In the Matter of the Insolvency of HAYMAN THORNHILL.

1895.
September 27.

D. C., Colombo, 1,822.

Appeal—Delay in forwarding record to Supreme Court—Revision—Insolvency—Granting certificate in the absence of proper material.

After an appeal from an order of a District Court is perfected the District Judge should not delay forwarding in due course the record of the case to the Supreme Court ; and it would be an act of insubordination on the part of a proctor to apply to the Judge not to do his duty in this respect.

The Supreme Court has the power of revising the proceedings of all inferior courts. This power is in no way limited by the provisions of section 132 of the Insolvency Ordinance.

The object at which the Supreme Court aims in exercising its power of revision is the due administration of justice ; and whether any particular person has complained against an order proposed to be revised, or is prejudiced by it, is not to be taken into account in the exercise of such power.

The District Court had granted an insolvent his certificate without having before it the assignee's report or any material regarding the status, conduct, dealings, &c., of the insolvent—

Held, that in the absence of such material the Judge was not in a position to say whether a certificate should be granted or not, or of what class it should be, or whether, if a certificate was granted, any condition as to setting aside any portion of the insolvent's future income should be annexed to the grant; and the order granting the certificate was therefore wrong, and could not stand.

THE facts of the case are set out in the judgment of BONSER, C.J.—

Bawa, for insolvent.

27th September, 1895. BONSER, C.J.—

This case is a case of insolvency. The matter came up before us in appeal from an order of the Acting District Judge of Colombo, Mr. Templer, who had refused an application by a creditor for annulment of the adjudication.

The appeal was delayed, and it was delayed at the instance of the insolvent, whose proctor moved the District Court that the appeal should not be sent up to the Supreme Court until after a certain date. It was an act of insubordination to apply to the Judge that he should not do his duty, and I trust that such a proceeding will never occur again. This Court must not be impeded in the exercise of its appellate jurisdiction, and will visit with punishment any attempt to do so. Notwithstanding the appeal, the proceedings went on in the District Court, and for some reason

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or other were conducted in a most perfunctory manner. When the matter came up before us in appeal the other day, we referred to the careless way in which the papers in the proceedings appeared to have been drawn up, but we held there was not sufficient to justify us in setting aside the order for the adjudication.*

But this attempt to delay the appeal called our attention to the subsequent proceedings.

In view of the irregularities appearing therein, we ordered that notice should be given to the parties that the case would be brought up in revision.

There is no doubt whatever that this Court has the power of revising the proceedings of all inferior courts, and that it should have such a jurisdiction is most necessary in the circumstances of this Colony, where justice is largely administered by Judges and Magistrates who are not professional men, who have in many cases but little experience of judicial work, and who, in the out-stations, have not the assistance of a strong Bar.

Mr. Bawa urged, first, that we could not exercise this power of revision, because section 132 of the Insolvency Ordinance limited the power of the Supreme Court. But I am of opinion that it does nothing of the sort.

Then he said that we ought not to exercise it in the present case, because no one complained of the grant of the certificate, and no one was prejudiced by the order. But the Supreme Court is not to be governed in these cases by the wishes of the parties. The object at which this Court aims, in exercising its power of revision, is the due administration of justice, and therefore when we see in this case that the certificate has been granted to the insolvent on absolutely no materials whatever, we think it our duty to send the case back to the District Court that the District Court may deal with the matter in the way in which it ought to deal with it, and may make its order upon proper and sufficient materials.

Insolvency is a question which effects the interests of the Colony at large. It is not merely a question between the individual creditors and the debtor, but one which affects the whole trading community. That the insolvency law should be properly administered is of the utmost importance to this Colony, and to this city in particular as a great commercial centre.

In this case no inquiry appears to have been made or attempted. It does not appear in the proceedings what the insolvent is,

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*See *I, N. L. R. 242.*

whether he is a trader or a private person or a professional man. Not a word as to his condition, or status, or means of livelihood appears in any part of the proceedings.

Then, no attempt seems to have been made to ascertain how it was that the insolvent became insolvent, or when he first became aware that he was insolvent; no books of account were produced before the Judge; no cash account furnished; and no report was made by the assignee. In the absence of these materials the Judge was not in a position to say whether a certificate should be granted or not, and of what class the certificate should be, and whether, if a certificate is granted, any condition as to setting aside any portion of his future income should be annexed to the grant.

In the present case the Judge has certified that the insolvency arose from "unavoidable losses and misfortunes." I asked Mr. Bawa to point out anything in the proceedings to support that finding, but he was unable to do so. There is absolutely not a tittle of evidence in the proceedings to justify it.

The order granting a certificate must be cancelled, and the matter must go back to the District Court in order that the application for a certificate may be properly dealt with.

I wish to state that we do not wish to express any opinion whatever on the merits of the case. This gentleman may be entitled to a certificate or he may not, but we express no opinion whatever on this question.

The District Judge must ascertain all the facts and circumstances which led up to the insolvency, the position and condition of the insolvent, and his conduct generally, and in particular with regard to the action brought against him by Packir Saibo. He will take into account the amount realized by the sale of the assets; and, after taking all these matters into consideration, he will then adjudicate thereon.

The insolvent will have protection from arrest till the matter comes before the District Court.

WITHERS, J.—

I entirely concur. The fact that there was no material upon which to determine the question of a certificate is quite sufficient ground for setting aside this order and remitting the case for a new trial and adjudication.

The order brought up in review had really no foundation whatever.

Neither by the assignee nor by the Judge has there been any inquiry into the causes which led to the insolvency.

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WITHERS, J.

I entertain no doubt whatever that we have the power to bring this order up in revision in the way that has been done.

The Ordinance No. 1 of 1889 gives the Supreme Court exclusive cognizance, by way of revision as of appeal, of any matter of which a lower Court has taken cognizance, with a view to the correction of any error committed by that Court to the substantial prejudice of any party affected by the error. The particular matter came under our observation when the proceedings were before us in appeal.

I think the Acting District Judge proceeded with great precipitancy. It was imprudent of him, to say the least, to take any further step in the proceedings after the appeal to this Court from his order refusing to amend the adjudication had been perfected.

For my part, I question his power to do so, at all events in cases where the matter of the appeal concerns the right to institute the proceedings. Our law is *Nihil debere innovari appelatione interposita. Voet, lib. XLIX., tit. VII.* begins thus :—*Appellationis effectus, quod, suspendatur sententia omniaque in pristino statu relinqui debeant, de secundum hujus tituli incriptionem nihil innovari.*

No doubt the 75th section of Ordinance No. 1 of 1889 provides that the execution of a judgment in appeal is not to be stayed, but it does not seem to me to follow therefrom that the action or matter is to be continued notwithstanding an appeal from an order which affects the validity of the action or matter.

Appeals of urgency of the kind will, I am sure, be promptly taken up in this Court on good cause being shown, so that there may be as little delay as possible in bringing the case to a final determination in the lower Court.

The application to keep the record back was highly irregular, should never have been entertained for a moment, and should never have been entered in the journal of the Court.