Present : Bertram C.J. and Garvin A.J. 1921.

SEDRIS *v.* RAMANATHAN.

103—D. C. Galle, 466.

Insolvency — Power of Court to annul adjudication — Application by opposing creditor for an adjournment with a view to making an application for the annulment of adjudication.

The power of the Court to annul an adjudication in bankruptcy is not limited to cases for which special provision is made in the Insolvency Ordinance. The Court has a general power to annul an adjudication in appropriate circumstances.

APPELLANT was, on an application made by him under section 20 of Ordinance No. 7 of 1853 on December 21, 1920, to have his estate adjudged insolvent and placed under sequestration, adjudged insolvent under the provisions of section 26 of the said Ordinance.

Two sittings were appointed under section 30 and estate adjudged insolvent, and all other incidental steps having been gone through, and his last examination having been proceeded with, the second sitting was declared closed, and a public sitting was appointed for the allowance of his certificate, under the provisions of section 124 of the Ordinance, for July 12, 1921.

On July 8, 1921, the assignee gave notice of his intention to oppose the granting of the certificate on four grounds.

On July 12, 1921, on an oral application made by counsel for opposing creditor asking for an adjournment of the certificate meeting to enable him to prove that the assets are not enough to pay five shillings in the pound, and to take the necessary steps to have the adjudication of insolvency annulled, the District Judge, over-ruling the objections raised by counsel for appellant to an adjournment, adjourned the meeting.

The insolvent appealed.

Soertsz, for the appellant—An order of adjudication once published in the *Gazette* is a judgment *in rem*, and cannot be annulled thereafter (see sections 30, 41, and 143).

The whole of our insolvency laws is to be found within the four corners of the Ordinance, and in the Ordinance there is no provision for annulment of the adjudication in the circumstances of this case.

The Ordinance provides for the Court satisfying itself of the sufficiency of the estate before the adjudication, and once the Court has satisfied itself and adjudged the estate insolvent, the Court cannot reconsider its decision. In this case the mere fact that the estate later realized less than five shillings in the pound cannot

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prejudice the appellant. That may be due to various causes, and the estate may well have been worth five shillings in the pound at the date of the petition.

Keuneman, for respondent.—The Court has a general power to annul an adjudication. *Ex parte Spicer*.[1] *Ex parte Charles Louis*.[2] The material before the Court was not sufficient for the Court to adjudicate upon the sufficiency of the estate, and it is now open to the Court to annul the adjudication. *5 Bal. Notes of Cases 1.*

December 2, 1921. BERTRAM C.J.—

This is an appeal by an insolvent against the order of the District Judge of Galle granting an adjournment with a view to enabling an opposing creditor to make an application for the annulment of the adjudication. The learned Judge has seen fit to grant an adjournment. There is no substantial justice in the application which the opposing creditor desires to make. The petition was presented by the insolvent himself at a time when he was undergoing imprisonment as a civil debtor. He presented the petition a day after the commencement of his imprisonment, and the ground of his petition was that he would not be able to satisfy the Court that his assets would realize five shillings in the pound. Had he waited for three weeks, he would, under the final sentence of section 20 of the Insolvents Estate Ordinance, No. 7 of 1853, have been able to apply for an adjudication without satisfying the Court as to the amount of his assets. The sole object of this application is to subject the insolvent to three weeks' imprisonment before he can re-institute proceedings. One, therefore, has no moral sympathy with the creditor now opposing the grant of a certificate. Nevertheless, certain interesting points have been raised, and it is necessary to give a decision upon these points as points of law.

Mr. Soertsz, who appears for the appellant, takes the objection that it was not competent to the learned Judge in any case to annul the adjudication. He argues that the grounds upon which an adjudication may be annulled are specified in the Ordinance, that there is no general power in the Court to annul an adjudication where it is thought that adjudication should not be made, and that, moreover, the order of adjudication, being in effect a judgment *in rem*, is under section 41 of the Evidence Act conclusive. I do not agree with these contentions. The power of the Court to annul an adjudication is not limited to cases for which special provision has been made. That is the principle of the English law. It will be found laid down in the case of *ex parte Ashworth*,[3] where Sir James Bacon C.J. says : " I do not entertain the slightest doubt that the Court of Bankruptcy has power at any time, for good reasons, to annul any bankruptcy in which an adjudication may have been made."

[1] *M. D. & De G's. Rep. 388.* [2] *M. D. & De G's. Rep. 365.*
[3] *(1874) 18 Eq. Cases 705.*

Mr. Keuneman has cited to us interesting examples of the application of that principle from *ex parte Spicer*,[1] where a *fiat* was set aside on the ground that it was concerted merely to serve the purposes of the bankrupt, and not with any view benefiting the creditors; and *ex parte Charles Louis*,[2] where again the Court considered the question whether the *fiat* was sued out *bona fide* by the petitioning creditor for the benefit of himself and the other creditors of the bankrupt.

An interesting discussion of the history of the subject in English law may be seen in the judgment of Vaughan Williams L.J. in *ex parte Painter*.[3] These principles have been adopted into our own legal system by the judgment of Cayley C.J. *In the Matter of the Insolvency of C. B. Rowlands*,[4] and I think that in view of the date of that case, we must take it as settled law and part of our legal system that a District Court has a general power to annul an adjudication in bankruptcy in appropriate circumstances.

Mr. Keuneman also takes another legal point. In the application of his client for an adjournment, the only ground stated was that at the date of the petition the assets of the insolvent were not anything like five shillings in the pound. He now wishes to show that the proceedings are irregular, on the ground that no evidence, other than an affidavit of the insolvent, was tendered to prove the amount of his assets, and he relies upon the case of *Majeed v. Chetty*.[5] I do not think in any case that, even if an adjournment were granted, the appellant ought to be allowed to raise this point. He asked for an adjournment on one specific ground, and if the adjournment were allowed, I think he should be tied down to that ground. But I think that the decision to which he refers is liable to misapprehension. It is based—the judgment of the Chief Justice at any rate—upon an old English decision, an anonymous case in *Fonblanque, p. 6*. In that case the Commissioner said that he must be satisfied of the facts contained in the petition by other evidence than the petitioner's own affidavit. The only affidavit in that case appears to have been in the form required by section 89 of the Bankrupt Law Consolidation Act, 1849. We have referred to that Act and to the prescribed form which is given in *Archbold's Bankruptcy Practice, Book II., on page 13*. The form of petition there prescribed merely states that the petitioner verily believes that he can make it appear to the satisfaction of the Court that his available assets were sufficient to produce the sum of one hundred and fifty pounds at the least. It will be noted that the requirement is slightly different from that of our own law, which requires it to be shown that the estate would realize five shillings in the pound. But that was in consequence of an amendment of the law passed shortly after the enactment

[1] *2 M. D. & De G's. Rep. 388.*
[2] *1 M. D. & De G's. Rep. 365.*
[3] *(1895) 1 Q. B. 85.*
[4] *(1880) 4 S. C. C. 2.*
[5] *(1915) 5 Bal. Notes of Cases 1.*

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of the Act of 1859. The form of affidavit required for the verification of the allegations in the petition is simply in these words: "The petitioner named in the petition hereunto annexed maketh oath and saith that the several allegations in the said petition are true." Now, in the present case, there is something more than this bare affidavit. There is a schedule of assets and liabilities. I think it is clear that in *Majeed v. Chetty* [1] what the Court must have meant was not that in no case would the petitioner's affidavit be sufficient evidence of the facts alleged, but that the affidavit in the particular case was not sufficient.

There is no reason why the necessary evidence should not be given by affidavit, or why a Court should not act upon the affidavit if the affidavit is sufficient.

This being the law we now come to the facts of the particular case. Is this a case in which, when considering the application for the certificate, the Court should suspend proceedings in order to allow an opposing creditor to make application for the annulment of the adjudication? It is no doubt the fact that, if it appeared that there was a misstatement of the assets in the petition, and that this misstatement was made recklessly or frauduently, the Court would have power to annul an adjudication. But nothing of this sort is suggested in the present case. No *primâ facie* case is made out for suggesting that there is any ground for the extraordinary proceedings asked for. On the contrary, we are told, and the statement is not contradicted, that one of the principal assets in the case—certain jewels which were pledged, and which were valued at Rs. 600—had been pawned to a Chetty, and that Rs. 235 had actually been advanced upon them. This is very good *primâ facie* evidence that they were worth the amount, and the reason why the assets have in fact not realized five shillings in the pound appears to be that for some accident the jewels have not realized the value of the amount advanced upon them.

There is another reason, too, why the Judge ought not to have granted an adjournment in this case (though the reason I have given is quite sufficient), and that is, that although this point was in the mind of the creditor so early as January 24, and although he had every opportunity of making formal application, and if necessary of obtaining information on the subject, he never took any action until the Judge was considering the question of the grant of the certificate, and it appears that, even at that time, he had not the full information which he required for the purpose of the application. Delay in such cases is a point that will be taken into account, as is shown by the case of *ex parte Moule*,[2] though in that case the application was made long after the issue of the certificate.

[1] *(1915) 5 Bal. Notes of Cases 1.*

[2] *14 Vesey Jr. 602.*

For these reasons I am of opinion that this is not a case in which the learned Judge should have granted an adjournment for the special purpose specified in the application, and I think that the case should go back to him for the purpose of determining the question of the grant of a certificate.

The appeal, in my opinion, should be allowed, with costs.

GARVIN A.J.—I agree.

Appeal allowed.