Judgement of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals (Two) of The Oriental Bank Corporation v. *Richer & Co. and another, from the Supreme Court of Mauritius, delivered 29th March* 1884.

Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR ARTHUR HOBHOUSE.

Two questions are raised by the two appeals in this case. One is whether the adjudication of bankruptcy which was passed on the 20th January 1881 against Frederic Richer & Co. is a valid adjudication against Frederic Richer, who is the sole member of that firm. Their Lordships did not think it necessary to hear the Respondents on this question. Nor do they now think it necessary to say anything, except that they concur with the Supreme Court in holding that the defect which undoubtedly appears in the order affords no ground for annulling the adjudication, because it is merely formal, and is not calculated to injure anybody.

The other question is whether, under Sections 40, 43, and 50 of Ordinance No. 33 of 1853, a creditor can challenge the validity of an adjudication against his debtor, who, being a trader, has been made bankrupt on his own petition, on the ground that he has not made it appear to the satisfaction of the Court that his estate is sufficient to pay his creditors at least

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five shillings in the pound, clear of all charges of prosecuting the bankruptcy.

The bankrupt Frederic Richer gave, so far as appears on the face of the proceedings, no evidence of this qualified solvency of his estate except the petition and affidavit required by Sect. 40. And it is contended that by Sects. 43 and 50, the Court is bound to require some further evidence, and to attain the requisite satisfaction on some judicial grounds capable of being tested by the parties concerned, and of being made the subject of contention, and, when necessary, of appeal.

Their Lordships are of opinion that on the true construction of Sect. 43 the Judge is to satisfy himself as to the requisite solvency of the estate by such evidence as he thinks fit. The proceedings are *ex parte*. The matter is one which cannot possibly be the subject of exact proof, and in most cases the proof can be but rough, provisional, or even conjectural. If the question were to be subject to dispute, nothing could solve it short of an administration, or at least an exhaustive and conclusive account, of the estate, and a long litigation might attend this preliminary proceeding. It is not provided by the Ordinance that creditors shall attend the adjudication, and it is not intended that they shall in any way put in issue the fact of qualified solvency.

That being so, is it right that they should by any process bring into contest the propriety of the Court's conclusion? It is a question of difficulty, but their Lordships think it must be answered in the negative. Instead of saying that the qualified solvency shall be proved, the Legislature in Sect. 43 says that it shall be made to appear to the satisfaction of the Court. The use of that language indicates rather a satisfaction in the personal discretion of the Judge than a

judicial process on which issues may be taken and appeals presented. Whether the Court had reasonable ground for the satisfaction which it felt in this case is not the question. The question is whether this particular preliminary to the adjudication can be contested so as to bring the propriety of the adjudication itself into discussion. Their Lordships concur with the Supreme Court in thinking that the adjudication is conclusive upon the point.

Their Lordships will humbly advise Her Majesty that both appeals should be dismissed, and the Appellants must pay the costs.