1904.
October 7.

Present: Mr. Justice Wendt and Mr. Justice Sampayo.

In the Matter of the Insolvency of ENSOR HARRIS.

Ex parte DAVIES, creditor, appellant.

D.C., Kandy, 1,476.

Insolvency—Proxy—" Letter of attorney "—Proof of execution—Ordinance No. 7 of 1853, s. 66.

A proxy filed by a proctor authorizing him to vote in the choice of an assignee, is not a " letter of attorney " within the meaning of section 66 of the Insolvency Ordinance (No. 7 of 1853), and does not require proof of execution before the proctor is allowed to vote.

APPEAL from an order of the District Judge of Kandy (J. H. de Saram, Esq.) holding that a proxy filed by a proctor, authorizing him to vote in the choice of an assignee, was a " letter of attorney " within the meaning of section 66 of the Insolvency Ordinance (No. 7 of 1853), and that before the proctor could vote he should furnish proof of the execution of the proxy.

Dornhorst, K.C., for the creditor, appellant.

H. Jayewardene, for the respondent.

F. J. de Saram, for the assignee.

Cur. adv. vult.

7th October, 1904. WENDT J.—

This is an insolvency matter, and the question raised by the appeal is whether the proctor of the appellant, a proved creditor, was entitled in his client's absence to vote in the choice of an assignee. At the first sitting, on 18th March, Mr. Vanderwall presented the proxy of the appellant, together with the appellant's affidavit, and proved a debt of over Rs. 1,000. The sitting was adjourned to the 25th March, and was on that day closed. On 8th April a special sitting was ordered to be fixed for 13th May, for the appointment of an assignee. On that day one E. A. Sayibu, a proved creditor, whose proctor was also present, voted for the appointment of J. H. Schokman; no other creditors were present in person, though Mr. Vanderwall appeared for the appellant, and four other creditors were represented by counsel and proctor. Mr. Vanderwall voted for the appointment of Mr. E. B. Creasy, a proved creditor, and he was supported by the four other creditors. The right of the proctors to represent their absent clients was challenged for want of proof of execution of their proxies by affidavit or *viva voce* evidence. The District Judge, after taking time to consider, upheld the objection and declared Schokman duly appointed by the single vote of Sayibu. He was of opinion that an appointment or proxy filed by a proctor authorizing him to vote in the choice of an assignee was a

" letter of attorney " within the meaning of section 66, and before the proctor could vote, he should furnish proof of the execution of the proxy. There is no doubt a proxy is a " letter of attorney " in the general sense, but is it also in the special sense of section 66. In my opinion it is not. I think the section has no application to proctors at all, but deals with cases in which an absent creditor may send a layman to represent him at a meeting of creditors.

In England a solicitor appearing in Court for his client is not required to file any proxy or written authority, and under section 247 of the Bankruptcy Act of 1849, which is not represented by any similar provision in our Ordinance, every solicitor was entitled to " appear and plead " in the Bankruptcy Court. But when he sought to vote in his client's name in the choice of assignees, he was not exempt from the requirement of section 139 (the source of our section 66), that he should produce and prove a letter or power of attorney from his client [see *Ex-parte Carter* (1)]. The difference between the English Bankruptcy Laws and our Ordinance consists in this, viz., that whereas those laws created a new Court styled the " Court of Bankruptcy, " our Ordinance committed the administration of the new Insolvency Law to an existing Court, that is to say, the District Court. There was therefore no necessity to define (as in the English statute) what practitioners should be entitled to appear in that Court. All those entitled to audience in the District Court in its ordinary civil jurisdiction would be equally entitled to practise in its insolvency jurisdiction, and the acts of proctors who filed the proxies of the insolvent, of the assignee, or of creditors, would be regarded as the acts of their respective clients. The reason of the thing also favours the dispensing with proof of the letter of attorney where the attorney is a practitioner in the Court, and not a stranger, more especially where the Court has in earlier stages of the proceedings recognized the proctor as representing the client by virtue of that very authority. The practice under our Ordinance supports the view I have stated. In the course of my own experience I have never known such proof to be required. It has often happened that an assignee was chosen at a late stage of the proceedings and at a special sitting of the Court for the purpose, and in such cases the proctors who at the earlier stages had proved their clients' debts were allowed without objection to vote in their clients' names when their proxies contained a power in that behalf. We are informed by the learned District Judge of Colombo, to whom our Registrar addressed an inquiry upon the subject, that by the practice of his Court the provision as to proof of the letter of attorney is never, in

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the matter of voting for assignees, applied to the proxies of proctors, and I do not think that we ought to interfere with a practice which has apparently obtained throughout the fifty odd years during which the Ordinance has been in operation.

It follows that the appointment of Mr. Schokman as assignee was invalid owing to the rejection of the votes of the appellant and others, and it must be set aside and the District Court directed to appoint a fresh sitting for the election of a new assignee. The respondents will pay the costs of the appeal.

SAMPAYO A.J.—I agree.

Appeal allowed.