

## ORIGINAL CIVIL.

*Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Parsons.*

IN THE MATTER OF DARASHA RUSTOMJI COLABAWALLA, PETITIONER

*University of Bombay—Act XXII of 1857, Sec. 12—Construction—  
Candidate for a degree.*

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November 23.

The words "candidate for a degree" in section 12 of Act XXII of 1857 to establish the University of Bombay mean a candidate for the final examination, the passing of which entitles him to a degree. They do not mean a candidate for a degree at any stage of his University career. Students, therefore, presenting themselves for the Previous Examination prescribed by the Senate of the Bombay University need not present the certificate required by that section.

RULE *nisi* dated 2nd November, 1898, requiring the University of Bombay to show cause "why the abovenamed petitioner should not be allowed to sit at the Previous Examination to be held at Bombay on the 7th instant, and why the answer papers of the said petitioner should not be examined and the result declared, and also why, in the event of the said petitioner not being allowed to sit at the examination to be held on the 7th instant, the University should not be ordered to examine the said petitioner for the Previous Examination at any other early and convenient day, and to examine the papers of the said petitioner and to declare the result, &c."

The petitioner having presented his petition obtained the above rule under section 45 of the Specific Relief Act (I of 1877).

The following were the material facts stated in the petition:—

The University of Bombay was established under Act XXII of 1857. Under the powers conferred on it by the said Act, the University prescribed that before any candidate could present himself at any degree examination, he should have passed two preliminary examinations, *viz.*, the "Previous Examination" and the "Intermediate Examination;" and that candidates desiring to be examined at the "Previous Examination" must have passed the Matriculation Examination and kept two terms at a college or institution recognized in Arts (p. 42 of Calendar for 1897-98). With regard to candidates for degrees, it was further provided as follows by section 12 of the Act:—

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"12. Except by special order of the Senate, no person shall be admitted as a candidate for the degree of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, or Master of Civil Engineering, unless he shall present to the said Chancellor, Vice-Chancellor and Fellows a certificate from one of the Institutions authorized in that behalf by the Governor of Bombay in Council to the effect that he has completed the course of instruction prescribed by the Chancellor, Vice-Chancellor and Fellows of the said University, in the bye-laws to be made by them under the power in that behalf given by this Act."

The petitioner had duly passed the Matriculation Examination and had kept two terms at an Institution "recognized in arts" as required by the above-mentioned bye-laws of the University. This institution was known as the "Collegiate Institution", and by a resolution passed by the University Senate at a meeting held on the 20th February, 1897, it had been "recognized" for a period of three years for the purpose of the "Previous Examination" only. It did not, however, begin to receive and prepare intending candidates for the Previous Examination until December, 1897.

On the 17th December, 1897, the Registrar of the University by a letter of that date pointed out to the Principal (Mr. Karkaria) of the Collegiate Institution that the recognition of the Collegiate Institution was incomplete, and that to enable its members to proceed eventually to degrees, it would be necessary under section 12 of the Act that the Institution should be authorized by the Governor in Council to give certificates to candidates that they had completed the course of instruction prescribed by the University. The Principal replied that such authorization was not required for the Collegiate Institution, as that institution did not send up candidates for degrees, but only for the Previous Examination. The following is the correspondence which took place on this subject:—

"No. 1925 of 1897-98.

"Bombay, 17th December, 1897.

"To R. P. KARKARIA, Esq., B.A.,  
Bombay.

"SIR,—I am instructed by the Syndicate of the Bombay University to let you know that the recognition of the Collegiate Institution by the Bombay University is still incomplete.

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"2. I am to say that Government have pointed out to the Syndicate that under section 12 of the Act of Incorporation, an institution, in order to have such valid recognition as will entitle its members to eventually proceed to degrees, requires to be specifically authorized by His Excellency the Governor in Council to give certificates to candidates for degrees that they have completed the course of instruction prescribed by the University.

"3. Under these circumstances I am to suggest that before opening the institution you may think it advisable that the necessary authorization from Government should be obtained.

" I have, &c., &c.,

" (Signed) D. MACDONALD,

" University Registrar."

"Bombay, 21st December, 1897.

"TO DR. D. MACDONALD,

" University Registrar.

"SIR,—In answer to your letter of the 17th instant, I regret to say that the alleged incompleteness in the recognition of the Collegiate Institution should have been brought to notice now ten months after the Senate has recognized it and when our arrangements for opening it have been quite completed.

"As regards the authorization from Government which is thought advisable by you to obtain from Government, I am advised that such an authorization is not necessary under the regulations for the recognition of institutions given on page 243 of the University Calendar. Regulation 3 says: 'It shall be competent for the Senate, on the recommendation of the Syndicate, to recognize an institution in any faculty for the purposes of a particular examination or examinations only.' And nothing is said here about Government authorization.

"Section 12 of the Act of Incorporation to which you refer, applies clearly and solely to institutions that send up candidates for a degree, whilst our institution has been recognized for the purposes of a particular examination—the Previous in Arts—only.

"That such is the case may be seen from the fact that institutions similar to ours have not obtained Government authorization, nor have they been advised by the Syndicate to apply for such authorization. Indeed, colleges teaching up to a degree have not obtained such authorization.

"Under these circumstances I do not see how I can apply to Government for authorization, as the Collegiate Institution is not to send up candidates for degrees, and as the regulations under which it has been recognized say nothing about its authorization.

"As our arrangements for opening the Collegiate Institution are quite complete, I shall be obliged by the favour of a very early reply to this letter.

"Yours truly,

" (Signed) R. P. KARKARIA,

"Principal."

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"No. 1949 of 1897-98.

"Bombay, 23rd December, 1897.

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"To R. P. KARKARIA, Esq., B. A.,

"Bombay.

"SIR,—I have the honour by direction of the Syndicate to acknowledge receipt of your letter of the 21st instant and to state that after the warning given by them in my letter No. 1925 of the 17th instant the question of opening the Collegiate Institution is solely one for your consideration and that it would be at your own risk if you opened the institution without such authorization as is referred to in that letter.

"I have, &amp;c., &amp;c.

"(Signed) D. MACDONALD,

"University Registrar."

In February, 1898, Mr. Karkaria addressed the following letter to the University:—

"SIR,—With reference to the correspondence we had in the last week of December, 1897, I have the honour to enquire whether the Syndicate has done anything in the matter there alluded to, *viz.*, authorization of this institution by Government, as this college has been opened and lectures on all the subjects for the Previous Examination are being regularly given during the last five or six weeks to the students, who number more than 25. An early reply will oblige."

The following reply was sent by the University (No. 2330 of 1897-98, dated 16th February, 1898):—

"SIR,—With reference to your letter of the 1st instant, I have the honour by direction of the Syndicate to state that in sending up to Government a list of the Colleges to which the authorization by Government under section 12 of the Act of Incorporation should in their opinion extend, they have omitted the name of the Collegiate Institution. They have further informed Government that a Principal of the Institution you were warned by them last December, before the institution was actually opened, that authorization by Government might be necessary to give full effect to 'recognition' by the Senate, and that, if you opened the institution before you had obtained such authorization, you would do so at your own risk."

In September, 1898, the petitioner through Mr. Karkaria, the Principal of the "Collegiate Institution," applied to the University to be permitted to appear at the Previous Examination to be held on the 7th November following, and forwarded the certificates and fees required by the Regulations.

Thereupon the Registrar of the University sent the following letter refusing the required permission:—

"No. 2174 of 1898-99.

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"Bombay, 7th October, 1898.

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"TO THE PRINCIPAL, COLLEGIATE INSTITUTION,

"Bombay.

"SIR,—With reference to the applications for permission to appear at the ensuing Previous Examination received from you on 22nd September last, I have the honour by direction of the Syndicate to inform you that the candidates cannot be admitted to the examination. The candidates' fees will be returned to you in a few days.

"I have, &c., &c.

"(Signed) D. MACDONALD,

"University Registrar."

The petitioner then presented a petition to the High Court under section 45 of the Specific Relief Act (I of 1877) and obtained the above rule. The question was whether, as the Collegiate Institution was not authorized by Government as required by section 12 of the Act, the petitioner could claim to be examined at the Previous Examination. The petitioner contended that section 12 only applied to a person presenting himself for the final B.A. Examination; that such a person only could be considered as a "candidate for a degree" within the meaning of that section, and that he only could be called upon to give the certificate thereby required. The University on the other hand contended that the petitioner as a student who had matriculated and desired to pass the Previous Examination must be considered as a "candidate for a degree" within section 12 and must present the certificate thereby required.

The prayer of the petition was as follows:—

- (1) That the University of Bombay do allow your petitioner to sit at the Previous Examination to be held on the 7th instant.
- (2) That the University do examine his answer papers and declare the result.
- (3) That, in the event of the University being not ordered to allow your petitioner to sit at the examination on the 7th instant, the University do examine him for the Previous Examination at any other early and convenient date and declare the result.
- (4) That, in the event of your petitioner failing to pass the examination this year, the University do examine him once in every subsequent year for the Previous Examination and declare the result till he passes the said examination.

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"24. That your petitioner prays that this Honourable Court may pass such other and further order as the circumstances of the case may require."

*Scott*, for the University, showed cause.

*Macpherson* and *C. H. Selalvad*, *contra*, in support of the rule.

The Act of Incorporation (Act XXII of 1857), sections 8 and 12, and the bye-laws of the University (see University Calendar for 1897-98) were referred to.

KERSHAW, C. J.:—There can be no doubt that this is a very important case, affecting as it does the course of studies of the students of the University of Bombay. I think I speak for my learned brother when I say that we have no doubt what our judgment should be in this case. I understand the course of proceeding which we are asked to adopt is analagous to that which the Court of Queen's Bench in England has been accustomed to take when applied to for a writ of mandamus. The Court of Appeal has been asked to compel the Bombay University, a Corporate Body, to carry out a duty imposed upon it by statute. And the Act, which corresponds in its procedure to the application for a writ of mandamus in England, is the Specific Relief Act of 1877, and under section 45, chapter 8, of that Act it is laid down (His Lordship read the section and continued).

The facts are shortly these. The applicant to this Court was a student who was desirous of being examined at an examination, called the Previous Examination, which is one of the examinations that a student at the Bombay University must pass on his way to a degree. It is clear to me that he came under section 12 of the Act of Incorporation of the University, and that he had a right to demand that he should sit and be examined at this examination. But it was said that before having the right to be so examined he must first produce a certificate to the effect that he had previously studied in one of the institutions recognized by the University Governing body and authorized by the Governor in Council. I need not go into the facts of that part of the case, but need only say that it was admitted that he was not provided with such certificate, and he was, therefore, rejected by the University, who refused to allow him to sit and be examined at a "Previous Examination." A way out of the dead-lock was,

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however, found that was praiseworthy, since he was allowed to be examined *de bene esse* pending the decision of this Court as to whether under the circumstances he had the absolute right to demand to be so examined or not.

Looking at section 12 I think the first thing we have to ask ourselves is whether the applicant came under the designation of "Candidate for a degree of B.A.," and it seems to us that having regard to the end of the section it can only be read as applying to those persons, and to those persons only, who asked to be examined for the third or final examination for the B.A. degree. (His Lordship then read section 12 of Act XXII of 1857 and continued:—) Certificates as to the previous course of instruction are by the concluding words of the section to be demanded from and produced by those who have completed their course. The applicant in this case had come forward to be examined for the Previous Examination and could not be said in any sense to have "completed his course of instruction." He had only recently passed his Matriculation Examination and was approaching, as I have said, his Previous Examination, which was that which was only second on the list on his way to a degree. Therefore, it would be impossible for him to give any such certificate as would be required by the Act, and it seems to me that the bye-laws which were afterwards appended to the Act help us to that decision. On page 42 under the heading of B.A. are specified the various examinations a student has to go through on his way to a B.A. degree, and clause 9 says that "Candidates for the Degree of B.A." must have passed their Matriculation and will be required to pass three subsequent examinations to obtain such a degree. Regulation 11 may apply to this case, and he might be told on his entrance as a student of the University that he would be required to pass the "Previous," the "Intermediate" and the "Third or Final Examination for the Degree of B.A."

I do not agree with the arguments of Mr. Macpherson with regard to the whole of the examinations having to be passed before the student becomes a "candidate for the Degree of B.A." I agree with the interpretation of my learned brother. When a candidate appears for an examination which it is necessary for him to pass immediately prior to, and which is expressly

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called the Final Examination for, the Degree of B.A., it seems to me that the words of section 12 apply to him; that he then becomes a candidate for the degree of B.A., and that he must produce before being allowed to take his B.A. degree a certificate showing he has received instruction at an "authorized" institution.

These, shortly, are the reasons which induce this Court to come to the conclusion that the University in this matter have struck too soon. We cannot find any authority that provides that he must produce these certificates at an earlier or at every preliminary examination. Section 12 means what it says. At the final examination the University should ask for the certificate to the effect that he has been introduced by a recognized institution. Those are the grounds upon which I base my decision, and I think they are the same upon which my learned brother will give judgment.

PARSONS, J.:—The first point for our decision in this case is the meaning of the words "candidate for the degree" used in section 12 of Act XXII of 1857. Do they mean a candidate for a degree at any stage of his University career, or do they mean one who is a candidate for the final examination, the passing of which would entitle him to the degree? I think the latter. In section 8 of the Act the expression "candidates for degrees" apparently means all persons who make use of the University with the object of obtaining a degree. It allows of the making of bye-laws and regulations touching the qualifications of the "candidates for degrees" and the previous course of instruction to be followed by them and the preliminary examinations to be submitted to by them. At the same time it shows clearly that there is intended to be only one examination for degrees which it calls "the examination for degrees." The holding of this examination is provided for by section 13, which enacts that an examination for degrees shall be held at least once in every year, and that the candidates shall be examined at every such examination. Before this section comes section 12, which provides that "no person shall be admitted as a candidate for the degree . . . unless he shall present . . . a certificate . . . to the effect that he has completed the course of instruction pre-

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scribed . . . in the bye-laws." The use of the word "admitted" might mean that he shall not be admitted at all to the University. This, however, is negatived by the use of the words "completed the course of instruction," and it was not a construction that was contended for on behalf of the University. Their counsel only argued that the words meant that he should not be admitted to any examination which was prescribed for the degree. But to this argument also the use of the same words seems to be equally fatal. To suit this argument we should have to read the section as providing that no person shall be admitted as a candidate for any examination, preliminary or final, prescribed for the degree without a certificate that he has completed the course of instruction prescribed down to the stage at which he has arrived, or for the examination at which he is about to present himself. This would, I think, be doing great violence to the words of the section as they stand. In my opinion, the course of instruction and the preliminary examinations, which are provided for by bye-laws, come within the words "course of instruction," and section 12 enacts that no one shall be admitted to the examination for degrees without a certificate that he has conformed to the bye-laws and completed the prescribed course of instruction. All other matters the Legislature has left the University to arrange, but this certificate (and one only is mentioned) is to be given by an institution authorized in that behalf by the Governor of Bombay in Council. I am confirmed in this opinion by the order in which the sections are placed. Section 11 gives the power to confer degrees after examination (that is, after the final examination). Section 12 deals with the qualifications of candidates for degrees (that is, for that final examination for degrees). Section 13 provides for the holding of that final examination for degrees and section 14 for the grant of degrees at the conclusion of the examination to those deemed entitled to them. All these sections deal in order with the same examination which can only be a final examination, the one which qualifies for a degree directly and immediately.

This, then, being my opinion on the meaning of section 12, it follows that a certificate is not required by that section or by any other provision of law for the Previous Examination, which is

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a preliminary one made by bye-laws under section 8 of the Act. We need not, therefore, enter on the other points raised. The applicant is duly qualified and has satisfied the requirements of the bye-laws of the University as to his appearance at the Previous Examination, and the University were under statutory obligation to examine him when he presented himself for it. We, therefore, make the rule absolute with costs.

*Rule absolute.*

Attorneys for the Petitioner:—Messrs. *Thakoredas, Dharamsi and Cama.*

Attorneys for the University:—Messrs. *Craigie, Lynch and Owen.*

## INSOLVENCY JURISDICTION.

*Before Mr. Justice Russell.*

1898.  
*December 21.*

DAYABHAI SARUPCHAND, INSOLVENT; SORABJI BYRAMJI COLAH,  
OPPOSING CREDITOR.

*Insolvency—Order of personal discharge—Finality of order—Indian Insolvent Act (Stat. 11 and 12 Vict., cap. 21), Secs. 47, 56—Practice—Procedure.*

An order under section 47 of the Indian Insolvent Act (Stat. 11 and 12 Vict., cap. 21) for the final discharge of an insolvent once granted cannot be set aside except upon the grounds specified in section 56 of that Act. The only course open to an opposing creditor is to appeal against the order under section 73.

RULE obtained by the opposing creditor to have an order made under section 47 of the Indian Insolvent Act (Stat. 11 and 12 Vict., cap. 21), for the personal discharge of the insolvent revoked or set aside.

The insolvent had filed his petition and schedule on 12th January, 1898. In pursuance of Rule 14 (see Rules and Orders, Bombay) he gave notice of his intention to apply to the Court for an *interim* order of protection under section 13 of the Insolvent Act. Thereupon the opposing creditor filed grounds of opposition to such order, and appeared by counsel on the 4th May, 1898, to oppose the granting of the order. The Court, however, in spite of his opposition granted a protection order to the in-