

In Re: A.A. Hailes

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Court : Kolkata

Decided On : Apr-06-1920

Reported in : 60Ind.Cas.943

Judge : Rankin, J.

Appellant : In Re: A.A. Hailes

Judgement :

Rankin, J.

1. In this case I think that, as it is admitted that the creditor who appears as respondent to dispute the right of the insolvent to have an annulment of adjudication under Section 21 is a creditor upon a judgment which carries interest at 6 per cent. the insolvent has not brought himself within the large of Section 21 unless he satisfies me that he has paid to the creditor, being a creditor in respect of a debt which was proved such sum as would have been a complete discharge to him in respect of that debt, had there been no bankruptcy that Under Section 21 the position is, that an insolvent is entitled to claim a right which the section gives him, if it is proved to the satisfaction of the Court, that the debts of the insolvent are paid in full It is true that the right is not an absolute right because the insolvent may have mis-conducted himself to such an extent that even then the Court may have discretion to refuse it. Apart from any such consideration. As that, a person who can say how debts are paid in full ought no longer to be subject to the control

and his estate ought no longer to be subject to the administration of the Court. But such a person coming to the Court in the middle of a pending bankruptcy and asking the Court to determine his bankruptcy must show, independently of any rights given to him by the Bankruptcy Act, that he has paid off his creditors as one man pays another apart from the Bankruptcy Court altogether. He is asking the Court to bring the bankruptcy to a sudden stop because it is no longer necessary. In my opinion, the only person who is in that position is the person who has made such a payment as could be pleaded between two ordinary parties as amounting to a complete discharge of the debt. In this case there is a judgment-creditor who has an interest carrying judgment if there had been no insolvency, it is perfectly clear that the payments made would only have been payments on account, and would not have discharged the liability under the judgment, That being so, it does not seem to me that this insolvent has brought himself within the terms of Section 21. The matter may be illustrated in this way. For this purpose I know nothing and require to know nothing about the state of the assets in the bankruptcy. There may be a surplus--there might be a very large surplus--capable of being handed over to the insolvent. If there were, that would not be a good reason for refusing to him an annulment of the bankruptcy if, in other circumstances, he would have been entitled to it, yet in such case it is quite clear that if the bankruptcy goes on, the creditor would get not only interest upto the date of receiving order but interest upto the date of payment and he might even get interest at one of the higher postponed rates right up to the date of payment. That right could be defeated if, by merely paying interest upto adjudication, an insolvent were entitled, to have the bankruptcy set aside. That seems to me to be contrary to the principle and intention of the Insolvency Act. I think that, for the present purpose, the man who is claiming to set aside the adjudication altogether, must be taken just as if the onus was on him to show that, independently of the insolvency, he had cleared off this debt and satisfied the creditor in question in full. I do not think I need consider whether 'debts' includes debts other than those which have been proved or whether interest due upon them comes within this section. I am dealing here solely with debts in respect of which proofs have been lodged and admitted. With respect to such debts I think Section 21 involves that complete payment discharging the debt has been made. For these reasons, I do not think that this applicant has

brought himself under the section.

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