

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of M'Clean v.
Dummett, from Barbadoes; delivered 1st July,
1869.*

Present:

SIR WILLIAM ERLE.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

IN this case their Lordships are clearly of opinion that there is no petitioning creditor's debt, and that even if the party had been adult, it would have been very questionable whether there was a debt or not, but seeing that the party was an infant, beyond all question, there was no debt of any description.

The alleged debt, in fact, is a debt on a Bill signed by a clerk, of the name of Waldron, who held a power of attorney from the two adult partners in this firm; neither of those powers referring to the alleged infant partner M'Clean, or referring to M'Clean in any way; and the Bill itself was drawn at a time when M'Clean was in Demerara. Their Lordships are clearly of opinion that if any action had been brought against M'Clean, a plea of infancy would have been fatal to that action; and, therefore, upon that ground, that these proceedings in bankruptcy ought to have been superseded.

With reference to the rest of the case, their Lordships cannot part with it without saying that that which has been stated in the Court below as conduct affording a reason why these proceedings should not have been superseded, does not come within the principles of any of the decided cases. Those cases proceed upon conduct connected with the actual in-currence of debts in the trade. It is not enough that the infant should have traded. It is not enough that his name should have been in the 'Gazette,' and that he should have been gazetted as a partner. It is not enough that he has dealt with property in a mode in which it ought not to have

been dealt with. These cases proceed on this, viz. that the infant has fraudulently asserted himself to have been of age when he was not of age, and that he has, by that fraudulent assertion, induced persons to give him credit, and thereby has contracted debts in the trade.

Upon these grounds their Lordships are of opinion that the Court below has miscarried; that the adjudication of insolvency against the Appellant ought to be set aside and annulled with costs; and that the decision of the Chief Judge confirming the same ought to be reversed, also with costs; and that these as well as the costs of this Appeal ought to follow the result of the whole litigation; and so their Lordships will humbly advise her Majesty.



