misconception of law. A riparian right is a natural right and is not acquired by immemorial user. It exists by law, it may be lost by the adverse enjoyment of another, but it has not got to be enjoyed to be kept up. Whatever the enjoyment at the date of the grant may be, the measure of the right that passes is determined only by the configuration and the width of the river or stream. I therefore think in this case the plaintiff is entitled to draw water from the Addarapu Kalava in exercise of his rights as a riparian owner and so long as he does not exceed those rights he is not liable to water cess. That in India rights of the riparian owner include also the right to take reasonable quantity of water for purposes of irrigation scarcely admits of any doubt.

In the result, I would allow the appeal and decree the suit with costs throughout, but only with interest at six per cent instead of twelve per cent claimed.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace

ALAMELU AMMAL (PLAINTIFF), PETITIONER,

v.

T. S. VENKATARAMA IYER (DEFENDANT) RESPONDENT.*

1927, April 18.

Provincial Insolvency Act (V of 1920), ss. 28 and 42—Refusal to order final discharge, whether a termination of insolvency proceedings—No annulment of adjudication.

On an order of adjudication, the property of the insolvent vests in the Official Receiver under section 28 of the Provincial Insolvency Act and it continues to be so until the insolvency proceedings terminate in any of the ways indicated by the Act,

* Civil Revision Petition No. 1283 of 1925.

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such as, annulment of the adjudication. An order refusing under section 42 of the Act the final discharge of the insolvent does not terminate the insolvency proceedings and does not, therefore, enable a decree-holder to apply for execution against the insolvent, without the leave of the Court.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act praying the High Court to revise the order of K. S. VENKATACHALA AYYAR, Small Cause Judge of Kumbakonam, in E. P. No. 2145 of 1925 in S.C.S. No. 1947 of 1920.

The facts are given in the judgment.

S. Subrahmanya Ayyar for petitioner.

K. S. Desikan for respondent.

JUDGMENT.

This Civil Revision Petition is against the order of the lower Court in a matter of execution. The petitioner put in an execution petition praying for the arrest of his judgment-debtor (respondent). The respondent urged that he is still an insolvent and that the proceedings in insolvency are still pending, that the petitioner has not got permission of the insolvency Court to open execution proceedings against him and that, therefore, the petition is not maintainable. The respondent was adjudicated insolvent on 6th January 1921. The petitioner, however, claims that the insolvency proceedings have come to an end since the respondent applied for and was refused a final discharge on 30th October 1923. The petitioner put in a petition for review of that order which was dismissed on 15th March 1924. The present execution petition was put in on 30th April 1925. It is admitted that the respondent's adjudication has not been annulled.

The question for decision is, does the refusal, under section 42 of the Provincial Insolvency Act, of a final

discharge *ipso facto* determine the insolvency proceedings? The lower Court has held that it does not, and I agree. It is the order of adjudication which vests the property of the insolvent in the Court or in the Official Receiver (see section 28). It would follow that until and unless that order is annulled the property continues to vest in Court, and so long as that vesting remains, the insolvency proceedings cannot have come to an end. It would be absurd to hold that it was open to an execution creditor without the permission of the insolvency Court to arrest his judgment-debtor for not satisfying his decree-debt, when the assets of the judgment-debtor are not vested in him or under his control, and when the Official Receiver is still holding them for the benefit of the judgment-debtor's general body of creditors. Further, an order of refusal of a final discharge is not in itself necessarily final. There are cases in which it may not be final. For example, the final order of discharge may be refused, because the insolvent's assets are less than eight annas in the rupee, but the insolvent may subsequently come into property which would enable a dividend of more than eight annas to be paid and the Court might on that finally grant him an absolute order of discharge. Obviously, the insolvency proceedings must in such a case be pending after the first refusal to grant an absolute order of discharge. It is true that Act V of 1920 does not provide that the pendency of an insolvency proceedings shall be terminated in every case by annulment of adjudication. Such annulment is provided for by sections 35, 36, 39 and 43. But these sections do not cover every possible case. It is clear from the scope of the Act that if a Court intends to bring the insolvency proceedings to an end and restore the *status quo ante*

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the insolvency it must annul the adjudication. In every case where an order under section 42 has been passed the Court might *suo motu* or on the motion of a creditor annul the adjudication, but until it is annulled the insolvency proceedings are still pending.

Another indication that this is the correct view is, that while under section 37 the order annulling an adjudication must be published, there is no section which says that the order of refusal to discharge must be published. The purpose of publication is obviously to notify to the public that the insolvency has come to an end. If it came to an end by an order of refusal to discharge, then it would be equally necessary to direct the publication of that order. That the insolvency Court in the present case did not close the proceedings is clear from the fact that the petitioner himself received a dividend from the Official Receiver on 26th November 1924, five months before his execution petition and eleven months after the order refusing absolute discharge. It is now suggested that the payment might have been sanctioned long before the order of refusal, but there is nothing on the record to warrant that suggestion.

There is a surprising lack of authorized reported rulings on this point of law. A case in Rangoon has been cited to the contrary. The ruling is by a single judge reported in *Maung Po Toke* v. *Maung Po Gyi*(1). Another learned Judge of the same Court has ruled to the contrary effect in *Rowe & Co.* v. *Tan Thean Taik*(2), and I find myself in agreement with the latter's view.

It is not necessary to go into the further question as to whether the execution petition is barred by limitation. The lower Court has made no error of law in holding

(1) (1925) I.L.R., 3 Rang., 492. (2) (1924) I.L.R., 2 Rang., 643.

that the insolvency proceedings were pending at the time of the execution petition and that section 28 barred the application, as no permission of the Insolvency Court was obtained. I therefore refuse to interfere and I dismiss the Civil Revision Petition with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Venkatasubba Rao.

NAGASUBRAHMANIA MUDALIAR (RESPONDENT), APPELLANT,

v.

N. KRISHNAMACHARIAR (PETITIONER), RESPONDENT.*

1927, April 25.

Provincial Insolvency Act (V of 1920), sec. 2 (a) (d)—Decree against son for debt of father—Liability of son to adjudication under the Act.

Until there is a personal decree under section 52, Civil Procedure Code, a decree against a person as the legal representative of another (such as in this case a decree against a son for the debt of his deceased father to the extent of the assets in his hands) does not make him liable to adjudication under the Provincial Insolvency Act. *The Official Assignee of Madras* v. *Palaniappa Chetty*, (1918) I.L.R., 41 Mad., 824, followed. *Muthuveerappa Chettyar* v. *Sivagurunatha Pillai*, (1926) I.L.R., 49 Mad., 217, considered.

APPEAL against the order of the District Court of North Arcot at Vellore in I.P. No. 22 of 1923.

The facts are given in the judgment of VENKATASUBBA RAO, J.

A. Visvanatha Ayyar for appellants.

V. C. Rajagopala Achariyar for respondent.

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* Civil Miscellaneous Appeal No. 382 of 1924.