Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Wood Renton.

1908.
June 29.

SESMA LEBBE MARIKAR *v.* MANATCHY UMMA *et al.*

D. C., Colombo (Testamentary), 2,925.

Administration—Insolvency of applicant—Disqualification—English Law—Civil Procedure Code, ss. 523 and 544.

An undischarged bankrupt is not *ipso jure* disqualified for the office of administrator of a deceased person's estate under the Civil Procedure Code.

APPEAL from an order of the District Judge of Colombo granting letters of administration of the estate of Packeer Pulle Mustapha Natchia to the respondent Siddi Lebbe Marikar Sesma Lebbe Marikar. The facts sufficiently appear in the judgments.

F. M. de Saram, for the third respondent, appellant.

Bawa, for the petitioner, respondent.

Cur. adv. vult.

June 29, 1908. HUTCHINSON C.J.—

This is an appeal from an order made on February 13, 1908, granting letters of administration of the estate of Packeer Pulle Mustapha Natchia to the respondent Siddi Lebbe Marikar Sesma Lebbe Marikar.

The respondent is the only son of the deceased; the appellant is a grandson, and he opposed the respondent's application for a grant of administration, alleging that he is not a fit and proper person to administer the estate, but giving no reason for the allegation.

The District Judge took evidence, from which it appeared that the respondent was adjudicated insolvent thirty-six years ago, and had got no certificate, but had paid all his debts; and that the appellant had been in jail for five years about seven years ago for uttering a forged promissory note. The District Judge said that the respondent is a respectable old man, and that his insolvency is now matter of ancient history.

The appellant contends that an uncertificated bankrupt is by law incapable of being appointed administrator. Williams, on *Executors, 1,336, 359*, says that such a person is disqualified, giving as his authority the case of *Hills v. Mills*,[1] which means that in England the Court will not appoint such a person. In Ceylon an application for a grant of administration of an intestate's estate is made under section 544 of the Civil Procedure Code, which places no restriction on the power of the Court to appoint any person interested in having

[1] *1 Salkeld 35.*

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the estate administered, except that when there is a conflict of claims, regard is to be had to section 523, which enacts that the claim of the widow or widower is to be preferred to all others, and the claim of an heir to that of a creditor. But, of course, the Court will not appoint a person whom it thinks to be not a fit and proper person; and in considering whether a claimant is fit and proper, the Court may be guided by the English practice, although there is no law making that practice absolutely binding on it. I do not feel sure that an English Court would hold that a man who was bankrupt thirty-six years ago and has paid all his debts and lived a respectable life ever since is absolutely disqualified by the fact that he never obtained an order of discharge. But, whether that is so or not, I do not think that we should bind our Courts by laying down a hard and fast rule which the Legislature, in the elaborate provisions which it has enacted on the subject of administration, has not laid down.

I think the appeal should be dismissed, with costs.

WOOD RENTON J.—

This appeal arises out of a contest for the grant of letters of administration to the estate of Packeer Pulle Mustapha Natchia, who died intestate on May 2, 1889. The appellant is the grandson, and the respondent is the son of the intestate. The appellant is entitled to 7/60 and the respondent to 8/60 of the property. As regards character, the balance is decidedly in favour of the respondent. The learned District Judge has found—and Mr. Morgan de Saram does not contest the finding—that he is a respectable old man, who was for some time employed by the Governor of Ceylon in his communications with the Maldivian Ambassador. The respondent, on the other hand, was on his own admission convicted and sentenced to five years' imprisonment for forgery, and he was undergoing that sentence about seven years ago. The exact date of his conviction does not appear. The District Judge rightly declined to consider a person of this description as a serious candidate for the grant of letters of administration, and Mr. de Saram did not press his client's claims upon us from that standpoint on the hearing of the appeal. But he contended that the respondent was, *ipso jure*, disqualified for the office of administrator by reason of the fact that he is an undischarged bankrupt. The respondent stated—and there is no evidence to the contrary—that his bankruptcy occurred thirty-six years ago, and that he has since paid his creditors in full. But he is still a bankrupt, and Mr. de Saram contends that he is thereby disqualified to be an administrator. In support of this proposition no local enactment or decision was cited; but we were referred to a passage in Williams on *Executors* (*10th ed., vol. I., p. 359*), in which it is stated that " the incapacities of an administrator . . . . . .

extend to . . . . . bankruptcy." The authorities given in the footnote (*n* (*o*)) are *Hills v. Mills* and Comyn's *Digest*, title *Administrator* (*B*) 6. *Hills v. Mills* [1] is not a direct authority on the point. It was a motion for a prohibition to the Ecclesiastical Court of Canterbury to stay a suit for the revocation of probate, on the ground that the executor "was become bankrupt." The report poceeds "and though one Coates's case was cited, where an administration was revoked for that cause, yet the Court said that differed; for the executor is constituted by the testator himself, and by him intrusted." The prohibition was, therefore, granted. This case was cited to the Court of King's Bench in *R. v. Simpson*,[2] and Lord Mansfield C.J. said: "The consequence was that the Court of Chancery was forced to assume a new jurisdiction and take the power out of the executor's hands and appoint a receiver of the effects;" and the principle is now well established that while probate cannot be refused to a person appointed executor of a will on the ground of insolvency (*R. v. Raynes*,[3] Williams on *Executors*, *10th ed.*, *I.*, *p. 162*, and cases *ad loc. cit.*), the Court can and will restrain an executor who becomes bankrupt after probate from further dealings with the estate (*cf. Utterson v. Mair*,[4] *Scott v. Becher*,[5] *Bowen v. Phillips*,[6]). I have been unable to trace any report of Coates's case to which reference was made in *Hills v. Mills*, or to find any other authority for the proposition that bankruptcy necessarily disqualifies a person for the office of administrator. *Hills v. Mills* is not such an authority. Neither is Comyn's *Digest* (*ad loc. cit.*). The words used are: "So if the next of kin be incapable, administration shall be granted to another . . . . . as . . . . . if he become bankrupt," and the statement is justified by a reference to *Hill v. Mills*.[7]

I conclude, therefore, that there is nothing in the English Law of administration to fetter the power of the District Court in the present case, acting under the joint provisions of sections 519 and 545 of the Civil Procedure Code, to say that "by reason of consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered," the respondent is, in spite of his remote bankruptcy, "a proper person to be appointed administrator."

I would dismiss this appeal, with costs.

Appeal dismissed.

[1] (*3 Will. and Mary*) *1 Salk. 36.*
[2] (*1 W.*) *Black 455 at p. 458.*
[3] (*10 Will. III.*) *1 Salk. 299.*
[4] (*1703*) *2 Ves. Jun. 95.*
[5] (*1816*) *4 Price, 346.*
[6] (*1897*) *66 L. J. Ch. 165.*
[7] *1 Salk. 36.*