

Present: Lascelles C.J. and Ennis J.

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55—D. C. (Inty.) Kandy, 1,579.

*Indian cooly—Protection from arrest for debt—Ordinance No. 9 of 1909, s. 19—Insolvent—Certificate in form R withdrawing protection from arrest.*

The protection from arrest for debt under section 19 of the Indian Coolies Ordinance, No. 9 of 1909, extends to an Indian cooly from whom protection from arrest has been withdrawn under the Insolvency Ordinance.

THE facts appear sufficiently from the judgment.

*Bawa, K.C.*, for the insolvent, appellant.—The appellant is an Indian cooly, and is therefore not liable to be arrested for debt by virtue of the provisions of section 19 of Ordinance No. 9 of 1909. In cases of arrest for debt, it is the provisions of the Civil Procedure Code which apply, and not the Insolvency Ordinance. It was held by the Full Court in *Salgado v. Peiris*<sup>1</sup> that the provisions of the Civil Procedure Code applied as to appeals in insolvency cases.

In *In re Pieris*<sup>2</sup> an insolvent who was returning from Court after acquittal on a criminal charge was held to be not liable to be arrested under a warrant issued under section 152 of the Insolvency Ordinance.

It was held that the provisions of section 834 of the Civil Procedure Code applied to such cases. The object of enacting section 19 of Ordinance No. 9 of 1909 is to exempt agricultural labourers from arrest (see statement of object and reasons in *Tambyah's Planters' Manual* 131). The object would be defeated if the labourer were liable to be arrested under the Insolvency Ordinance.

Counsel also cited 33 L. J. C. P. 109, *Maxwell* 244.

*Wadsworth*, for the petitioner, respondent.—The certificate in form R is issued when the Court is satisfied that the insolvent has committed offences referred to in section 151 of the Ordinance. The arrest under the Insolvency Ordinance is in the nature of a punishment. Section 154 makes special provision for imprisonment for one year. Arrests under the Insolvency Ordinance have nothing to do with the Civil Procedure Code. The two Ordinances are independent of each other. Counsel referred *In re W. H. de Vos*.<sup>3</sup>

*Cur. adv. vult.*

<sup>1</sup> (1909) 12 N. L. R. 379.

<sup>2</sup> (1900) 1 Br. 1.

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This appeal raises the question whether an uncertificated insolvent, who is an estate kangani, is protected from arrest for debt by section 19 of the Indian Coolies Ordinance, No. 9 of 1909. The section runs as follows:—

“ From and after the commencement of this Ordinance no kangani, subordinate kangani, or labourer shall be liable to arrest under the provisions of the Civil Procedure Code, 1889, or in execution of a decree for money.”

The learned District Judge has held that the insolvent was arrested under section 152 of the Insolvency Ordinance, and not under the Civil Procedure Code, and that he is therefore not protected by the above-mentioned section.

The only decided case which appears to have any bearing on the question is *In re W. H. de Vos*,<sup>1</sup> which is directly in point, and a strong authority in favour of the appellant.

The insolvent in that case was in the same situation as the insolvent here. A certificate of conformity had been refused. A creditor had obtained a certificate under section 152 of the Insolvency Ordinance and taken out execution against the insolvent's person. The insolvent's case was that he had been arrested in contravention of section 366 of the Civil Procedure Code. It was contended by the creditor that the arrest was not under the Civil Procedure Code, but under section 35 of the Insolvency Ordinance, and that section 366 of the Code did not apply. Bonser C.J., in dealing with this contention, said: “ In my opinion the District Judge rightly repelled the contention and held that this was not such an arrest under warrant of Court as is referred to in that section, but was an arrest under an ordinary writ of execution against the body of the insolvent, which must be executed in the way provided for by the Civil Procedure Code for such arrests.”

If this authority had been cited to the learned District Judge, his decision would probably have been different, for if the arrest in the present case be regarded as an arrest under an ordinary writ of execution, it is an arrest under the Civil Procedure Code, and the insolvent is exempt from arrest.

An examination of the sections of the Insolvency Ordinance relating to the arrest and imprisonment of insolvents shows beyond any doubt that the sanction for arrest and imprisonment is to be found, not in the Insolvency Ordinance, but in the law for the time being in force with regard to the execution of judgments against the person. Section 36, for example, protects insolvents from arrest in coming to surrender, and after their surrender until their examination is over. What is the arrest here referred to? It is clearly

<sup>1</sup> 2 Br. 357.

not arrest under the authority of the Insolvency Ordinance. It is arrest under ordinary civil process under the authority of the law, whatever it may be, relating to the execution of judgments. The Ordinance enables the Court to protect the insolvent either temporarily or permanently against execution by imprisonment, to which the insolvent, but for such protection, would be liable under the law, which corresponded to the execution sections of the Civil Procedure Code.

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When the Court has finally refused further protection, section 152 comes into play. The assignee and the creditor are relegated to their ordinary civil remedy, and may enforce a " writ of execution " against the body of the insolvent. The expression " writ of execution " connotes execution by ordinary civil process.

An insolvent cannot, therefore, with any propriety be said to be arrested or imprisoned under the Insolvency Ordinance; the arrest and imprisonment of all debtors under civil process are now under the authority of the Civil Procedure Code. All essential matters with regard to the imprisonment of insolvents, such as the issue of warrants of arrest, the conditions under which the warrant may be executed, and the subsistence of the person, are regulated by the Civil Procedure Code.

The Insolvency Ordinance provides for the protection of the insolvent in certain cases from execution against the person; it contains certain provisions which are not consistent with our present Code of Civil Procedure, so that the provisions of the Code with reference to the imprisonment of insolvents must be read with the necessary modifications. But when we come to the question whether the imprisonment is under the authority of the Insolvency Ordinance or under the authority of the Civil Procedure Code, it is clear to me that it is under the authority of the latter enactment.

For the above reasons I would set aside the order of the learned District Judge and order the insolvent to be discharged from custody.

The respondent must pay the costs of the appeal and of the motion in the Court below.

ENNIS J.—

In this case the appellant, an insolvent debtor, had been arrested on a warrant issued under section 152 of Ordinance No. 7 of 1850, after a certificate in form R withdrawing protection from arrest in execution had been issued. He pleaded that he was an Indian cooly exempt from arrest in execution of a decree for money by virtue of Ordinance No. 9 of 1909. That Ordinance introduced a new section 19 into Ordinance No. 13 of 1899, which runs: " No kangani, subordinate kangani, or labourer shall be liable to arrest under the provisions of the Civil Procedure Code, 1899, in execution of a decree

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for money." The learned District Judge held that this section only dealt with arrests under the Civil Procedure Code, and had nothing to do with arrests under section 152 of the Insolvency Ordinance, and he refused to release the insolvent. The appeal is from this order.

The question to be decided is whether the exemption from arrest provided for by section 19 of Ordinance No. 19 of 1899 is affected by the Insolvency Ordinance. In *De Vos's case*,<sup>1</sup> where the house of the insolvent was broken into to effect an arrest, which was contrary to the provisions of section 366 of the Civil Procedure Code, but in accordance with section 35 of the Insolvency Ordinance, it was held that the arrest was not under a warrant of Court as referred to in section 35 of the Insolvency Ordinance, but was an arrest under an ordinary writ of execution against the body of the insolvent, which must be executed in the way provided for by the Civil Procedure Code for such arrests.

Section 4 of the Civil Procedure Code provided that nothing in the Code should affect or modify any special rules of procedure under any Ordinance then in force, save so far as they were expressly repealed or modified by the Code. The special procedure relating to arrests in the Insolvency Ordinance is the exemption of all insolvent debtors from arrest in execution until the protection is withdrawn by the issue of a certificate in form R, and there is the procedure under section 152 by which the warrant may be issued by the Secretary of the Court on production to him of the certificate in form R.

The warrant would be an ordinary warrant of arrest in execution of a decree for money, for it is against this that the Insolvency Ordinance gives protection and provides for the withdrawal of the protection in certain cases. It would be enforceable under the Civil Procedure Code in all respects in which the Insolvency Ordinance does not provide a special procedure to the contrary. The Civil Procedure Code contains several sections providing for exemptions from arrest, and in *Pieris's case*<sup>2</sup> the Supreme Court held that a person exempt from arrest under section 834 could not be re-tried in the circumstances provided by that section, on a warrant of arrest in execution issued by a Court exercising jurisdiction in insolvency.

For these reasons it seems to me that the exemption from arrest now found in section 19 of Ordinance No. 13 of 1899 is not affected by the Insolvency Ordinance.

I would set aside the order appealed from and release the appellant.

*Set aside.*

<sup>1</sup> 2 Br. 357.

<sup>2</sup> (1900) 1 Br. 1.