

1873. " V. I think the English law is applicable, and that the
 RA'MJIMANOR plaintiff, having served for the full month of November, is
 F. D. LITTLE. v. entitled to receive his wages due on the 1st December, and that
 as he has left the service, without leave, on the 4th Decem-
 ber, he should receive no pay for three days of that month
 only."

The reference came on for disposal before Westropp, C.J.,
 and Melvill, J., on the 1st April 1873.

PER CURIAM:—Without laying down any general rule as
 to the application of the English law to this case, the Court
 is of opinion that the servant ought to be paid his wages up
 to the end of November and to forfeit those for December.

[INSOLVENCY JURISDICTION.]

April 2.

In re SITA'RA'M ABBA'JI.

Ex parte SUNDARDA'S MULJI.

*Insolvency—Death of insolvent—Vesting order, Effect on—Official
 Assignee—Stat. 11 & 12 Vict., c. 21—Abatement.*

The death of an insolvent before obtaining his discharge does not
 affect the right of the Official Assignee to deal with the property of
 such insolvent, nor does it cause the proceedings in such Insolvency,
 so far as the Official Assignee and the creditors are concerned, to
 abate.*

THIS was an application made on behalf of Sundardás
 Mulji for the opinion of the Insolvent Court on the
 question, whether an abatement of proceedings in Insol-
 vency takes place upon the death of the insolvent before
 obtaining his final discharge.

The application was made at the request of the Official
 Assignee.

* *Note.*—See *In re Ramsabuck Misser* (6 Beng. L. R. 119), and *In re
 King* (Coryton's Indian Insolvent Act p. 18); *sed quaere* as to this last
 mentioned case.—Ed.

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The question arose in the following manner:—The insolvent, Sitáram Abbáji, on the 19th of August 1871, entered into an agreement to sell to Sundardás Mulji a house. Sitáram Abbáji did not perform this agreement, and Sundardás Mulji sued him in the High Court for specific performance. While that suit was pending, Sitáram Abbáji, on the 14th of September 1872, filed his petition and schedule in the Insolvent Court, and, thereupon, the usual vesting order was made, vesting his property in the Official Assignee. The letter on consideration of the agreement for sale, having come to the conclusion that Sundardás Mulji was entitled, on payment of the balance of the purchase money, to a specific performance of his agreement with the insolvent, was about to execute a conveyance of the premises, the subject of the agreement, to Sundardás Mulji, when before completing the conveyance and before obtaining his order of discharge, the insolvent, Sitáram Abbáji, died. The Official Assignee, thereupon, feeling doubtful as to the effect of such death upon the insolvency proceedings and as to his right under the circumstances to complete the conveyance to Sundardás Mulji, requested him to move for the direction of the Court in the matter.

Lang, on 19th of March 1873, moved, accordingly, before Gibbs, J., sitting as Commissioner in the Insolvent Court. He contended that the vesting order had the effect of a conveyance, and that the death of the insolvent did not alter the right of the Official Assignee to deal with the property vested in him by the vesting order, in accordance with the provisions of the Insolvent Act. He referred to cases cited in Archbold on Bankruptcy p. 564 (11th edition).

Cur. adv. vult.

GIBBS, J.:—In this case, the Official Assignee applied by counsel for instructions how to proceed in the matter, the insolvent having died after the petition and schedule were filed and the vesting order was made.

The early English cases have been quoted, but they all seem to turn on the fact of statutable provision for the continuance of proceedings after the death of the bankrupt, having been made as early as 1 Jac. 1.

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Mr. Marriott, in the case of *Bhugwanjee Dwarkadass*, argued in favour of the negative of the question, but did not produce authorities of much moment, certainly not such as to guide me; and as his application was disposed of by being granted under a rule of the Court, I cannot deem that his argument was an answer to Mr. Lang's or was complete.

From the best consideration I have been able to give to the matter, I think the Official Assignee should be instructed to proceed, so far as circumstances will admit, with the insolvency in the same manner as he would have done, had the insolvent been living. The property was, by order under the 7th Section, vested in the Official Assignee in trust for the creditors, and I cannot find any authority for holding that the death of the insolvent supersedes or nullifies that order.

Had the legislature intended that the death of the insolvent should produce such a result, it would most probably have said so, as it has said in the proviso in the 7th section of the Act with regard to the dismissal of the insolvent's petition. I think that the Official Assignee may proceed as usual.

[ORIGINAL CIVIL JURISDICTION.]

April 19. GRAHAM AND OTHERS.....*Plaintiffs.*
HILLE *Defendant.*

Bill of lading—Construction of Exceptions—Leakage—Breakage—Damage caused to goods by leakage from other goods.

Piece goods were carried from London to Bombay under a bill of lading, the exceptions in which protected the master from "*leakage, breakage, rust, decay, loss, or damage from machinery boilers * * * misfeasance, error in judgment, negligence or default of * * * persons in the service of the ship * * ** and the ship not being liable for any consequences of causes therein excepted however originating."

The piece goods, on their arrival in Bombay, were found to be damaged by oil and by chafing, *i.e.*, by rubbing against other goods in the hold, but there was no evidence to show how such damage was occasioned.