

1957 Present: Basnayake, C.J., and L. W. de Silva, A.J.

V. MANDIRAMPILLAI and another, Appellants, and K. SUBRAMANIAMPILLAI and others, Respondents

S. C. 22 Inty.—D. C. Colombo, 5,983

Insolvency Ordinance (Cap. 52)—Section 30—Procedure.

Under section 30 of the Insolvency Ordinance the insolvent is the party who should begin in proceedings in which he is required to show cause against the validity of his adjudication. It is not for the petitioning creditor to begin:

Supramaniam Chetty v. Gaffoor & Co. (1908) 2 Weerakoon 5, not followed.

APPEAL from an order of the District Court, Colombo.

Sir Lalita Rajapakse, Q.C., with *G. E. Chitty, Q.C.*, *C. Renganathan* and *Miss Maureen Seneviratne*, for Petitioners-Creditors-Appellants.

C. Chellappah, with *S. Sharvananda*, for 1st Respondent-Respondent.

N. Kumarasingham, with *P. Navaratnarajah* and *S. Sharvananda*, for 2nd and 3rd Respondents-Respondents.

September 19, 1957. BASNAYAKE, C.J.—

The question for decision in this appeal is whether the learned District Judge was right in holding that the petitioning creditors should begin in proceedings under section 30 of the Insolvency Ordinance.

The learned trial Judge has ruled on the authority of *Supramaniam Chetty v. Gaffoor & Co.*¹ that the petitioning creditors should begin. That decision is based on the case of *Re Clay*². Neither counsel was able to cite that report. Without an examination of that case we are unable to satisfy ourselves that *Re Clay* is a decision which can be applied to the interpretation of section 30 of the Insolvency Ordinance. With great respect we are unable to agree with the view taken in *Supramaniam Chetty's* case. It is clear from an examination of section 30 that the insolvent is the party who should begin in proceedings in which he is required to show cause against the validity of his adjudication. The learned trial Judge was, therefore, in our opinion wrong in ruling that it was for the petitioning creditors to begin. Learned counsel for the

¹ (1908) 2 Weerakoon's Reports 5.

² (1851) 1 Fonblanque's Bankruptcy Cases 212.

petitioning creditors complains that they have been prejudiced by reason of the wrong procedure adopted by the learned Judge. We therefore set aside all the proceedings on and after 12th September 1955 and direct that, if the insolvents wish to show cause, they should be required to begin.

The appeal is allowed with costs.

L. W. de SILVA, A. J.—

I agree.

Appeal allowed.

