

*Suit No. 219 of 1870.*1870.  
Jan. 20.

DA'DA'BHA'I NASARVA'NJI ..... *Plaintiff.*  
 MA'NIKJI SHA'PURJI KA'KA' ..... *Defendant.*

*Insolvent Trader—Order of Discharge—Debts not specified in Schedule—Indian Insolvent Debtors' Act—11 & 12 Vict., c. 21, s. 60.*

The order of discharge of an insolvent trader, under Sec. 60 of the Indian Insolvent Debtors' Act, operates to discharge such trader from all debts that could be proved in the matter of his insolvency, whether they are specified in his schedule or not.

THE plaintiff in this case stated that the plaintiff, on the 1st of December 1864, agreed to purchase a house from the defendant for Rs. 70,000, and on the 22nd of that month and year paid Rs. 15,000 in part payment; that subsequently, in May 1865, it was agreed between the plaintiff and defendant that the plaintiff should resell to the defendant the said house at the original price, and that the defendant should pay back to the plaintiff the Rs. 15,000 which had been so paid as aforesaid; and that the defendant paid Rs. 3,000 on account to the plaintiff on the 12th of May 1866. The suit was brought to recover the balance of Rs. 12,000, with interest, from the defendant.

The plaintiff also claimed Rs. 2,092, being his share in the profits of a consignment of cotton shipped by him and the defendant and one Mehervánji Nasarvánji in June 1862, in the name of the son of the defendant; the profits upon which the defendant had received.

The defendant in his written statement alleged that "before the commencement of the suit and after the dates respectively of all the transactions in the plaint mentioned, the defendant, being a trader within the meaning of the bankruptcy laws, became insolvent, and applied for the benefit of the Act to consolidate and amend the laws relating to Insolvent Debtors in India (11 & 12 Vict., c. 21), by petition filed the 20th of August 1866, and by an order of the same court on the 1st of February 1869, made under the 60th section of the same Act, the said defendant was declared

entitled to a discharge in the nature of a certificate under the provisions of the said Act, and was discharged from all liability in respect of the debts or claims established, or which might by law be proved, in the same court in the matter of his insolvency from the date of his filing his said petition."

1870.

DA'DA'BHA'I  
NASARVA'NJIv.  
MA'NIKJI  
SHA'PURJI  
KA'KA'.

He further alleged that the plaintiff had had full knowledge of the proceedings in the matter of the petition.

The suit came on for hearing before BAYLEY, J., on the 16th of January 1870.

*Atkinson*, Serjt., and *Green* for the plaintiff.

*McCulloch* and *Latham* for the defendant.

An issue was raised "whether the plaintiff was bound, in respect of the causes of action in the plaint mentioned, by the order of discharge in the written statement referred to."

It was admitted (1) that the plaintiff had knowledge of the proceedings in the insolvency of the defendant; (2) that no official notices were sent to him as a creditor; (3) that neither of the claims arising out of the causes of action in the plaint mentioned was included in the schedule of the defendant.

The ordering part of the certificate of the 1st of February 1869 was as follows:—

"This Court doth order and adjudge that the said insolvent, being a trader within the meaning of the bankrupt laws, be, and he is hereby declared, entitled to a discharge in the nature of a certificate, under the provisions of the Act relating to insolvent debtors in India; and he is hereby discharged from all liability in respect of the debts or claims established, or which might by law be proved, in this court in the matter of his insolvency, from the date of the filing of his petition for the benefit of the provisions of the said Act."

*Cur. adv. vult.*

January 20. BAYLEY, J.:—The preliminary issue which has been raised will, if found for the defendant, put an end

1870.

DA'DA'BHA'I  
NASARVA'NJI

v.

MA'NIKJI  
SHA'PURJI  
KA'KA'.

to the present suit as to both the sums claimed. That issue was raised upon the written statement of the defendant, which set up that on the 1st of February 1869 the defendant had obtained a discharge under Sec. 60 of the Indian Insolvent Debtors' Act, and it was raised for the purpose of determining the effect of such discharge upon the present claims of the plaintiff.

The question mainly turns on the words of the order of discharge, which was hardly, at least not seriously, contended to have gone beyond the provisions of the statute. [His Lordship read the order.]

It was argued by counsel for the plaintiff that the provisions of the statute itself were such as to limit the discharge of the defendant to the debts specified in his schedule. The language of Sec. 60, taken in its ordinary meaning, does not warrant that construction, but it was said that the words of the proviso at the beginning of the section, "provided he shall have filed his schedule," apply to the latter part of the section.

It was also argued that the plaintiff had elected not to come in under the insolvency, and that he was not, therefore, affected by the order of discharge. I consider there is no ground for this contention. It was admitted that the plaintiff knew of the proceedings in the matter of the insolvency of the defendant, though he had no official notice of them; and also that his present claims were not specified in the schedule of the defendant.

Now if this had taken place in the Court of Bankruptcy in England the discharge of the defendant in that court would have affected the claim in question. The form of plea given in Bullen and Leake's Precedents of Pleadings, p. 505 (edition of 1868) sufficiently shows that this is so:—"That he became bankrupt within the meaning of the statutes in force concerning bankrupts, and that the causes of action in the declaration mentioned accrued before the defendant so became bankrupt." On the language of Sec. 60, there appears to me to be no doubt that an order of dis-

Charge under it has a similar effect, more especially when it is compared with Sec. 47, under which discharges are commonly granted, and I think that the mere non-insertion of debts in the schedule does not prevent the certificate barring such debts. In a recent case, that came before him in chambers, Sir Charles Sargent put that construction on Sec. 60. But the point is, I consider, conclusively determined by a case, not cited at the bar, of *Re Warwick and Worcester Railway Co. ex parte Parbury (a)*, which was a decision of Lord Campbell, then Lord Chancellor, and the Lords Justices, upon the effect of an order absolute of the Insolvent Court at Calcutta granted under the Indian Insolvent Act 11 & 12 Vict., c. 21, s. 60.

1870.  
DA'DA'BHAI  
NASARVA'ANJI  
v.  
MA'NIKJI  
SHA'PURJI  
KA'KA'.

Lord Campbell says, in the course of his judgment (p. 87): "What I rely upon is that the statute does not make the specification of the debt or liability a condition precedent to a discharge from the debt or liability; and it is quite clear that, according to the Indian Insolvent Act, there are debts not specified in the schedule from which, by virtue of the absolute order, the insolvent is discharged."

The Lord Justice Turner says (p. 89): "This question mainly depends, as it seems to me, upon the operation of the order absolute under the Indian Insolvent Act. Having attentively considered that Act, I have come to the conclusion that the order absolute under that Act was meant to discharge, and does discharge, the insolvent from all demands which would be discharged by a certificate under a fiat in bankruptcy of even date with the insolvent's petition. It is in terms so enacted by the 60th section of the Act, and I can find nothing in the context of the Act which can control that enactment. This section indeed refers in the early part of it to the schedule which the insolvent is required to file; but it seems to me to be clear that the discharge was not intended to be confined to the debts enumerated in the schedule: for throughout the Act continual reference is made to debts not included in the schedule, and such debts are treated as standing on the same footing as debts admitted by

(a) 3 De Gex F. & Jones 80; S. C. 30 L. J. Ch. 513.

1870.

DA'DA'BHA'I  
NASARVA'NJI

v.

MA'NIKJI  
SHA'PURJI  
KA'KA'.

the schedule. Assuming, then, that the discharge was not intended to be limited to the debts in the schedule, was it intended to be limited to those debts, and to such other debts as might, to use the language of the Act, be established under the insolvency? I see nothing in the Act which can warrant this construction, and, on the contrary, I think there is much to be found in it which is unfavourable to such a limit, and favourable to a general discharge having been intended" (p. 90).

The Court held (Lord Justice Knight Bruce doubting) that the omission in the schedule did not prevent the insolvent's discharge from having the same effect as a bankruptcy certificate in England.

The defence set up does not come upon the plaintiff by surprise. It was alluded to in a letter sent to the plaintiff, dated the 24th of March 1869, and the plaint was filed, notwithstanding, on the 10th of April following. I find the issue raised in favour of the defendant, and there must be a decree for him with costs.

*Decree for defendant with costs.*

Attorney for the plaintiff: *C. Tyabji.*

Attorneys for the defendant: *Acland, Prentis, and Bishop.*