

In the Matter of HAYMAN THORNHILL, Insolvent.

1895.

September 20.

D. C., Colombo, 1,822.

*Appeal—Delay in forwarding appeal—Insolvency Ordinance—Civil Procedure Code, s. 438—Description of insolvent—Debt of petitioning creditor—Motion for annulment of adjudication of insolvency—Technical objections.*

A District Judge has no right to delay the forwarding of a case in due course to the Supreme Court after the appeal has been perfected.

It is sufficient if a petitioning creditor's debt is proved in accordance with the form in the schedule to the Insolvency Ordinance.

The Civil Procedure Code does not effect proceedings under the Insolvency Ordinance, and an affidavit proving a debt in insolvency proceedings need not, therefore, be in accordance with section 438 of the Code, but may follow the form given in the schedule to the Ordinance.

In a petition to have a person declared insolvent it is not sufficient to state his name only, but his description and address should be given.

One of several partners of a firm having petitioned to have a person declared insolvent on the footing of a debt due to the firm, it was objected that the petition was irregular, inasmuch as the debt was not due to the petitioner only, and that he should have produced the power of attorney authorizing him to sign for the firm :

*Held*, that the objections were too technical to be given effect to, in the absence of some injustice suffered on the merits.

One partner of a firm may sign such petition for himself and on behalf of the others without a power of attorney from the latter.

**T**HE facts of the case are set out in the following judgment.

*Dornhorst* appeared for the creditor appellant; *Bawa*, for insolvent respondent; *Chapman*, for petitioning creditor.

20th September, 1895. BONSER, C.J.—

This is an appeal by a creditor of a person who is described as Hayman Thornhill, of Colombo. Whether that person is male or female, or whether it has any occupation or business, does not appear.

The insolvent was adjudicated insolvent on the petition of one William Jenkins, who gives the vague address, Colombo. The appellant is a creditor, and he objected to the adjudication and moved that it be annulled. That application was refused, and he has appealed to this Court. The appeal was perfected on the 22nd July, but the papers were not transmitted to the Supreme Court until the 31st of August, and they were not received here till the 3rd of September, whereas they ought to have been sent on or soon after the 22nd of July.

This detention of the proceedings was quite irregular. The District Court has no right to take upon itself to delay an appeal.

1895. That this was done intentionally appears from the fact that it is recorded that a motion was made on the 7th of August, 1895, by *September 20.* the proctor for the insolvent, that "the record be not forwarded "to the Supreme Court until after the 15th instant." The District Judge, instead of dismissing that motion with costs, allowed it to stand over for a few days. I mention this because I wish it to be understood that a District Judge has no right to delay appeals.

BONSER, C.J.

The objections taken to the jurisdiction were of a highly technical nature. The first was, as I understood it, that the petition was not the petition of the real creditor, but was only the petition of one of several joint creditors. The debt was not due to William Jenkins, but was due to him and his co-partners, who were trading under the firm of Cargill & Co. Strictly speaking, the petition ought to have been the petition of the three persons to whom the debt was due. But that objection is a purely technical one, and I do not think the Court is bound to give effect to it, unless some injustice has been done. It appears on the face of the petition that it was a debt due to the firm. Then it was said that the power of attorney ought to have been produced empowering Mr. Jenkins to sign the petition on behalf of his partners. But I do not see that that is necessary, for, in the form given in the schedule to the Ordinance (form B), there is a note which sets out "if the petition be by "partners, alter the form accordingly, and let it be signed by one on "behalf of himself and partners." Strictly speaking, either all three partners ought to have signed the petition, or it should have been signed by the one partner, William Jenkins, on behalf of himself and his two other partners; but that is a pure technicality which does not in any way affect the merits of the case.

Then it was said that there was no proper proof of the petitioning creditor's debt, but the proof given was in accordance with the form in the schedule, and was sufficient. Another objection was, that the affidavit verifying the petition does not state that it was signed, as well as sworn, before a Justice of the Peace as required by section 438 of the Civil Procedure Code, but we have held in a recent case that the Civil Procedure Code does not affect proceedings under the Insolvent Ordinance, and the form given in the Insolvent Ordinance does not require more than that the affidavit should be sworn before a Justice of the Peace. Therefore that objection fails.

I think, therefore, there is no ground for setting aside this adjudication, and the appeal must be dismissed. At the same time I should point out that the petition appears to have been drawn

very carelessly. It is not sufficient merely to describe a person who is petitioned against as Ram Menika or John Smith of Colombo. The description and address of the person should be given so that creditors and other persons concerned may know that the person who is to be adjudicated insolvent is their debtor, and the person with whom they have had dealings, and in whose affairs they are interested.

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The appeal will be dismissed, but there will be no costs.

WITHERS, J.—I agree.

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