

**(1918) 05 CAL CK 0023**  
**In the Calcutta High Court**

E.D. Murray

APPELLANT

Vs

East Bengal Mahajan Flotilla Co., Ltd.

RESPONDENT

---

**Date of Decision :** 21-05-1918

**Acts Referred:**

**Citation :** (1919) ILR (Cal) 156

**Hon'ble Judges :** Greaves, J

**Bench :** Single Bench

---

### Judgement

Greaves, J.—This is an application by the defendant Company for an order that the plaintiff be directed to give security for the costs of the suit. The plaintiff is an undischarged insolvent and he is suing to recover from the defendant Company a sum of Rs. 33,731 for brokerage, said to have been earned by, him subsequent to his adjudication. The total liabilities of the insolvent are said to amount, according to his schedule of affairs, to Rs. 11,604. In reply to an enquiry addressed by the defendant Company to the Official Assignee on the 22nd January 1918 as to whether he claimed any interest in the suit and if it had been instituted with his knowledge or consent, he replied on the 25th January 1918 that the suit would be continued by him; but so far as I am aware, he has not taken any steps with regard to it.

2. It is admitted that this application is not covered by any provision in the Code of Civil Procedure, but that Code is not exhaustive, and I must deal with it under the general law.

3. It is well settled in English Law that a cause of action which accrues to a bankrupt subsequent to the adjudication in respect of after-acquired property, remains vested in him and does not vest in his Trustee in Bankruptcy and that he is the proper plaintiff to sue in respect thereof, and that anything recovered by him remains in the bankrupt until the Trustee intervenes (see William's Bankruptcy Practice, 11th Ed. pp. 242 to 250), and I see no reason to doubt that the same principles are applicable in this country under the Presidency Towns Insolvency Act.

4. Again it is well settled in English Law that a plaintiff will not be compelled to give security for costs merely because he is a pauper or a bankrupt: see Chitty's Archbold, Vol. I, pt. 5, Ch. 33, p. 398, quoted with approval by Lindley L.J. in Rhodes v. Dawson (1886) L.R. 16 Q.B D. 548 and see Cook v. Whellock (1890) L.R. 24 Q.B.D. 658 where Vaughan Williams J. states at page 659 that a plaintiff who sues in respect of a cause of action accruing subsequently to the bankruptcy cannot, simply because he is an undischarged bankrupt, be called upon to give security for costs unless he is acting on behalf of the Trustee; and "that the order as to security for costs only applies where the plaintiff is merely a nominal plaintiff suing for the benefit of others," and Lord Esher states at page 662 that if the undischarged bankrupt gets a benefit, he is not a nominal plaintiff; see also Cowell v. Taylor (1885) L.R. 31 Ch. D. 34 and the judgment of Bowen L.J. at page 38.

5. I think that the same principles are applicable in this country.

6. What, therefore, I have got to decide on this application is, whether the plaintiff here is a nominal plaintiff suing only for the benefit of the Official Trustee. I think that he is not. I will assume in favour of the defendant Company that the letter of the Official Assignee of the 25th January 1918 amounts to an intervention by him, so that he will claim up to the sum of Rs. 11,604 any sum recovered by the plaintiff: in the suit; but the claim is for Rs. 33,731, and accordingly any sum recovered in excess of Rs. 11,604 remains for the plaintiff's benefit, so that I cannot say that the plaintiff in any event gets no benefit and is a nominal plaintiff. In certain events he gets a substantial benefit and on this ground I dismiss the application with costs.