

Privy Council Appeal No. 6 of 1941

Navroji Ardechir Cooper and others - - - + *Appellants*

v.

The Official Assignee of Bombay - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 10TH FEBRUARY, 1942.

Present at the Hearing :

LORD THANKERTON

SIR GEORGE RANKIN

SIR CHARLES CLAUSON

SIR MADHAVAN NAIR

[*Delivered by LORD THANKERTON*]

The present appeal arises out of a litigation in which the trial Court and the Appellate Division of the High Court have both given judgment on the merits to the same effect. The latter stages of the litigation have been conducted at the expense of the present appellants they having indemnified the trustee until after the decision of the High Court. The present appellants then applied to the trustee to carry the case further or, failing that, to allow his name to be used by them, they offering a continued indemnity to the trustee. The trustee declined, and the result was a notice of motion on the 7th January, 1937, on the Insolvency Side of the High Court, asking the Court to direct the Official Assignee to lend his name to the applicants for the purpose of carrying on the appeal to His Majesty in Council, they offering the usual proper indemnity. That motion was heard in the first instance by Blackwell J. and was refused. The present appellants then appealed to the Appellate Division of the High Court and it was again refused by that Court.

It is sufficient to refer to the reasons given by the Chief Justice in the High Court, in which his colleague concurred. He says:

"If we thought that there was any reasonably good prospect of success in the appeal, we might be prepared to grant the leave. But even if we directed the Official Assignee to let his name be used we should then have to be satisfied that there was a substantial point of law before we could grant him leave to go to the Privy Council. In my judgment there is no substantial point of law, so that if we gave the direction asked for in this appeal it would carry the matter no further. The decision of the Court of Appeal against which it is desired to appeal to the Privy Council confirmed the judgment of the lower Court, and both the trial Judge and the Court of Appeal expressed a very emphatic opinion that the plaintiff had no cause of action."

The present appeal is against that judgment of the 9th March, 1938.

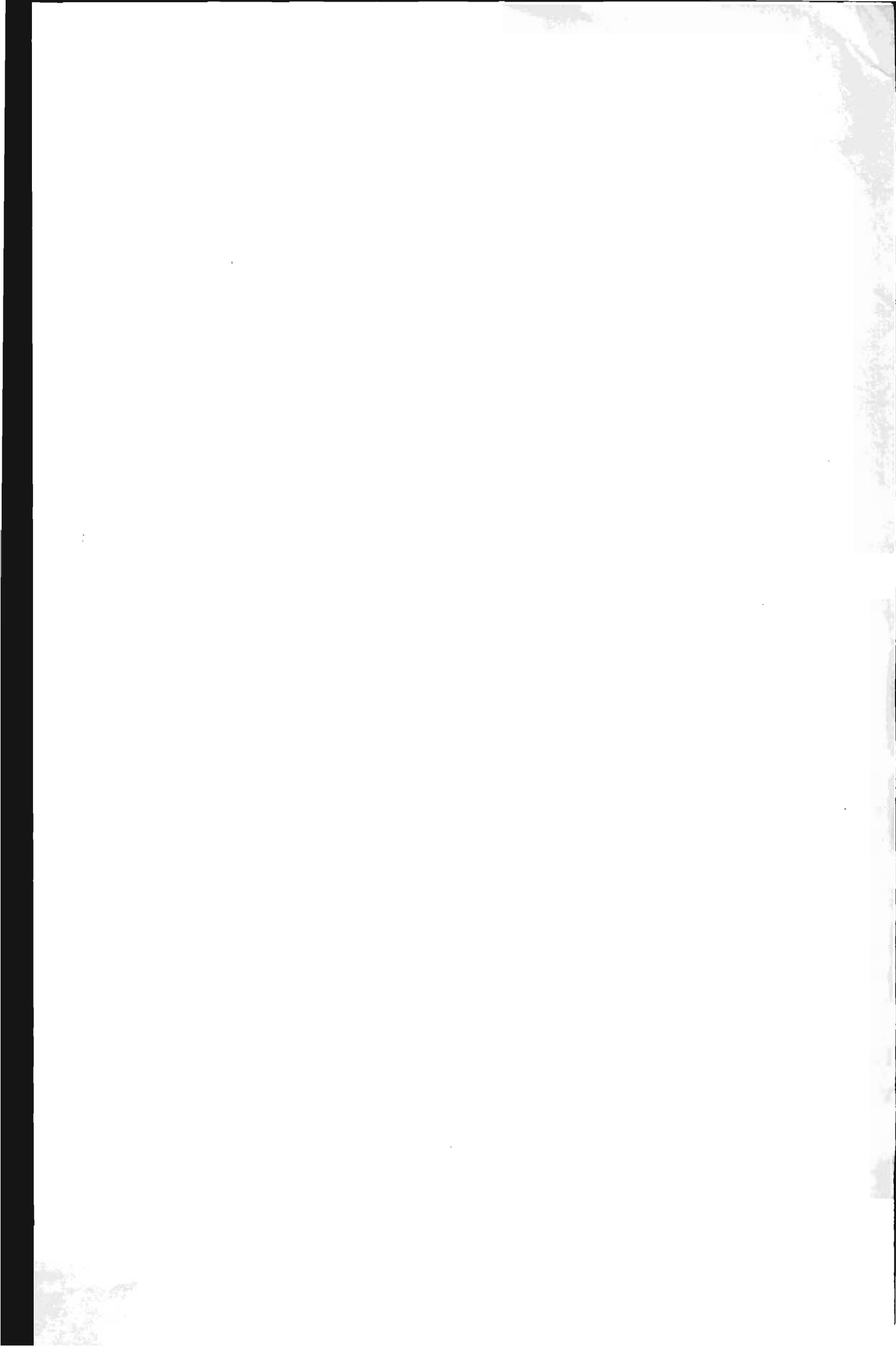
Three main points were mentioned by Mr. Rewcastle in his very full and able address to their Lordships, but he quite frankly admitted that if, in regard to any one of those three points he had not made out what it was necessary for him to make out for the purpose of succeeding in this appeal, he would fail. It is sufficient to deal with the first point namely the question whether there was a partnership between the insolvent and Narandas. On this point the appellants have the judgments of two Courts against them. Their Lordships have listened to the grounds as stated by counsel for the appellants on which he founds his hope of persuading their Lordships that they ought to overrule those judgments. The

High Court have expressed a strong view on the complete insufficiency of those grounds and their Lordships are satisfied that that view is a correct one.

This conclusion must necessarily result in the failure of the present appeal. It is to be borne in mind that if this appeal succeeded, the next step would be an application to the High Court for leave to appeal. The judgment already given in the High Court makes it clear that that application would fail. The next step would be an application to His Majesty in Council for special leave to appeal. In view of what their Lordships have just stated, their Lordships would be bound to advise His Majesty to refuse special leave. It follows that to allow the present appeal would in no whit benefit the appellants and would merely lead to expenditure of money in costs.

Their Lordships desire to add that they entertain no doubt as to the principles on which the Court should deal with such a motion as that which is the subject of the present appeal. Such a motion seeks to get the Court to overrule the decision of the Official Assignee not to litigate further. It is not sufficient for the applicant to point to a possible point which could be raised in argument. He must satisfy the Court that the Official Assignee, in declining to give his name for the purpose of starting or continuing a litigation, notwithstanding that a full and proper indemnity has been offered to him, is not acting as a reasonable man would act if he were owner of, and not merely a trustee of the estate.

Their Lordships accordingly will humbly advise His Majesty that the present appeal should be dismissed. The appellants will pay the costs of the respondent.



In the Privy Council

NAVAROJI ARDESHIR, COOPER
AND OTHERS

2.

THE OFFICIAL ASSIGNEE OF BOMBAY

DELIVERED BY LORD THANKERTON

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