

C. A.

1880

Dec. 9.

*Ex parte* BREULL. *In re* BOWIE.

*Debtor's Summons—Jurisdiction of Court—Residence of and carrying on of Business by Debtor—Bankruptcy Rules, 1870, r. 17.*

*Held*, that a debtor, who was employed as a clerk in a bank, the office of which was within the district of the *London* Bankruptcy Court, was, within the meaning of rule 17 of the Bankruptcy Rules, 1870, "carrying on business" within the district of that Court, and that consequently that Court had jurisdiction to grant a debtor's summons against him.

The debtor's private residence was in one of the suburbs, outside the district of the *London* Court:—

*Held*, by *James*, L.J., that he was also, within the meaning of rule 17, "residing" within the district of the *London* Court.

THIS was an appeal from a decision of Mr. Registrar *Murray*, acting as Chief Judge in Bankruptcy.

On the 13th of July, 1880, *S. Breull* served a debtor's summons, issued out of the *London* Bankruptcy Court, upon *J. H. Bowie*. The debt claimed had been contracted in the city of *London*.

*Bowie* was a clerk in the employment of a bank, the office of which was in the City. He lived with his mother at *Beckenham*, outside the district of the *London* Court, going from there every morning to the bank to discharge the duties of his employment, and returning home in the afternoon. The summons was served on him at the office of the bank, which was stated in the summons as his address.

The Registrar dismissed the summons for irregularity, on the ground that at the date of its issue the debtor did not reside within the district or jurisdiction of the *London* Court.

The summoning creditor appealed.

*Winslow*, Q.C., and *Bigham*, for the Appellant:—

The debtor is fairly described, within the meaning of rule 17 of the Bankruptcy Rules, 1870 (1), as residing where he carries on his daily avocation.

(1) Rule 17: "A debtor's summons . . . may be granted by the *London* Bankruptcy Court if the debtor resides or carries on business within the district of that Court; and when the debtor

neither resides nor carries on business within the district of that Court, it may be granted by the Court within the district of which the debtor resides or carries on business."

[JAMES, L.J., referred to *In re Williams* (1).]

A man's residence is the place where he is most likely to be found: *Common Law Procedure Act*, 1852, s. 6; *Ablett v. Basham* (2); *Bills of Sale Act*, 1854, s. 1; *Blackwell v. England* (3).

Regard must be had to the object of the rule. A debtor's summons must be served within business hours. All the Bankruptcy Courts are branches of one Court: *Bankruptcy Act*, 1869, s. 80, sub-s. 6; and the object of the rule is merely to determine which branch is to have jurisdiction: *Ex parte Pascal* (4). The object of the rule would be defeated if a debtor was to be taken to the Court of a district different from that in which his debt was contracted, and to which he comes every day to carry on the business of his life.

Moreover, the debtor in the present case may be fairly said to "carry on business" in the city of *London*. "Business" does not necessarily mean buying and selling, or the business of a principal.

[JAMES, L.J.:—I suppose the manager of a joint stock company carries on business.

LUSH, L.J.:—The rule does not say "his business."]

*McIntyre*, Q.C., and *G. A. Vennell*, for the debtor:—

The debtor neither resides nor carries on business within the district of the *London* Court. He clearly resides in the suburb where he lives.

[JAMES, L.J.:—A man may have several residences.]

*Blackwell v. England* was a case under sect. 1 of the *Bills of Sale Act*, 1854, which required that the affidavit filed with the bill of sale should describe the "residence and occupation" of the grantee; it said nothing about the place where he carries on business.

[LUSH, L.J.:—The object there was to identify the man, so that inquiries might be made about him.

(1) Law Rep. 8 Ch. 690.

(2) 5 E. & B. 1019.

(3) 8 E. & B. 541.

(4) 1 Ch. D. 509.

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C. A. COTTON, L.J.:—Rule 17 seems to assume that carrying on business is not the same thing as residence.]

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Under the *Bills of Sale Act* there was no question about jurisdiction; the question was as to identification. In *Maybury v. Mudie* (1) it was held that in an affidavit verifying a plea in abatement for non-joinder of a co-contractor, it was not sufficient to state the place of business of the co-contractor. If a man is moving about continually it may well be that his residence is at the place where you can catch him. That was the case in *In re Williams* (2). It cannot be properly said that the present Respondent resides at the bank. A man's residence means his house, his domicile, the place where his goods and chattels are. The rule requires that this should be within the district of the Court which grants the summons.

Nor can it be properly said that he carries on business within the district of the *London Court*. The duties of a salaried clerk are not a "business"; they would be properly described as an "occupation." Rule 17 refers to a man's business, a business which he carries on as a principal, not as an agent for some one else: *Ex parte Charles* (3).

[LUSH, L.J.:—The Act is not confined to traders.]

The words should be construed strictly. It has been held with reference to the jurisdiction of the Mayor's Court of *London* that a railway company carries on its business only where its principal station is situate, though it has a station within the district of the Mayor's Court at which a considerable portion of its business is transacted; *Le Tailleur v. South Eastern Railway Company* (4). To the same effect are *Brown v. London and North Western Railway Company* (5) and *Shiels v. Great Northern Railway Company* (6), with reference to the jurisdiction of County Courts.

JAMES, L.J.:—

I am of opinion that this appeal ought to succeed. There are cases in which it has been judicially decided, and I think rightly,

(1) 17 L. J. (C.P.) 95.  
(2) Law Rep. 8 Ch. 690.  
(3) Ibid. 13 Eq. 638.

(4) 3 C. P. D. 18.  
(5) 4 B. & S. 326.  
(6) 30 L. J. (Q.B.) 331.

that the words "residence" and "business" have no actual definite technical meaning, but that you must construe them in every case in accordance with the object and intent of the Act in which they occur. What is the object and intent of this rule with regard to the distribution of business between the *London* Court of Bankruptcy and the Provincial Courts? The only object, as it appears to me, which can be predicated is that a debtor is to be sued in what may be called his natural forum, that he is not to be taken away from the forum which is the most convenient to him to another forum about which neither he nor his creditors know anything. Having regard to the object and intent of the rule, and to the fact that the words "residence" and "business" are elastic words, and that it is only necessary that the case should be brought within one of the two alternatives—residence or carrying on business within the district—I am of opinion that a man may fairly be said to reside where he is to be found daily. Certainly this would be so if he had no fixed sleeping place. And I think it is not the less so if he happens to sleep always at his mother's house or elsewhere. It is not, however, necessary to deal with this point, for I cannot doubt that for all commercial purposes, in the language of commercial men, this debtor does carry on business in the city of *London*. His business in life is that of a bank clerk, and it is not the less his business because he receives a fixed salary for it. He is really and truly, for all commercial purposes, carrying on business in the city of *London*. I am not sorry that this case has arisen for decision, for I think that any narrower construction of the words would lead to great inconvenience and mischief, whereas no injury can result to any human being from the construction which we have adopted.

COTTON, L.J.:—

I am of the same opinion. I quite agree that such words must receive a construction in accordance with the object of the Act in which they are found. They are ambiguous words, and may have different meanings according to the position in which they are found. I prefer to base my decision on the ground that the debtor carries on business within the district of the *London* Court.

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I do not intend to decide that he does not reside there, but I am clearly of opinion that he carries on business in the City. It is said that a man does not carry on business unless he is a principal, but I do not see that that is necessary. In ordinary language a man is said to carry on business, whether he be a principal or not. If I had to decide whether this man's employment was more properly described as a "business" or an "occupation," I might think that the latter would be the more appropriate term. But "business" is the larger term, and I think it includes his employment.

LUSH, L.J.:—

I am entirely of the same opinion. The words in question are susceptible of a wider or a narrower interpretation, and in order to interpret them we must have regard to the object and intent of the rule; and I cannot doubt that the object and intent was this, that the debtor was not to be put to needless expense and inconvenience by being taken away to a Court at a distance when there is a Court within his own district to which he and his creditors can resort. All the Courts of Bankruptcy have exactly the same jurisdiction. It cannot, I think, be intended that the words "carries on business" should be confined to persons carrying on business on their own account as principals. That would leave out a large number of persons who are engaged in business in the city of *London*. I think that a man carries on business at the place where he is to be found during the business hours of the day. In the present case the employment of a banker's clerk is the business of the debtor's life; he carries it on in the city of *London*, and the *London* Bankruptcy Court is his natural forum, though he resides with his mother in another district. The cases relating to railway companies which have been cited have no application to the present question; they are only decisions that a railway company carries on its business where its principal seat of business is situate, and not at every station it may have throughout *England*. It carries on its business at the place where a creditor who wanted to get his debt paid would go to ask for it, the place where the persons who manage its business are to be found.

JAMES, L.J. :—

We allow the appeal only on the ground that there is jurisdiction. The case will go back to the Registrar to be heard on its merits.

Solicitors for Appellant : *W. W. Wynne & Son.*

Solicitor for Debtor : *F. Clift.*

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## WYE VALLEY RAILWAY COMPANY *v.* HAWES.

[1879 W. 319.]

*Practice—Third Party Notice—Ex parte Application—Discretion of Court—*  
*Rules of Court, 1875, Order xvi., rr. 18, 20, 21.*

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V.-C. H.  
Nov. 20.

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Dec. 15.

An application by the Defendant in an action for leave to serve a third party notice under Order xvi., rule 18, ought to be made on notice to the Plaintiff, and not *ex parte*.

In an action by a company against its directors and others, seeking to make the Defendants personally liable in respect of certain dividends alleged to have been improperly paid out of capital, the Defendants applied under Order xvi., rule 18, for leave to serve third party notices on all the shareholders of the company, 450 in number, on the ground that if they, the Defendants, were held liable, they would have a right over against the shareholders to recover from them the sums received by them by way of dividend :—

*Held* (affirming the decision of *Hall*, V.C.), that the granting of the leave asked for would materially embarrass the Plaintiffs in the conduct of their action, and that, therefore, the Court in the exercise of its discretion ought to refuse the application.

THIS action was instituted in August, 1879, against the five directors of the *Wye Valley Railway Company*, the contractor and the financial agents, seeking, *inter alia*, a declaration that the Defendants were liable to repay to the company a considerable sum of money which it was alleged had, under an arrangement between the directors and the contractors, been improperly paid to the preference and other shareholders by way of dividend out of capital. These shareholders were 450 persons, and it was alleged by the Defendants that they, the shareholders, had notice of the circumstances under which the arrangement now complained of had been entered into.