

1909.

BHIMA-
CHARYA
v.
RAMA-
CHARYA.

takes the property of the step-mother, where the latter leaves no progeny, husband, or the like". [Smriti Chandrika, Krishna-sawmy Iyer's Ed. 2nd, page 135, section 58.]

That the husband of a childless woman is entitled to inherit her *stridhan* before a son by another wife of his seems to us to follow as a necessary corollary to certain decisions of this Court. In *Kesserbai v. Valab Raoji*⁽¹⁾ it was held that a step-mother could not inherit her step-son's property under the term "mother" but that she could come in only as a *gotraja sapinda* on the authority of the decisions in *Lakshnibai v. Jayram Hari*⁽²⁾ and *Lallubhai v. Mankuvarbai*⁽³⁾. If a step-mother cannot come in as "mother" in the line of heirs to her step-son but can only come in as a *gotraja sapinda*, it follows, from the same reasoning, that the step-son cannot come in as "son" but can inherit only as a *gotraja sapinda* of his step-mother.

For these reasons the decree appealed from must be confirmed with costs.

Decree confirmed.

R. R.

(1) (1879) 4 Bom. 188 at p. 208. (2) (1869) 6 Bom. H. C. Rep. 152 (A. C. J.).

(3) (1876) 2 Bom. 388.

ORIGINAL CIVIL.

Before Mr. Justice Russell.

IN RE NAOROJI SORABJI TALATI *

1908.

July 22.

Indian Insolvency Act (11 and 12 Vict. c. 21), secs. 7, 26 and 36—Insolvent's property at Shanghai—Property of insolvents at Shanghai vests in Official Assignee of the Insolvent Debtor's Court at Bombay—Court can order insolvent at Shanghai to hand over property to Official Assignee in Bombay—Court can order commission to examine insolvent at Shanghai.

The firm of T. and Co. filed their petition in insolvency in Bombay on 29th April 1907 at which time one of the partners M. was at Shanghai. M. subsequently swore his petition at Shanghai on 16th October 1907.

On 16th March 1907 certain creditors of the firm obtained an order directing M. to appear before the Court of Insolvent Debtors at Bombay to be examined under section 33 of the Indian Insolvency Act.

* Nos. 197 and 200 of 1907.

A Rule *nisi* was obtained on behalf of M. calling upon the opposing creditors to show cause why the above order should not be set aside.

These creditors also obtained a Rule *nisi* calling on M. to show cause why he should not deliver up to the Official Assignee goods belonging to the Insolvent firm in his possession at Shanghai.

These two Rules were heard together.

Held, that the property of the insolvent debtors' firm in Shanghai vested in the Official Assignee of the Insolvent Debtor's Court at Bombay, and that Court could order M. to hand over such property to the Official Assignee in Bombay.

Held, further, that the Insolvent Debtor's Court at Bombay can order the examination of a witness at Shanghai, but cannot direct a witness to come to Bombay to be examined, there being no machinery for that purpose.

THE firm of Talati & Co. consisting of four partners on the 29th April 1907 filed their petition in insolvency in the High Court at Bombay. At the time the petition was filed one of the partners Maneckji Pestonji Talati was at Shanghai having gone there in October 1906 to look after the affairs of the firm. Accordingly he did not join in the petition. Subsequently Maneckji Pestonji Talati swore his petition at Shanghai on 16th October 1907, and that petition was presented to Russell, J., in the Insolvency Court at Bombay on 4th December 1907. Russell, J., took time to consider his judgment which he delivered on 11th December 1907 rejecting the petition on the ground that Maneckji Pestonji Talati was not within the jurisdiction of the Court⁽¹⁾.

Among the creditors of the insolvents was the firm of Abhechand Goculdas who had obtained a decree against the insolvents for Rs. 16,951 on the 8th April 1907.

These creditors on the 4th March 1908 applied for and obtained an order directing Maneckji under section 36 of the Indian Insolvency Act to personally appear before the Court on the 17th June 1908 in order that he might be then and there examined touching the estate and effects and dealings of the insolvents and to produce all the books of account, papers and documents in any way relating to the insolvents' dealings and transactions.

On the same day a Rule *nisi* was obtained by the opposing creditors calling upon Maneckji to show cause why he should

(1) (1907) 10 Bom. L. R. 84.

1908.

NAOROJI
SORABJI
TALATI,
In re.

1908.

NAOROJI
SORABJI
TALATI,
In re.

not forthwith deliver over to the Official Assignee for the benefit of the general body of creditors the goods of the value of fifteen lacs belonging to the insolvents' firm now in his possession or subject to his control or the sale-proceeds thereof.

On the 15th April 1908 a Rule *nisi* was applied for and obtained on behalf of the said Maneckji calling upon the opposing creditors to show cause why the order for examination should not be set aside.

Setalvad in support of the Rule *nisi*.

Under section 4 of the Insolvency Act the Court cannot summon before it a witness who resides at a distance of more than 200 miles. It is untrue that Maneckji is in possession of goods or money amounting to 15 lacs. All the goods that were at Shanghai when the firm failed were in the possession of the banks who had advanced money on their security.

R. Wadia for the opposing creditor.

In *In re-Cawasji Ookerji*⁽¹⁾ it was held that the Court had power to summon before it witnesses residing at longer distances than 200 miles.

Setalvad in reply.

In *In re Cawasji Ookerji* the insolvent had filed his schedule in Bombay and had been punished under sections 50 and 57.

RUSSELL, J.:—An important question arises on each of these rules which were argued before me on Wednesday last particularly having regard to the fact that it has been suggested that the proposed New Insolvency Act for Presidency Towns in India shall not be an Imperial Statute.

For if I am right in the conclusions I have arrived at it is highly desirable that the Insolvency Act for Presidency Towns should continue to be an Imperial Statute.

On the 4th March 1908, M. P. Talati was called on to show cause why he should not deliver to the Official Assignee of Bombay goods of the value of fifteen lacs, belonging to the insolvents' firm now in his possession, or the sale-proceeds thereof, under section 26 of the Indian Insolvency Act.

(1) (1888) 13 Bom. 114.

On the same day the same person was ordered to attend the Court for examination under section 36, and on 15th April 1908 he by his constituted attorney took out a rule calling on the opposing creditor to show cause why that order should not be set aside.

It appears that a firm comprising N. S. Talati, D. S. Talati and Hujarimal Multanchand filed their petition in this Court on the 29th April 1907 and on that day the usual vesting order was made. M. P. Talati was a partner in that firm and left Bombay for Shanghai in October 1906. Since then he has been carrying on the firm's business at Shanghai. M. P. Talati presented a petition to this Court to be declared insolvent, but it was held that this Court had no jurisdiction to entertain it: see *Re Hanekji Pestonji Talati*⁽¹⁾.

From the power of attorney put in at the argument before me it appears that M. P. Talati is a British subject and it is stated on the opposing creditor's affidavit and not denied that there is at Shanghai "a British Consulate (*sic*—evidently intended for 'Consular.') Court" which has jurisdiction in insolvency and jurisdiction over M. P. Talati. It also appears on the rule and order of the 4th March that they were served on M. P. Talati through "H. B. M.'s Supreme Court for China and Korea at Shanghai."

The first question I propose to discuss is whether this Court can order M. P. Talati to deliver over the goods of the firm to the Official Assignee of Bombay. I deal hereafter with the question whether he has any of such goods in his possession in fact.

The Act for Relief of Insolvent Debtors in India is an Imperial Statute, and it must be borne in mind that "the jurisdiction of such Bombay Court" (and for this purpose an Insolvency Court stands on the same footing) is partly local and partly imperial, "the imperial nature of the jurisdiction consists in this, that the powers of the bankruptcy courts to discharge debtors from their debts extend to all debts wherever contracted; that is to say, the discharge of a debtor by a court exercising bankruptcy jurisdiction in England will discharge a debt contracted by the

(1) (1907) 10 Bom. L. R. 84.

1908.

NAOROJI
SORABJI
TALATI,
In re.

1908.

NAOROJI
FORAJI
TALATI,
In re.

debtor in one of the colonies or colonial States or in India, and the provisions as to the vesting of property in the officer appointed to collect and distribute it extend all over the Empire, so that, when a man is made bankrupt by a bankruptcy court in England, property which he has in the colonies or colonial States or in India will become distributable by the English Trustee in the bankruptcy, who can enforce his title to it." Vol. II, Laws of England by Lord Halsbury, title: Bankruptcy and Insolvency, p. 6 and cases there referred to.

By section 7 of the Indian Insolvency Act all the property of the insolvent, whether within the limits of the Charter of the East India Company or without vests in the Official Assignee.

Section 26 of the Indian Insolvency Act would appear to be supplemental to section 7, for it would be certainly anomalous for one section to vest all the insolvent's property wherever situate in the Official Assignee and the Act not to contain a section empowering the Official Assignee to get hold of such property.

Now in *In re Ganeshdas Panalal*⁽¹⁾, it was held that the Court for the Relief of Insolvent Debtors sitting in Bombay had jurisdiction to make an order under section 26 of the Indian Insolvency Act against a person residing outside the Bombay Presidency. The order asked for there was against a person residing at Amritsar. It will be observed that the Court expressly confined itself to the question before it, i. e., whether the property was situate in British India. But it is generally clear that Mr. Inverarity who argued the case for the successful appellants also put the case on the higher ground that the Insolvent Court would make an order as to the property of the insolvent wherever situate within the *British Dominions*. His argument was:

Coming to section 26 of the Act it will appear that its wording is very general. It says, "that in case *any* person shall, after any such insolvent shall have petitioned for his discharge... be possessed of or have under his power or control any property whatsoever of such insolvent ... it shall be lawful for the said Court further to order such person to deliver over such property... to the Assignee, etc." The section thus says 'any person,' and not 'a person residing within the limits of the town and island of Bombay.' Where an Act of Parliament is in general terms it applies to all countries in the British Dominion where the Imperial Parliament could legislate. See

(1) (1908) 32 Bom. 198 : 10 Bom. L. R. 77.

Callender Sykes & Co. v. Colonial Secretary of Lagos and Davies, where it is said (1891, A. C., p. 436).—‘If a consideration of the scope and object of statute leads to the conclusion that the legislature intended to affect a colony,* and the words used are calculated to have that effect, they should be so construed.’ And further at p. 467: ‘It is a much more reasonable conclusion that the framers of the Act considered that in using general terms they were applying their law wherever the Imperial Parliament had power to apply it: and their Lordships hold that there is no good reason why the literal construction of the words should be cut down so as to make them inapplicable to a colony.’⁽¹⁾

The Court of Appeal did not express any disagreement with this argument. From this I take it that in this respect the effect of the Indian Insolvency Act is the same as the Bankruptcy Acts in England, Scotland and Ireland under which it is clear that the moveables of the Bankrupt, whether in England or elsewhere, become vested in the trustee or the representative of the creditors. In Story on the Conflict of Laws, pp. 333 and 443 (1893), I say—“moveables” advisably as they are all that I am concerned with in this case. In my opinion therefore the property of the insolvents’ firm in Shanghai vested in the Official Assignee of the Insolvent Debtors Court in Bombay.

The question then arises can this Court order M. P. Talati to hand over such property to the Official Assignee in Bombay. In my opinion it can, for section 118 of the English Bankruptcy Act is a reproduction of section 71 of the Bankruptcy Act, 1869, and the Judicial Committee have held that that applies throughout the British Dominions. See *Callender Sykes & Co. v. Colonial Secretary of Lagos and Davies*⁽²⁾.

M. P. Talati is a British subject, he is subject to the Insolvent Jurisdiction of the Consular Court at Shanghai and therefore in my opinion that Court can order him if requested so to do by the Insolvent Court of Bombay to produce all the moveable property, books, papers and documents of the insolvents’ firm that may be in his possession.

In England such an order would be of course—see *In re Levy's Trusts*⁽³⁾—subject to the law applicable in Shanghai; *Ex parte Rogers*⁽⁴⁾.

(1) (1808) 10 Bom. L. R. 77 at p. 79.

(3) (1885) 30 Ch. D. 119 at p. 124.

(2) [1891] A. C. 460.

(4) (1881) 16 Ch. D. 665 at p. 666.

1908.

NAOROJI
SOMBHJI
TALATI,
In re.

1908.

NAOROJI
SORABJI
TALATI,
In re.

Although on the affidavits before me it is not possible for me to hold that he has got in his possession property of the value of fifteen lacs of rupees, still from the fact of his having presented his petition in insolvency in this Court, it is impossible to suppose that he has in his possession none of the moveables, account books, etc., of the firm in which he was a partner. I allowed the rule to be amended in this respect.

The opposing creditor must therefore make an application for such a request to be sent to H. B. M.'s Supreme Court at Shanghai the terms of which must be submitted to me.

Now as to the order for the examination of the said M. P. Talati I am of opinion that the order can and should be made. "Every British Court with jurisdiction in bankruptcy or insolvency, is bound to act in aid of and be auxiliary to each other in bankruptcy matters; and an order of the Court seeking aid, with a request to the Court whose aid is sought, will be sufficient authority to the latter Court to enable it to exercise in regard to the matter of the request all the jurisdiction which either of the two Courts in question could exercise in regard to similar matters." Vol. II, Laws of England, Bankruptcy and Insolvency, p. 319, citing s. 118 of Bankruptcy Act, 1883, and *Callender Sykes & Co. v. Colonial Secretary of Lagos and Davies*⁽¹⁾.

I see nothing to prevent a commission being issued by this Court for the examination of M. P. Talati and H. B. M.'s Supreme Court at Shanghai making the necessary order for his examination thereunder at the request of this Court. Of course I cannot direct M. P. Talati to come to Bombay to be examined, there being no machinery for that purpose. This request to H. B. M.'s Court at Shanghai will also be submitted to me.

The costs of and incidental to the order and rules will be reserved to be dealt with by the judge who hears the case eventually.

Attorneys for M. P. Talati: *Messrs. Azdeshir, Hormusji, Dinshaw & Co.*

Attorneys for Abechand: *Mr. M. B. Chothia.*

B. N. L.

(1) [1891] A. C. 463.