1913.

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relates to execution of decrees, and provides that no proceeding in execution of any decree against the Government ward or his property shall be *instituted or continued* until the decree-holder files a certificate from the Court of Wards that the decree claim has been duly submitted. That apparently is the only provision which the Legislature has thought necessary to make for the protection of the estate of a Government ward where a decree has been passed in a suit instituted before the assumption of superintendence by the Court of Wards. For the above reasons, we set aside the order of the District Judge dismissing the darkhast with costs. The respondents must pay the costs, if any, of the hearing in the lower Court and the costs of this appeal.

Order set aside.

G. B. R.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1912. *December* 4.

IN RE SUBRATI JAN MAHOMED, AN INSOLVENT.*

Presidency Towns Insolvency Act (III of 1909), sections 15 (2) and 21 (1)—Adjudication, annulment of, when Court has jurisdiction to pass order for—Debts, necessity that all debts of the insolvent actually and properly proved in the bankruptcy should have been fully paid in cash—Conduct of insolvent applying for annulment of an adjudication order, duty of Court to scrutinize—Discretion of Court, how exercised.

A debtor who has been adjudicated insolvent on his own petition cannot, even with the leave of the Court, withdraw his petition. Section 15 (2) of the Presidency Towns Insolvency Act only applies to petitions that are pending before any order has been made, as also does section 13 (8) dealing with petitions by creditors. Once an order of adjudication has been made the debtor becomes an insolvent and remains so until the order of adjudication is annulled or he obtains his discharge. The Court can only annul the order of

* Insolvency Suit No. 338 of 1912.

adjudication under section 21 of the Act if the Court is of opinion that the debtor ought not to have been adjudicated insolvent or it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full and in the latter case the "debts" including at least all debts actually and properly proved in bankruptcy must have been fully paid in cash.

It is the duty of the Court to scrutinize the conduct of an insolvent applying for an order of annulment. The Court is given a discretion by section 21 and it would not be a good exercise of that discretion to make an order of annulment of an adjudication where, if the insolvent were applying for his discharge, an order of discharge would not be granted.

In re Keet[1], applied.

THE applicant was adjudicated an insolvent on the 26th June 1912. He had only three creditors, two of whom were secured by mortgage of the applicant's immoveable property. The third one was unsecured; but he accepted a sum of Rs. 500 from a relative of the applicant in full settlement of his claims. The secured creditors had no objection to the "insolvent withdrawing his petition" and consented "to his estate re-vesting in him..... our respective mortgages being still unpaid and in any way unaffected by such withdrawal of the petition."

The applicant applied to withdraw his petition for insolvency and schedule.

H. U. Patel, for the applicant, relied on section 15 (2) of the Presidency Towns Insolvency Act.

The Official Assignee objected on the ground that the course adopted was unusual. The insolvent was bound to submit a scheme for composition as required by the Act.

MACLEOD, J. :—This is an application on behalf of an adjudicated insolvent that he should be allowed to withdraw his petition on the ground that he has settled with his creditors.

Counsel referred to section 15, sub-section (2) of the Presidency Towns Insolvency Act (III of 1909) but that sub-section as well as sub-section (8) of section 13 only

(1) [1905] 2 K. B. 666 at p. 677.

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apply to petitions which are pending before any order has been made.

Once an order of adjudication has been made, the debtor who presents his own petition, or the respondent in the case of a creditor's petition, becomes an insolvent, and remains so until the order of adjudication is annulled or he obtains his discharge.

The Court has no jurisdiction to annul the order of adjudication except in the manner provided for by the Act. Under section 21 (1) the order can be annulled if the Court is of opinion that the debtor ought not to have been adjudged insolvent, or if it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full.

This clause is the same as section 35 (1) of the English Bankruptcy Act of 1883. In *In re Keet*[1] it was held that to satisfy that section the "debts" including at least all debts which have been actually and properly proved in bankruptcy must have been fully paid in cash.

Under section 22 the order may be annulled if insolvency proceedings are pending in any other British Court.

Under section 30 the order shall be annulled if the Court approves of a proposal for a composition or for a scheme of arrangement.

Under the Indian Insolvency Act a practice had been established in this Court of allowing an insolvent to apply for leave to withdraw his petition on serving notices on all his creditors in the Schedule, and if no creditor appeared to oppose the application, leave was granted as a matter of course.

The Court did not concern itself with the conduct of the insolvent or the manner in which he had settled the claims of his creditors.

[1] [1905] 2 K. B. 666 at p. 677.

It is now the duty of the Court to scrutinize the conduct of every insolvent who applies either for an order of discharge or for the annulment of the adjudication order. Under section 21 the Court has a discretion to make an order of annulment, and when the ground on which the application is made is the payment of the debts in full, it is entitled not only to be satisfied that as a matter of fact the debts have been fully paid in cash but also to take into consideration the antecedent conduct of the debtor, since it would not be a good exercise of that discretion to make an order of annulment where, if the insolvent were applying for his discharge, an order of discharge would not be granted: see per Stirling, L. J., in *In re Keet*[1]. When a proposal is made by an insolvent for a composition or a scheme of arrangement, provision has been made by sections 28 and 29 that the proposal should be placed before the creditors in the prescribed manner, whereby the statutory majority of creditors can bind the minority, and all creditors receive equal treatment, thus preventing one or more creditors from refusing to accept the debtor's proposal except on preferential terms.

Moreover before the Court approves of the proposal it is bound to consider the conduct of the insolvent.

This application must be refused. That it ever was made seems to be due to a failure to comprehend the change introduced by the Insolvency Act of 1909.

Attorney for the applicant: *Mr. G. H. Dalal.*

Application refused.

H. S. C.

[1] [1905] 2 K. B. 666 at p. 677.