

We think, the defendant having raised the defence in her written statement, it should be clearly made out that she subsequently intended to abandon it.

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The defendant obtained no advantage by the amendment of the plaint, so as to meet the written statement. There was, therefore, no consideration for waiving the defence of the Law of Limitation. And Mr. McCulloch says that he did not at the time understand that he was waiving it.

We think that the order made by the learned Judge was a proper one, and justified by the circumstances of the case ; and we therefore affirm it, but without costs.

WESTROPP, J., concurred.

Order affirmed.

Attorney for appellants : *C. Leggett.*

Attorneys for respondent : *Macfarlane and Green.*

—♦—
In re MA'NEKJI FRA'MJI, an Insolvent.

Insolvent Court Rules—Fresh Petition—Practice.

Held that Rule 14 of the Insolvent Court at Bombay,—requiring a special application, on affidavit, and notice to opposing creditors, before a fresh petition can be filed—has reference to a dismissal upon hearing ; and not to the case of a petition dismissed under Rule 10.

THIS was an appeal, by an opposing creditor, from an order made by the Commissioner in Insolvency, on the 7th of January 1867, by which the petition of the Insolvent was dismissed, under Rule 10 of the Court, as the schedule had not been filed within thirty days after the filing of the petition (a) ; but leave was at the same time granted to file a fresh petition.

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Dunbar, for the appellant, contended that the Commissioner had no right to allow the insolvent to file a fresh petition, without a special application to the court having been made,

(a) RULE 10 :—“ In every case where the schedule shall not be filed within thirty days after the filing of the petition by a party not in custody, such petition shall be dismissed.”

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and notice served on the opposing creditors, as provided for by Rule 14. (*b*)

Marriott (*Green* with him), for the respondent, the insolvent, argued that this was not a case contemplated by Rule 14. It was not by reason of there being an opposing creditor that the petition in this case had been dismissed, but because Rule 10 required that "such petition *shall* be dismissed." But it was also the practice of the court in such case to allow a fresh petition to be filed without a special application.

COUCH, C.J. :—We think that Rule 14—which follows the rules having reference to the hearing of the petition—was not intended to apply to the case of a petition being dismissed under Rule 10, by reason of the schedule not having been filed; but that it refers to a dismissal upon the hearing of a petition.

ARNOULD, J., concurred.

Appeal dismissed.

(*b*) *RULE 14* :—"No insolvent who has had his petition dismissed shall be allowed to file a fresh petition without a special application to the Court, on affidavit, stating the cause of dismissal, and the grounds of such new application, which affidavit shall be served on the opposing creditors four clear days before the application to the Court is made."
