1930

Present : **Fisher C.J. and Drieberg J.**

SOCKALINGAM CHETTY *v.* MANIKAM *et al.*

165—*D. C. (Inty.) Jaffna*, 101.

Privy Council—Appeal from judgment of Supreme Court in insolvency proceedings —No right of appeal.

There is no right of appeal to the Privy Council from a judgment of the Supreme Court in insolvency proceedings.

APPLICATION for leave to appeal to the Privy Council. The respondent raised objections to the grant of conditional leave.

Hayley, K.C. (with him *Subramaniam*), for respondents.—The appellants have no right of appeal as they agreed to accept the decision of the Court. Counsel cited *Peries v. Peries*[1] and *Gooneratne v. Andrade*.[2]

No appeal lies in insolvency proceedings (*In re Ledward*,[3] *In re Keppel Jones*[4]).

The provisions of the Civil Procedure Code with regard to security for cost even do not apply to appeals to the Supreme Court (*In re Goonewardene*[5]).

Bartholomeusz (with him *N. K. Choksy*). —Nowhere have the appellants waived their right to appeal to the Privy Council.

[1] 1 *Browne* 420.
[2] 3 *C. A. C.* 69.
[3] (1859) 3 *Lor.* 234.
[4] (1877) *Ram.* 379.
[5] 24 *N. L. R.* 431.

In any event this case does not come within the principle of the cases cited for the respondent. Counsel referred to *Isan Appu v. Cooray*.[1]

Appeals in insolvency cases have been regarded as being on the same footing as interlocutory appeals from the District Court.[2]

It was also contended, on the facts, that though the questions at issue between the parties arose incidentally in an insolvency case they had really nothing to do with the actual insolvency proceedings themselves. A distinction should be drawn between an appeal relating to questions touching the insolvency and an appeal on a question arising between the creditors *inter se*. The decision in *Ledward's* case lays down a proposition which is far too wide and which is bound to work great hardship in many cases and needs revision at the present day.

April 15, 1930. DRIEBERG J.—

The respondents object to this application on two grounds. The first is that no appeal lies from the judgment of this Court as the petitioners had agreed to make payment on the amount declared proved by this Court.

I do not think that the petitioners can be regarded as having waived their right of appeal to the Privy Council, if they had such a right, though, no doubt when the agreement was drawn neither party contemplated the possibility of such an appeal.

Apart from this, one ground of their appeal is that the judgment of this Court is not right in holding that the earlier judgment of the Appeal Court, setting aside the order of the District Judge expunging the claims of the respondents, was such a judgment as was contemplated by the agreement, for the reason that it did not declare proved or fix a particular sum.

Section 52 of the Charter of 1833 gives a right of appeal against any final judgment, decree, sentence, rule or order in any civil suit or action, and it has been held by the Collective Court in appeal that

[1] 25 *N. L. R.* 257.

an insolvency proceeding is not a civil suit or action and that there is no right of appeal against the judgment or order of the Supreme Court made in it.

In the *Matter of the Insolvency of Ledward*[1] the assignee sought to appeal against a judgment declaring that a certain transaction was not a fraudulent preference. Leave to appeal was refused on the ground I have mentioned.

This was followed in the *Matter of the Insolvency of Keppel Jones Co.*,[2] in which the Supreme Court affirmed a judgment of the District Court refusing to give over to the claimant property in the possession of the insolvent.

The claimant applied for leave to appeal but this was refused.

In the *Matter of the Insolvency of H. W. de Vos*[3] a Bench of Two Judges refused the insolvent leave to appeal against an order refusing him a certificate of insolvency.

Brown A.J., referring to two cases in which appeals had been taken against orders in insolvency proceedings in Australian Courts, suggested that the decision in Ledward's case might have to be reconsidered in the light of these decisions. These cases do not touch the construction placed on section 52 of the Charter in Ledward's case.

In my opinion we are bound by these judgments of the Collective Court, and the petitioners' application is dismissed.

FISHER C.J.—I agree.

Appeal dismissed.