

1917.

Present: Wood Renton C.J. and Shaw J.

In re the Insolvency of ARNOLIS APPU.

27—D. C. Galle, 422.

Insolvency—Power of assignee to delegate his duties to an attorney—Assignee's report based on the results of inquiries made from outsiders—Grounds of opposition should be specifically stated—Amendment of law relating to bankruptcy and imprisonment for debt.

An assignee appointed under the Insolvent Estates Ordinance, 1853,¹ cannot delegate his duties to an attorney or other agent.

An assignee's report should not be based on information which has been gathered from "outsiders."

THE facts are set out in the judgment.

F. M. de Saram, for insolvent, appellant.—In this case a proved creditor, Palaniappa Chetty, was appointed assignee by the Court, but the report of the assignee is made by his attorney, Pethaperumal Pillai. The assignee himself is out of the Island, and it is submitted that the law does not permit of the delegation of the assignee's duties to a third party. (*Archibald on Bankruptcy* 513.) The assignee has no right to import into his report information he has gathered from "inquiries made from outsiders."

The learned Judge has also considered an objection raised by himself, which was not embodied in the notice of opposition given by the opposing creditors, viz., putting one of the creditors of the insolvent to unnecessary expense by making him a respondent to an application for discharge. This is an offence under section 151 of the Ordinance, and should have been specifically charged against the insolvent and an opportunity given to him to meet it.

E. W. Jayewardene, for assignee, respondent.—The assignee has made the report his own. There has been an exhaustive inquiry. These objections should have been taken in the District Court, and they must be taken to be waived. No prejudice has resulted.

Cur. adv. vult.

May 25, 1917. WOOD RENTON C.J.—

This is an appeal by an insolvent against the refusal of the District Judge of Galle to grant him a certificate of conformity. The appellant was adjudicated insolvent under section 20 of the Insolvent Estates Act, 1853,¹ on the footing that his estate would be able to

¹No. 7 of 1853.

pay Rs. 5 in the pound. The learned District Judge held on the evidence that this representation was untrue, but proceeded, nevertheless, with the examination of the insolvent. The first point taken in support of the appeal is that under the section above mentioned he should have annulled the adjudication. I am not satisfied that the District Judge considered the representation in the appellant's petition otherwise than under section 124 of the Act, and there are allegations in regard both to his conduct as a trader and as to the commission by him of statutory offences which, if substantiated, would justify the refusal of a certificate of conformity. But there have been irregularities in the proceedings which may have prejudiced the appellant's position in the District Court. In the first place, while Palaniappa Chetty was appointed assignee, the examination of the insolvent was conducted, and the assignee's report was presented, by his attorney Pethaperumal Pillai, a proceeding for which neither statutory nor judicial authority is to be found. On the contrary, the Insolvent Estates Act, 1853,¹ requires an assignee to be appointed, and he clearly has no power to delegate his authority to any one else. In the next place, the assignee's report is based, not merely on evidence, but also on the results of "inquiries made from outsiders," which are clearly inadmissible. Finally, the learned District Judge has taken account against the appellant of an allegation that he had put one of his creditors to unnecessary expense by making him respondent to a dishonest application for discharge. This allegation was not embodied in either of the notices of objections to the grant of a certificate which were filed in the District Court, nor was he clearly confronted with it in the proceedings.

I would set aside the order appealed against, and send the case back to the District Court for the appointment of an assignee, by whom personally the appellant shall be examined and the report presented, and for further proceedings in due course. None of the points urged upon us here was taken at the hearing, or in the petition of appeal, and there should be no costs of this appeal in any event. If any other questions of costs should arise, the District Judge will exercise his discretion in regard to them.

The number of insolvency appeals and the frequency with which the findings of courts of first instance in such cases have to be interfered with involve a serious waste of their time and ours, but, as matters stand, can scarcely be avoided. I called attention to the cause of these evils as far back as 1908 in the case of *Pitchetamby v. Abdulla*,² and my Brother Shaw has recently emphasized the same line of argument. The Insolvent Estates Act, 1853,³ is archaic, and completely out of touch with the requirements of modern commercial life. No rules of practice can now with advantage be

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Appu*¹ No. 7 of 1853, s. 66.² (1908) 11 N. L. R. 205.³ No. 7 of 1853.

1917. framed under it, and the courts of first instance have had to work
out a *cursus curiæ* for themselves, the lines of which have not always
WOOD been uniform or satisfactory. Is it too much to hope that the
RENTON C.J. Legislature will ere long bring the bankruptcy law of the Colony
In re the into line with that of practically every other part of the Empire?
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Appu

SHAW J.—

I entirely agree. The duties of an assignee are somewhat vaguely stated in the Insolvent Estates Ordinance, 1853,¹ and are often very much neglected in practice.

The assignee has, however, important duties to perform in getting in the insolvent's estate, and in assisting the Court in the insolvency proceedings, and his report is always taken into consideration by the Court on the question whether or not a certificate shall be granted.

It is clear that the assignee cannot delegate his duties to an attorney or other agent. In the present case Palaniappa Chetty, the assignee, has taken no part in the proceedings, and is said not even to have been in Ceylon since the date of his appointment. It may be a convenient method for Chetties to carry on their own business here by means of agents, but if appointed assignee under the Ordinance they must act personally.

I am in complete accord with the observations of my Lord as to the necessity for an amendment of our law. The present law in force in this Colony, relating both to insolvency and to imprisonment for debt, is not only a source of great trouble and perplexity to those who have to administer it, but is entirely out of harmony with the requirements and ideas of modern times.

Sent back.

¹ No. 7 of 1853.