1897.
October 13.

In the Matter of the Insolvency of AWENNA KEENA MUNA MOHAMMADU IBRAHIM NEYNA.

O. L. ABUBAKKER, of Colombo, a proved Creditor, Appellant.

D. C. (Insolvency Action) Kurunegala, 64.

Insolvency—Ordinance No. 7 of 1853, s. 66—Rejection of petitioning-creditor as assignee—Discretion of District Judge—Voting by proved creditors—Necessity of letters of attorney and proof thereof by affidavit or oath to enable a proctor to vote in absence of proved creditor.

The power to reject an assignee is a discretion vested in the District Court, with which the Supreme Court will not interfere, save in exceptional circumstances.

Reasons should be given why the person rejected is considered personally unfit for the office.

Under section 66 of the Insolvency Ordinance, the proved creditors must vote either in person or by persons authorized by letters of attorney, which must be proved either by affidavit or by oath before the Court *vivâ voce*.

IN this matter the petitioning-creditor was nominated as assignee by the majority of creditors in number and value. Some of the other creditors impeached the *bonâ fides* of the petitioning-creditor, who, they alleged, were acting in collusion with his nominors and the insolvent. The Acting District Judge (Mr. C. M. Fernando) ruled that a party who was not a creditor should be appointed assignee, and rejected the nominee under the discretionary power vested in him by section 66 of Ordinance No. 7 of 1853.

One of the aggrieved proved creditors appealed against this finding.

W. Pereira, for appellant.

13th October, 1897. LAWRIE, A.C.J.—

I would not disturb the order rejecting the petitioning-creditor as assignee. The power to reject is a discretion vested in the District Court, which (it seems to me) should not be interfered with, except in very exceptional circumstances. The District Court had already, on the 10th August, rejected an assignee supported by Mr. Markus and his clients, and it was but carrying out the same policy to reject another partisan who was supported by Mr. Daniels and his clients. At both the meetings for the election of assignee the election was not regularly conducted. The 66th clause of the Ordinance is quite explicit. At the election the proved creditors must vote either in person or by persons authorized by letters of attorney, which must be proved either by

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LAWRIE, A.C.J.

affidavit or by oath before the Court *vivâ voce*. Here, it was taken for granted that Mr. Modder (who had no proxy nor letters of attorney of any kind, but who appeared for another proctor) had authority to vote by proxy for each and all of Mr. Daniel's clients. Even Mr. Daniels held no letters of attorney proved by affidavit or by oath in Court; and certainly Mr. Modder had none. The election seems to me to be irregular. I would sustain the rejection of the person nominated by Mr. Modder for Mr. Daniels and I would remit for a new choice and appointment to be made in conformity with the Ordinance.

BROWNE, A.J.—

I agree. In recording the voting for choice of an assignee the record should show in detail the names of the creditors who vote for each person proposed and the values of each creditor's claim. The procedure in this case has been quite irregular, as my Lord pointed out, and the election should proceed *de novo*. I do not know of any instance as yet, in Ceylon, where a Judge has exercised the powers given to him by section 66 of the Insolvency Ordinance, and it would be well that when they are exercised reasons should be given why the person rejected is considered personally unfit for the office. A claim proved by the creditors' oath must be deemed honest and true till it shall be expunged by formal procedure.