

ORIGINAL CIVIL.

Before Mr. Justice Bayley.

1886.
March 30.

THE LONDON, BOMBAY AND MEDITERRANEAN BANK, (LIMITED), IN LIQUIDATION, PLAINTIFFS, v. DA'DA'BHOY CURSETJI MAJU, DEFENDANT.*

Company—Winding up—Suit against contributory on the B list—Plea of discharge in insolvency—Foreign judgment—Balance order—Indian Insolvent Act (Stat. 11 and 12 Vic., c. 21, sec. 61).

The plaintiffs, who were an English joint-stock company registered under the English Companies' Act, 1862, sued the defendant, as a past member of the bank, upon a balance order of the High Court of Justice in England dated 24th February, 1881. The bank was in liquidation under a winding-up order made on 20th July, 1866. The defendant pleaded discharge by insolvency, and it appeared that he had filed his schedule on 15th January, 1873, and had obtained his discharge under section 60 of the Indian Insolvent Act (Stat. 11 and 12 Vic., c. 21) on the 15th July, 1874.

Held, following the *London, Bombay and Mediterranean Bank v. Burjorji Sorabji Lywalla*⁽¹⁾ (but doubting) that the question of the defendant's liability or non-liability to the claim made against him as a contributory could not be raised in this suit, and that, on formal evidence being given by the plaintiffs, judgment must go against the defendant.

Suit by the liquidator of the London, Bombay and Mediterranean Bank to enforce against the defendant, as a past member of the bank, a balance order of the High Court of Justice in England of the 24th February, 1881.

The plaintiffs' bank was an English joint stock company, registered under the English Companies Act, 1862. The order for winding up was made on the 20th July, 1866.

The balance order, upon which the suit was brought, adjudged that the defendant should pay to the plaintiffs £160, sterling, with interest at 5 per cent. per annum. The present suit, which was filed as a short cause, was for Rs. 2,695-14-5.

At the hearing the defendant pleaded discharge by insolvency. It appeared that he had filed his schedule on the 15th January, 1873, and had obtained his final discharge, in the nature of a certificate, under section 60 of the Indian Insolvent Act, (Stat. 11 and 12 Vic., c. 21) on the 15th day of July 1874.

* Suit No. 62 of 1886.

(1) I. L. R., 9 Bom., 346.

Jardine for defendant:—I admit the case of *The London, Bombay and Mediterranean Bank v. Burjorji Sorábji Lywállá*⁽¹⁾ is against me, but that case being the decision of a co-ordinate Court is not necessarily binding if disapproved of. Here the winding-up order was made before defendant became insolvent. His liability to the bank could have been estimated, and might have been proved in the insolvency—*McEwen's Case*⁽²⁾; *Dádábháí v. Mánikjí*⁽³⁾; *Ex parte Marshall*⁽⁴⁾. *Furdoonjee's Case*⁽⁵⁾ has been disapproved of: see Buckley on Companies, (ed. 1883), p. 179. Defendant has got his discharge under section 60 of the Indian Insolvent Act. The order of discharge by this Court in its insolvent jurisdiction is equivalent to a judgment in defendant's favour. The balance order, on which this suit is brought, is a foreign judgment. The question, then, is, whether this Court, which has given judgment on the same point in defendant's favour, will allow a foreign judgment to override it, and will enforce that foreign judgment against us. I submit that this Court should support its own order. Counsel referred to the English Companies Act, 1862, sec. 75; the Indian Companies Act VI of 1882, sec. 125; *Ex parte Parburry*⁽⁶⁾; section 61 of the Indian Insolvent Act (11 and 12 Vic., c. 21).

Macpherson for plaintiffs:—I rely on *The London, Bombay and Mediterranean Bank v. Hormasji Pestanji Frámjí*⁽⁷⁾; *The London, Bombay and Mediterranean Bank v. Burjorji Sorábji Lywállá*⁽⁸⁾: see also *Ellis v. McHenry*⁽⁹⁾; *Bank of Australasia v. Nias*⁽¹⁰⁾. The defendant might have pleaded his discharge effectually when he was summoned to the English Court to show cause why he should not be placed on the list of contributories; but, not having done so, he is now too late, and his discharge will not avail him.

BAYLEY, J.:—I think under the circumstances I ought to follow the decision in the case of *The London, Bombay and Mediter-*

(1) I. L. R., 9 Bom., 346.

(2) L. R., 6 Ch., 582.

(3) 7 Bom. H. C. Rep., 22, O. C. J.

(4) L. R., 7 Ch. Ap., 324.

(5) 3 Ch. Div., 264.

(6) 30 L. J., Ch. N. S., 513.

(7) 8 Bom. H. C. Rep., O. C. J., 200.

(8) I. L. R., 9 Bom., 346.

(9) L. R., 6 C. P., at pp. 238-9.

(10) 16 Q. B., 717.

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ranean Bank v. Burjorji Sorábji Lywállá⁽¹⁾; but I hold myself at liberty to consider the point if it should ever come before a Court of appeal of which I may happen to be a member.

It is not denied that the debt for which this suit is brought is a debt affected by the discharge obtained in July, 1874, by the defendant under section 60 of the Insolvent Act; nor is it disputed that, if the defendant had appeared in the Court of Chancery in England and proved his discharge under section 60, that Court would not have placed him upon the list of contributories. The defendant, however, although he had due notice of the proceedings in Chancery, did not appear, and consequently his name appears upon the B list of contributories; and, having regard to the decision in *The London, Bombay and Mediterranean Bank v. Hormasji Pestanji Frámji*⁽²⁾, the question of his liability or non-liability to the claim now made against him as a contributory cannot be raised in this suit. No evidence has as yet been given, but I understand it to be admitted that there is no defence upon the merits. I shall, therefore, be obliged, when the formal evidence is put in, to pass judgment for the plaintiffs.

At the close of the argument, attention was called to the provisions of section 61 of the Insolvent Act. That section is as follows. (His lordship read the section.) Now, that section provides that, where a person, who has obtained his discharge in the nature of a certificate, is sued for a debt from which he is discharged by that order, the Court shall stay further proceedings against him. If, therefore, an application to that effect be made to me on behalf of the defendant, I shall stay further proceedings in this case, in order to enable him to apply to the High Court in England to have his name struck off the list of contributories.

Attorneys for the plaintiffs:—Messrs. *Tobin and Roughton*.

Attorney for defendant:—Mr. *J. C. Cama*.

(1) I. L. R., 9 Bom., 346.

(2) 8 Bom. H. C. Rep., 200, O. C. J.