

the adjudication he sought by an act of the opposite party constituting, at any rate for the purposes of that suit, an admission of the right he proposed to establish. There was no submission to the order such as to give it a final effect, nor any decree in a suit confirming it. As the formal inquiry and adjudication were prevented, the earlier determination was not *res judicata* against him who did all that was incumbent on him to get the summary inquiry and order replaced by a formal trial and judgment. It is as though an investigation had been stopped midway.

The second attachment by the judgment-creditor, Ramchandra, after the first had been removed, was a new and distinct act, giving rise to a new cause of action, or complaint, to Kashinath, on which he was entitled to a fresh inquiry and decision. All that could be taken as settled by the previous litigation was that Kashinath had no ground of complaint against Ramchandra, because Ramchandra was not then interfering with Kashinath's possession.

For these reasons we make the rule absolute for an inquiry into his claim, with costs.

Rule made absolute.

INSOLVENCY.

Before Mr. Justice Scott.

In re HANSRAJ MALJI AND NARANDAS DAYAL, INSOLVENTS;
DEWAR & Co., OPPOSING CREDITORS.

1883
August 1.

Indian Insolvent Act (Stat. 11 & 12 Vict., C., 21)—Infant trader—Withdrawal of petition by infant—Rule 22, Rules and Orders, Bombay.

An infant who has traded, but has made no express representation that he is of full age, is not liable to become bankrupt; and although he has filed his petition for the benefit of the Indian Insolvent Act and his schedule, he should be allowed, on proof of his infancy, to withdraw from the proceedings, under the wide powers in this respect given to the Court by Rule 22 of the Rules and Orders, Bombay.

Ex parte Jones followed (1).

THE insolvents filed a joint petition for their discharge under section 47 of 11 and 12 Vict., c. 21, on the 24th of August, 1882, and also their schedule on the following day. In their petition they described themselves as Hindus lately carrying on business as merchants, commission agents, and mukadams in partnership under the style and firm of "Lakhmidas Narandas" in Bombay.

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In the observations annexed to their schedule they stated further as follows:—"The second insolvent (Narandas Dayal) is a minor under the age of eighteen years, and submits that his minority may be taken into consideration at the time of disposing of the matter of his petition. The insolvents (state) that the first insolvent (Hansraj Malji) was a working partner and the business of the partnership was commenced and carried on under the supervision of, and the funds supplied by, the principal partner Ranchordas Kanji (who died some time before the date of the schedule.)"

On the 21st March, 1883, the mother and guardian of Narandas Dayal applied, on affidavits, for leave to withdraw the infant's petition under Rule 22(1) of Court, on the ground of his infancy. Notice of the application was ordered to be given to the creditors of the insolvents, and Narandas Dayal was directed to attend personally for his examination on the return of the notice.

On the 8th June, 1883, Jās. A. Dewar, constituted attorney of Dewar & Co., who were admitted creditors of the insolvents' firm in the schedule, made an affidavit, which, among other things did not admit the age of Narandas Dayal as deposed to on his behalf. It stated further that, assuming Narandas Dayal was an infant, he had concealed that fact from his creditors during the time he had been engaged in trade, and was, therefore, guilty of fraud. It also urged that Narandas Dayal, "by filing his petition, committed an act of insolvency, and ought to be adjudicated an insolvent."

Lang for the opposing creditors.—The application is novel and without precedent. Rule 22 is intended to apply to cases where the insolvent has compromised his debts, and has no reason to proceed to a hearing of his petition. *Ex p. Lynch*(2) shows that

(1) *Rule 22*.—In all cases where an insolvent who has not filed his schedule is desirous of withdrawing his petition, notice of his intention shall be published in the English and one native language, in two successive numbers of the *Government Gazette*, before such application shall be made; but when an insolvent who has filed his schedule is desirous of withdrawing his petition, notice of his intention shall be served on all creditors, or persons claiming to be creditors, mentioned in his schedule, in the same manner as a notice of hearing.

(1) L. R., 2 Ch. D., 227.

a trader can be adjudicated a bankrupt in respect of debts incurred during infancy.

Vicaji.—The rule is wide enough to cover any ground of withdrawal. Infancy is not excluded—*Ex p. Jones*⁽¹⁾ overrules *Ex p. Lynch*⁽²⁾.

SCOTT, J.—The words of the rule under which the application is made are very large, and do not confine the grounds for the withdrawal of a petition to mere cases of compromise alone. They admit of being so construed as to apply to a case in which an infant insolvent has filed his petition, but is subsequently desirous of withdrawing the same on the ground of his infancy. The infancy, however, must be clearly proved, and I allow the opposing creditors opportunity to cross-examine those witnesses on behalf of the second insolvent who have deposed to his age.

Accordingly, on the 1st of August, 1883, the case came on for hearing of the petition, when evidence as to the infancy was also taken *vivá voce*.

The same counsel appeared for the parties respectively.

SCOTT, J.—Upon the evidence it appears sufficiently established that Narandas was, at the date of filing his joint petition, a minor under the age of eighteen years; that he had brought some capital into the firm, but had taken no active part in the business, and that he had made no express representation to any constituent or creditor of the firm that he was of full age. Such being the facts proved, the law laid down in *Ex p. Jones*⁽¹⁾ applies. That case is based on the general rule that infants being incapable of contracting, except for necessaries, cannot be adjudged insolvent, and the only exception allowed to the rule is where there has been an express representation amounting to fraud. Narandas is not liable to be made a bankrupt, though, no doubt, he has traded, and even brought some moneys of his own into the trade. From the mere fact of his trading he cannot be taken to have held himself out as a person of full age; nor, because he did not give out to the world what his real age was, can he be considered to have acted fraudulently. Such fraud must be strictly proved. There is, besides, no evidence of his having taken any active part

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(1) L. R., 18 Ch. D., 109.

(2) L. R., 2 Ch. D., 227.

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in the firm's business, nor of any express representation by him that he was of full age; and the filing of his petition cannot alter his *status*. He must, under all these circumstances, be allowed to withdraw from the insolvency proceedings.

Application granted.

Attorneys for the infant insolvent.—Messrs. *Jefferson, Bhaishankar and Dinsha.*

Attorneys for the opposing creditors.—Messrs. *Craigie, Lynch and Owen.*

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

NAHANIBAI, WIDOW OF VENKATIDAS (ORIGINAL PLAINTIFF), APPLICANT, *v.* NATHU BHAU (ORIGINAL DEFENDANT), OPPONENT.*

Signed balance of account—Account stated—Acknowledgment—Limitation—Act IX of 1871, Sec. 20, and Sch. II, Art. 62—Act XV of 1877, Sec. 19, and Sch. II, Art. 64.

A sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875 a balance was struck, and carried to another account signed by the defendant, and acknowledging the same to be "due for balance of old account". In 1878 the account was again balanced, and the balance again transferred to a fresh account similarly signed.

Held that the transaction did not amount to an account stated within the meaning of article 62, schedule II of Act IX of 1871, or article 64 of schedule II of Act XV of 1877, and was no more than a mere acknowledgment, which, as the suit had then long been barred by limitation, was of no avail.

An account stated, in the true sense of the term, and in the sense employed in the above-mentioned sections of the Limitation Acts of 1871 and 1877, is where several items of claim are brought into account on either side, and, being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on each side; each party resigning his own rights on the sums he can claim, in consideration of a similar abandonment on the other side, and of an agreement to pay, and to receive in discharge, the balance found due.

THIS was an application to the High Court in its extraordinary civil jurisdiction for a reversal of the decree of W. H. Crowe, Assistant Judge of Thana at Nasik, reversing the decree of Rav Saheb Vamanrav Bodas, Subordinate Judge of Yeola.

* Extraordinary Civil Application, No. 99 of 1882.