1927.

Present: Garvin J. and Maartensz A.J.

RAMANATHAN CHETTIAR *v.* BARFI LALL.

20—D. C. Jaffna, 5,870.

Official administrator—Application for administration by a creditor—Appointment of official administrator—Letters of administration pendente lite.

An official administrator should be appointed only when there is no fit and proper person to be appointed administrator.

Where proceedings are pending for the appointment of an administrator it is open to the Court to appoint an administrator *pendente lite.*

Neemath Umma v. Abdul Wahab [1] followed.

APPLICATION for letters of administration for the intestate estate of Mathan Lall by the appellant as creditor of the estate. The facts appear from the judgment.

H. V. Perera (with *Navaratnam* and *Nadarajah*), for appellant.

Croos DaBrera, for 1st respondent.

Hayley (with *Rajaratnam*), for 2nd respondent.

Joseph (with *H. H. Bartholomeusz* and *R. L. Bartholomeusz*), for 3rd respondent.

July 13, 1927. MAARTENSZ A.J.—

The appellant in this case purports to be creditor of the intestate estate of Bajanamand Mathan Lall, late of Khurja in India.

The intestate and his brother Baboo Lall, who predeceased him, were carrying on business in Jaffna under the name of B. Mathan Lall and Brother. The intestate was Baboo Lall's sole heir under the terms of a joint will executed by the brothers and was at the time of his death sole owner of the business, and in addition left a considerable amount of immovable property in Jaffna. The debts due to the business are put down at Rs. 200,000 and the debts due by the intestate at Rs. 550,000.

In case No. 5,828 letters *ad colligenda* were granted to the appellant as a creditor of the estate on June 9, 1925, on the ground that there was no one in Ceylon to represent the estate.

On July 23 the first respondent, as widow of the intestate, obtained in case No. 5,870 an order *nisi* appointing her administratrix of the estate, which order, so far as I can gather from the record, was made absolute on September 10, 1925.

[1] *(1919) 6 C. W. R. 288.*

On July 19, 1926, she was ordered to give security in the sum of Rs. 530,000.

On August 19 she intimated in case No. 5,870 that she was unable to give the security ordered. Prior to that, in the course of certain proceedings in case No. 5,828 had on August 3, 1926, there is a record that the widow, the present petitioner, is not prepared to give security and take out letters of administration and that the appellant consents to take out letters.

The District Judge then made the following order:—"He (appellant) will file papers and give the necessary security within three weeks hereof. If this is not done the letters *ad colligenda* will be withdrawn and the estate officially administered."

The appellant filed papers in case No. 5,870 on August 20 and moved for an order absolute in the first instance and that the security be reduced by Rs. 398,845, as the creditors to that amount had consented to letters issuing to him without security, on which the following order was made:—"File promissory notes and account particulars and other documents, in proof of his debt." I take it this order meant that the appellant was to file documentary evidence in proof of the debts due to him by the intestate.

On August 24 the appellant's application for letters of administration was opposed by the widow, and, after considerable discussion, the learned District Judge appointed the Secretary of the Court official administrator and cancelled the letters *ad colligenda* issued to the appellant. The appeal is from this order.

I am of opinion that the appellant's contention that he was not given an opportunity of establishing his claim to letters of administration and that an official administrator should not be appointed unless there is no one else to represent the estate must be upheld.

In the course of his judgment the learned District Judge expresses his doubts regarding the debts which the appellant claims as due to him and observes that the order that the creditor Chettiar (the appellant) should prove the debts due to him and should enter *order nisi* as a preliminary to giving security is a necessary one in the circumstances.

The procedure indicated by the learned District Judge in his observations should have been followed in this case, that is to say, the appellant should have applied for an order *nisi* and the question whether he was the proper person to be appointed administrator should have been determined after issues were framed and evidence taken under the provisions of section 533 of the Civil Procedure Code.

The procedure followed does not appear to be authorized by any provisions of the Code. The appointment of an official administrator should, as was contended by the appellant, only be made where there is no person fit and proper in the opinion of the court to be appointed administrator and not in any other case.

1927.

MAARTENSZ A.J.

Ramanathan Chettiar v. Barfi Lall

The order of the District Judge must, therefore, be set aside and the case remitted to the District Court for consideration of the application made by the appellant in the manner provided for by the Civil Procedure Code. I, however, do not think it desirable that the estate should be left without an administrator while these proceedings are pending, and I think the best course would be to issue letters of administration *pendente lite* to the Secretary of the Court with effect from the date of his present appointment to be in force until letters of administration are issued to another administrator, and order accordingly.

The case of *Neemath Umma v. Abdul Wahab* [1] appear to me to be an authority for the proposition that the Court has power in certain circumstances to appoint an administrator *pendente lite*.

As regards costs, the appellant was, I think, responsible for the order made by the learned District Judge as he applied for an order absolute in the first instance. I think he should pay his own costs both here and in the Court below. The costs of the official administrator should be paid from the estate. The other respondents should pay their own costs in appeal and in the Court below.

GARVIN J.—I agree.

Set aside.

[1] *(1919) 6 C. W. R. 283.*