

In Re: Joseph Perry

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Court : Kolkata

Decided On : Apr-30-1919

Reported in : (1919)ILR46Cal996,54Ind.Cas.478

Judge : Rankin, J.

Appellant : In Re: Joseph Perry

Judgement :

Rankin J.

1. In this case the learned Counsel for the accused has taken objection to the admissibility in evidence of the deposition reduced into writing taken under Section 36 of the Presidency Towns Insolvency Act. That is a deposition made by the accused himself, the insolvent in the case, and it is tendered against him in this enquiry on the principle that what a man says himself may be put in evidence against him as an admission. Objection has been taken to that, and if I may say so, very properly taken from the point of view of counsel for the accused, that, whereas by statute the public examination of a debtor is, under certain precautions, expressly said to be capable of being used in evidence against him, there is no such careful provision in Section 36 and that on principle the deposition taken under Section 36 ought not to be allowed.

2. Now what is the objection to allowing anything that the accused may have said to be put in evidence against him? The first objection that I can see is that it may

be said that the deposition was not voluntary but was one that the accused was compelled and obliged to make by the order of the Bankruptcy Court. The authorities which I shall refer to in a moment show that in the case of judicial proceedings taken before the Court that is not an objection. The case of a judicial proceeding taken before the Court is one in which the principle of voluntariness does not really apply at all. All that voluntariness for this purpose really means is that it shall not be under threat or under promise of reward, and when it is a judicial proceeding these considerations do not apply.

3. The next principle on which it can be objected to is this, that it is a maxim of the law of England and I hope and believe of the law of India, that nobody shall be obliged to incriminate himself, and that is certainly a very valuable maxim. The only thing that it is necessary to say about it is that both in England and in India it is just one of the penalties or disabilities of becoming a bankrupt that that principle does not apply. A bankrupt, under Section 36, cannot refuse to answer a question on the ground that he may incriminate himself. Any witness other than the insolvent may refuse to answer a question upon that ground, if that ground is really applicable. These really are the objections in principle.

4. From the point of view of authority the position is this. The English equivalent of the last sub-section of Section 27 of our Act lays it down that the notes of public examination shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to inspection of any creditor for a reasonable time. It was expressly held in the case of *Reg. v. Erdheim* [1896] 2 Q.B. 260 that that method of proving the answers in public examination is not the only method. It is the best method to produce the notes signed by the debtor himself; but it was one of the matters decided in the case of *Reg. v. Erdheim* [1896] 2 Q.B. 260 by a Court, which is of great authority, that even when that has not been done, and the notes are taken but not signed by the debtor, if the person who took the notes gives his evidence, that is quite allowable; in other words, that while the statute points to one way of putting notes in evidence it does not say that that is to be the only way. That being so, the ground of the distinction between public examination and private examination for this purpose has not got very much in it. I find that there is an express authority, namely, the

case of Reg. v. Widdop (1872) L.R. 2 C.C.R. 3 where the principle of Reg. v. Scott (1856) 25 L.J (M.C.) 128 ; Dears & B.Cr.C. 47. Reg. v. Skeen (1859) 28 L.J. (M.C.) 97 ; Bell Cr.C. 97 and Reg. v. Robinson (1867) L.R. 1 C.C.R. 80 was applied to a private examination. Reg. v. Widdop (1872) L.R. 2 C.C.R. 3 was a case where a man had been made bankrupt under the English Bankruptcy Act of 1869, and the question that arose there was a question as to the admissibility in evidence against him of the depositions taken under Sections 96 and 97 of the English Act of 1869. Sections 96 and 97 of that Act are the precise lineal ancestor of our Section 36; they are the private examination sections and not the public examination section. There can be no doubt therefore that there is authority, and the best authority, for holding that there is no difference for this purpose between a public examination and a private examination of the debtor. I base my decision both upon that authority and also upon this, that the particular method of putting in evidence, which is contemplated by Sub-section (6) of Section 27, is not the only method, and the moment this is found, there is really very little difference between them. The general principle of law remains. It is the general principle of law which is found stated, and correctly stated, in the case of Ex parte Hall, In re Cooper (1882) 19 Ch.D. 580, 583, by Jessel, M.R. the principle, though subject to exceptions, but after all the main principle that 'Any statement made by a man on oath may be used against him as an admission.' The only principle on which in this case an exception can really be founded, is the principle that a man is not to incriminate himself. That is a principle which is not open to an insolvent who, once he has been adjudicated, is bound, because he has been adjudicated, to give information touching his conduct, dealings and affairs, even though he incriminates himself thereby.

5. Under these circumstances, I shall not rule out the evidence that it is proposed to tender, and I overrule the objection.

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