

1933

Present : Dalton S.P.J. and Driéberg J.

RAMANATHAN CHETTIAR *v.* RATNASINGHAM.

111—D. C. Jaffna, 5,870.

Administration—Seizure of money in testamentary suit—Application to draw out the money—Insolvency of the estate—Concurrence—Civil Procedure Code, s. 352.

The appellant seized certain moneys lying in Court to the credit of a testamentary case in execution of a decree against the official administrator of the estate of the deceased intestate, and applied to have the money paid out to him.

Held, that the application cannot be refused on the ground that the estate is insolvent; it must be allowed subject to the right of any other parties who are entitled; to concurrence.

There is no provision in the law as it exists in Ceylon for winding up the estate of a deceased person in insolvency.

A PPEAL from an order of the District Judge of Jaffna.

H. V. Perera (with him *Nadesan*), for creditor, appellant.

No appearance for official administrator, respondent.

May 18, 1933. DALTON S.P.J.—

The appellant has seized certain moneys lying in Court to the credit of the testamentary case, in execution of a decree obtained by him against the respondent, official administrator of the estate of the deceased person. He has applied to the Court to have the sum seized paid out to him, but his application has been refused. The ground for refusal is that the estate is insolvent, that is there are not sufficient funds to pay all the debts in full.

No insolvency proceedings were taken against the deceased person in his lifetime, and apparently there is no provision in the law as it exists in Ceylon for winding up the estate of a deceased person in insolvency. A provision for the administration in insolvency of the estate of a person dying insolvent, similar to section 125 of the English Bankruptcy Act, 1883, would appear to be long overdue. There would, as the law stands at present, appear to be nothing to prevent an executor of an hopelessly

insolvent estate preferring one creditor to another of the same class. The estate would appear to be in the same position as a man who is unable to pay his debts, but has not obtained the protection of the insolvency law, with this addition that the estate cannot obtain that protection, nor the creditors its assistance.

The provisions of section 199 of the Civil Procedure Code give no assistance in such a case as this. It was held as long ago as 1906 that the administration there referred to is not the ordinary testamentary procedure provided by the Code (*Hay v. Nunn*¹). One can only stress this again as one of the matters on which the present Insolvency Law is deficient and out of date.

The District Judge had no ground for refusing the application, which must be allowed, subject of course to the rights of any other parties who are entitled to concurrence under the provisions of section 352 of the Civil Procedure Code.

The appeal is allowed with costs in both Courts.

DRIEBERG J.—I agree.

Appeal allowed.

