

1869  
Balvantray  
Bhaskar  
v.  
Bayabai and  
Chintaman  
Maddan.

adoption there must be a giving as well as a receiving, which there cannot be in the case of an orphan.

A decree was subsequently made against the first defendant, Bayabai, for an account, as prayed for, but not against Chintaman Maddan, as it was not known that he had inter-meddled with the estate.

Attorneys for the plaintiff—*Dallas and Co.*

Attorneys for the defendants—*Macfarlane and Green.*

*In the Insolvent Debtors' Court.*

Sept. 13.

In the matter of Ragubhai Ramchandra.

*Insolvent—Adjudication in Insolvency—Effect of Imprisonment under Civ. Proc. Code.*

Held, that a judgment debtor who had been in prison for two years under the Code of Civil Procedure was liable to be adjudicated an insolvent in respect of the same judgment debt where the Petition for adjudication was presented before he was released from prison under Sec. 278 of the Code.

On the 19th of July 1869 *Ferguson*, on behalf of Appaji Pandurang, constituted attorney of Gopal Krishna Modak, presented a petition to Westropp, J., sitting as Commissioner in Insolvency, praying that Ragubhai Ramchandra might be adjudicated an insolvent, and dealt with according to the provisions of the Act for the relief of Insolvent Debtors in India (11 and 12 Vict., c. 21, sec. 8).

The affidavit of Dhondu Shamrav, upon which the petition was founded, stated that on the 25th of February 1867 Gopal Krishna Modak obtained a decree against Ragubhai Ramchandra in the High Court for the sum of Rs. 12,931-5-4, and, further, interest on that amount at six per cent. per annum and costs. That in execution of that decree, a warrant of arrest was issued on the 26th of March 1867, and that in pursuance of the warrant, Ragubhai, Ramchandra was committed to prison by a Judge's order dated the 15th of July 1867.

At the expiration of his second year of imprisonment, on the 15th of July 1869, Ragubhai Ramchandra was released

from prison under the provisions of Sec 278 of the Civil Procedure Code. Although the present petition was not formally presented to the Commissioner until the 19th, the July, it had been mentioned before the release from imprisonment of Ragubhai Ramchandra, and it was then directed that the application should stand over until the 19th, the applicant not to be prejudiced by the delay.

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*Ferguson* contended that although Ragubhai Ramchandra had lain for two years in prison, he had not thereby satisfied the decree; that, though he could be no longer imprisoned on account of the decree, his property continued liable, and he was himself liable in respect of the unsatisfied decree to be adjudicated an insolvent, under Sec. 8 of the Insolvent Act.

A rule *nisi* was granted. The rule came on for argument before Couch C. J., on the 13th of September 1869.

*Ferguson* for the petitioner.

Ragubhai Ramchandra appeared in person, and stated that he had no property, that the petitioner was his sole creditor; and that he had been in prison for two years. He contended that, under these circumstances, he was not liable to be adjudicated an insolvent.

Couch, C. J.:—I think that the imprisonment in this case under the Code of Civil Procedure is not a satisfaction of the decree, and that the judgment debtor can, therefore, be now made an insolvent under the Act. I do not say that the insolvent could be further imprisoned under Sec. 50 or Sec. 51 of the Act; that, if necessary, must be considered hereafter. The usual order must be made for the filing by the insolvent of his schedule within the time generally allowed for that purpose.

*Order accordingly.*

Attorneys for the petitioner—*Dallas and Co.*