

*Present* : Garvin and Lyall Grant JJ.

1928.

DE ZILVA *v.* GOMES.

224—D. C. Colombo, 2,618.

*Administration—Claim by creditor—Not admitted by administrator—  
Responsibility of Court—Separate action.*

An administrator, who is not prepared to admit the claim of a creditor, is not entitled to place upon the Court the responsibility of a decision on the matter. In such a case it is left to the creditor to establish his claim by regular proceedings against the estate.

**A**PPEAL from an order of the District Judge of Colombo allowing the respondent, a creditor of one Shirman de Zilva, to draw certain moneys lying to the credit of his estate. The administrator, to whom the respondent applied for payment, was not prepared to admit his claim. The widow who was given notice of the application objected to the payment of the full claim.

*H. V. Perera*, for petitioner, appellant.

*Hayley, K.C.* (with *Soertsz*), for creditor, respondent.

February 1, 1928. GARVIN J.—

This is an appeal from an order of the learned District Judge on an application made by the respondent to draw from certain moneys lying in credit to one Shirman de Zilva, the sum of Rs. 65,000 and

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interest thereon at 10 per cent. per annum from August 3, 1923, less a sum of Rs. 6,525. The respondent was admittedly a creditor of the estate. He applied to the administrator for the payment of the debt which he alleged was due to him, but the administrator was not prepared to do so unless the Court ordered him to make the payment. The reason for the attitude of the administrator would seem to be that the widow of the deceased desired to challenge the right of the creditor to recover so large a sum as he claimed. Instead of suing the administrator the respondent adopted the course of applying to the Court for an order of payment in his favour for a sum of approximately Rs. 90,000. The widow was given notice of this motion and she appeared and through her Counsel objected to the payment of this claim in full. An argument appears to have taken place, at the termination of which the learned District Judge made order in the following terms :—“ I therefore order that the money be paid to the mortgagee if the official administrator has no other objection towards it. The widow can take any action she likes regarding the transfer and regarding the claim on the mortgagee.” It is urged that this is not an order which the learned District Judge was entitled to make. Indeed that the whole procedure adopted by the respondent to recover payment of his claim was irregular. The administrator of course has the right to decide for himself whether he will pay the claim against the estate or not. The administrator was not prepared to make decision upon the question. He did not pay the claim. He is not entitled to place upon the Court the responsibility of advising him as to whether the claim is one which should or should not be admitted. In such a case it is left to the creditor by appropriate proceedings against the estate to establish his right to the amount which he claims to be due to him from the estate of the deceased. It seems to me that since the administrator in this case was not prepared to take the responsibility of paying the claim, the creditor should have been left to establish his claim in a regular proceeding. For these reasons I would set aside the order under appeal. We make no order as to costs.

LYALL GRANT J.—I agree.

*Set aside.*