

In Re: De Momet

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Court : Kolkata

Decided On : Jun-25-1894

Reported in : (1894)ILR21Cal1018

Judge : Sale, J.

Appellant : In Re: De Momet

Judgement :

Sale, J.

1. In this case I think I ought to follow the course adopted in the case of In re King, who was described as ' carrying on the trade and business of an indigo factory proprietor and dealer in indigo, lately residing at No. 3, Chowringhee Lane, in the town of Calcutta, but now residing at No. 21, Lindsay Street, in Calcutta, a European British subject.' In that matter the insolvent obtained his personal discharge, and in due course applied under Section 60 of the Indian Insolvent Act, first, for an order nisi, and, then, for an order absolute, for his final discharge. There being no opposition, the discharge was granted. The question whether he had properly described himself as a trader was not raised nor considered in that ease. What constitutes a trader depends upon the definition given to that term in Section 65, of the Statute 12 and 13 Victoria, cap. 106, which is rendered applicable to this country by Section 9 of the Indian Insolvent Act. In the enumeration of traders given in Section 65 of that Act are 'persons using the trade

of merchandize * * * * or who seek their living by buying and selling, * " * * or by the workmanship of goods or commodities.' Now it was contended that following the profession of the proprietor of an indigo factory constitutes a person a trader within the words 'persons using the trade of merchandise, or who seek their living by the workmanship of goods or commodities. '; It is said that the proprietor of an indigo factory in the ordinary course ;of his business produces a commodity-namely, indigo-for the purpose of selling it as such, and that he uses the trade of merchandise inasmuch as in the ordinary course of his trade or business he purchases the indigo plant, and then by the ordinary process well known in the indigo industry produces the commodity, indigo, by the sale of which he obtains a profit in his business. It is clear from some of the authorities which have been cited that a manufacturer who purchases the raw material, and then, by a process applied to such raw material, produces a finished article, is a trader; and I think that the cases cited show clearly that a person who merely produces an article from the soil, as for instance the owner of a stone quarry, is not a trader within the words of the section, because there is not that buying and selling necessary to constitute him a trader; and also because the article which he produces and sells is not produced by 'the workmanship of goods or commodities' as contemplated by the Act. I think therefore that the case of persons who deal in the natural products of the soil is distinguishable from the present case. It was also said that if the proprietor of an indigo factory be deemed to be a trader within the meaning of the section, so also must the proprietor of a tea garden, whose business it is to manufacture and sell tea. I am not required to decide whether the proprietors of tea estates do or do not come within the class of traders. When the case arises it is quite possible that it may be held that the produce of a tea garden-dried tea leaves-fulfil the description of articles produced 'by the workmanship of goods or commodities' within the meaning of 12 and 13 Victoria, cap. 106, Section 65, and that therefore such persons would be traders within the meaning of that Act. But whether or not dried tea leaves may or may not be deemed to be the production of 'the workmanship of goods or commodities,' the article indigo certainly is.

2. I think, therefore, I ought to hold that the insolvent, at the time he incurred the debt, the subject matter of this insolvency, was a trader within the meaning of Section 60 of the Indian Insolvent Act. And I think also that it makes no difference

that the business was conducted in the name not of the insolvent but of his partner Mr. Legge. The debt was a trade debt and the mere fact that it was due to the partner makes no difference. The insolvent will therefore obtain a certificate in the usual form. The costs of the insolvent and of the opposing creditor will be paid out of the estate.

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