Official Liquidator⁽¹⁾, we are not disposed to apply the section beyond what the language clearly requires; and, therefore, without deciding whether it would apply to an application for review, we do not think it was intended to apply to an application to set aside an *ex parte* order, which is not, strictly speaking, an application for a rehearing, although it may result in it. Moreover, the defendant is ordinarily in ignorance of the order having been made against him, and may remain so until it was attempted to be enforced against him.

In this view of section 169 of the Act we must reverse the order of the Court below and send back the case for a decision on the merits. Costs to abide the result.

Order reversed.

(1) I. L. R., 4 Calc., 706.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

1894;
February 15.

DWA'RKA'DÁS PARSHOTAMDÁS, DECREE-HOLDER, v. ISÁBHÁI DÁUD-KHA'N, SURETY, AND ABDUL TYAB DÁUDKHA'N, JUDGMENT-DEBTOR.*

Civil Procedure Code (Act XIV of 1882), Sec. 336—Judgment-debtor—Surety—Judgment-debtor's application to be declared an insolvent—Release of the surety.

A person standing surety for a judgment-debtor under section 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation when the judgment-debtor has applied to be declared an insolvent.

REFERENCE by Khán Bahádur Barzorji Edalji Modi, Judge of the Court of Small Causes at Surat, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Dwárkádás Parshotamdás obtained a decree in the Court of Small Causes at Surat against his debtor Abdul Tyab Daudkhán, and applied for execution by the arrest and imprisonment of the judgment-debtor. A warrant was issued, and the judgment-debtor was arrested and brought before the Court on the 25th August, 1893. He, thereupon, expressed his intention to apply, under Chapter XX of the Civil Procedure Code (Act XIV

* Civil Reference, No. 2 of 1894.

of 1882), to be declared an insolvent and to furnish security under section 336 of the Code. He was accordingly released from custody, and one Isábhái Dáudkhán stood surety for him. On the 30th September, 1893, he presented his application under section 344 of the Code to be declared an insolvent. After some postponements the application was finally adjourned for hearing on the 24th November, 1893, on which day he failed to appear, and his application was consequently rejected.

The proceedings under the application for execution being still pending, the warrant for the arrest of the judgment-debtor was re-issued on the 1st December, 1893, at the instance of the decree-holder. In the meantime,—that is, on the 29th November, 1893,—the decree-holder applied to the Court that the surety Isábhái Dáudkhán should be called upon to pay the amount of the security under his surety bond, namely, Rs. 147-14-5, or in default that the amount might be recovered from him and his property. On the 8th December, 1893, the surety appeared in person, and gave a written undertaking to produce the judgment-debtor whenever ordered. He was accordingly ordered to produce the judgment-debtor on the 11th idem. On that day the surety appeared with his pleader, and contended that he had been released from liability when the judgment-debtor made an application under section 344 of the Civil Procedure Code, and in support of his contention relied on *Koylash Ohandra v. C. Christophoridi*⁽¹⁾ and *Ramzan v. Gerard*⁽²⁾.

The Judge, therefore, submitted the following question :—

“ Whether the surety of a judgment-debtor arrested under a warrant in execution of a decree and released under section 336, Civil Procedure Code, on his furnishing the required security, is released from the liability merely on the judgment-debtor filing an application for insolvency ? ”

The opinion of the Judge was in the negative.

Krishnalál M. Javeri (*amicus curiæ*) for the decree-holder.

Markand N. Mehta (*amicus curiæ*) for the surety.

(1) I. L. R., 15 Calc., 171.

(2) I. L. R., 13 All., 100.

1894.

DWÁRKADÁS
PARSHO-
TOMDÁS
v.
ISÁBHAI
DÁ'UD-
KHÁN.

1894.

DWA'RKADA'S
PARSHO-
TAMDA'S
v.
ISA'BHA'I
DA'UD-
KHAN.

SARGENT, C. J.:—We agree with the decisions in *Koylasti Chandra v. C. Christophoridi*⁽¹⁾ and *Ramzan v. Gerard*⁽²⁾ that the person standing surety for the judgment-debtor under section 336 of the Civil Procedure Code, is released from his obligation when the judgment-debtor has applied to be declared an insolvent.

Order accordingly.

(1) I. L. R., 15 Calc., 171.

(2) I. L. R., 13 All., 100.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

1894.

February 17.

THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT,
v. MANILA'L UDENÁTH (ORIGINAL PLAINTIFF), RESPONDENT*.

Municipality—District Municipal Act (Bom. Act VI of 1873), Secs. 42, Cl. (1), 48 and 75†—Public street—Obstruction—Removal—Notice—Corporate bodies.

Under the District Municipal Act (Bom. Act VI of 1873), a Municipality has power to have all obstructions in a public street removed, whether the obstructions were placed

* Second Appeal, No. 479 of 1892.

† Sections 42 (clause 1), 48 and 75 of the District Municipal Act (Bom. Act VI of 1873):—

42. *Clause 1.*—The Municipality may by written notice require the owner or occupier of any house or building to remove or alter any projection, encroachment, or obstruction which, although erected before this Act comes into operation in the place, shall have been erected or placed against or in front of such house or building, if the same overhangs or juts into or in any way projects or encroaches upon any public street, so as to be an obstruction to the safe and convenient passage along such street, or if the same projects and encroaches into or upon any uncovered aqueduct, drain, or sewer in such street so as to obstruct or interfere with such aqueduct, drain, or sewer, or the proper working thereof: Provided always that if such projection, encroachment or obstruction shall have been lawfully made, the Municipality shall make reasonable compensation to every person who suffers damage by such removal or alteration; and if any dispute shall arise touching the amount of such compensation, the same shall be ascertained and determined in the manner hereinafter provided.

48. Whoever, after this Act comes into operation in any place, shall build any wall, or erect or set up any fence, rail, post, step, stall, or any erection or thing or other obstruction or encroachment in any public street, or shall deposit or cause to be placed or deposited any box, bale, package of merchandise, or any other thing in such street, or in or over or upon any open drain, gutter, sewer or aqueduct in such street, shall be liable to the penalty hereinafter provided; and the Municipality shall have