

*Re* WIKRAMANAYAKE.

1901.

RUPASINGHE, appellant.

*July 2 and 5.*

*D. C., Colombo, 1,884.*

*Assignee in insolvency—Liability of, for what he might have recovered except for his default—Power of Court to summarily order the assignee to bring into Court the amount he neglected to recover—Ordinance No. 7 of 1853, ss. 78, 113.*

Under sections 78 and 113 of the Insolvency Ordinance of 1853, an assignee is not responsible for irrecoverable debts.

Query whether it is open to the District Judge to direct the assignee to bring into Court a sum of money which he might have recovered but did not, without a full inquiry into his conduct and the question whether the debts were recoverable or not.

**T**HE appellant in this case was an assignee in insolvency, who had been ordered by the Additional District Judge of Colombo to pay into Court summarily the full value of the book debts due to the insolvent, on the ground that the assignee had neglected to sell or recover them in due time, so that they had become prescribed.

1901. *Wendt*, for appellant.—This order was based on the auditor's  
 July 2 and 5. report, but "the assignee filed an explanation. The Court has no  
 power to deal with this matter in the summary manner it has done. The wording of section 113 of Ordinance No. 7 of 1853 is similar to that of 6 *Geo. IV.*, c. 16, s. 106, and a case decided on it applies here. *Ex parte Keys, 2 Deacon and Chitty*, p. 633. It was there decided that a Commissioner in bankruptcy cannot charge the assignees with what they might have recovered but for their default. There were not sufficient facts to justify the present order. No creditors moved. If necessary a new assignee may be appointed, and it would then be open to him to allege and prove negligence against the old assignee, but the present order is bad.

*Cur. adv. vult.*

5th July, 1901. LAWRIE, A.C.J.—

The learned District Judge made this order:—

" It was the debts, whether good or bad, that the assignee undertook to sell by auction and bring the proceeds to Court. He has not done this, and is therefore accountable for the whole amount, Rs. 774·33. I order the sum of Rs. 774·33 to be added to the credit side of the assignee's account, and the amount to be paid into Court by him on or before the 21st. "

On the latter day the District Judge ordered writ to issue forthwith to enforce the order to pay Rs. 774·33.

It seems to us that this order was founded on insufficient material. The assignee said that the debts were worthless. No evidence as to the value was adduced. The District Judge read the list of alleged debtors, and he said: " Some of them are gentlemen of high standing in Colombo, who would never think of repudiating a just debt. " This is not enough to justify a decree for the whole alleged value being entered against the assignee. If the debts were irrecoverable, the assignee is not responsible. There has not been a sufficient inquiry either into the assignee's conduct or into the value of the book debts to justify the ruling of the District Court. I would therefore set aside the order as to the Rs. 774·33.

If it had been proved that the book debts, to the amount of Rs. 774·33, were a good and recoverable asset of the insolvent's estate, and that the whole or the greater part of that sum had been lost to the estate by the culpable negligence of the assignee, then it would have been necessary to decide whether the 78th section of the Ordinance No. 7 of 1853 gave the Court power to direct the assignee to pay that money, on the footing that it had come into his legal possession as assignee.

On the scope of the 78th section it is not necessary now to give an opinion, holding as we do that the necessary facts to establish the value of the debts and the legal responsibility of the assignee were not before the Court.

1901.  
*July 2 and 5.*  
LAWRIE,  
A.C.J.

We do not interfere with the order as to Rs. 15.75, a payment to Gunasekere.

MONCREIFF J.—I am of the same opinion.

