

1909.
March 23.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wendt.

In the Matter of the Insolvency of K. P. Anthony.

JAYESINGHE *v.* ANTHONY.

D. C., Colombo, 2,303.

Insolvency—Ignorance of proceedings—Granting of certificate—Recalling certificate—Ordinance No. 7 of 1853, s. 129—Powers of Supreme Court.

A creditor who has been prevented from opposing the grant of a certificate of conformity to an insolvent in the District Court, by reason of want of notice of the insolvency proceedings, may apply under section 129 of the Insolvency Ordinance to the Supreme Court to recall and cancel such certificate.

APPPLICATION under section 129 of Ordinance No. 7 of 1853 to the Supreme Court to have the certificate granted to the insolvent K. P. Anthony by the District Court recalled and cancelled. The facts on which the application was based are fully stated in the judgment of the Chief Justice.

Hayley, for the petitioner.

H. A. Jayewardene, for the insolvent.

March 23, 1909. HUTCHINSON C.J.—

This is an application under section 129 of Ordinance No. 7 of 1853 for the recall and cancellation of the certificate which was granted to the insolvent K. P. Anthony on August 31, 1908.

On May 19, 1908, the insolvent gave two cheques drawn by him to M. J. Perera or order, and on May 21 he gave a third cheque drawn in the same way; they were in payment of tea sold to him between April 20 and May 30. He swears that he dealt with and gave the cheques to M. J. Perera personally, but the petitioners A. Don Charles Jayesinghe and M. J. Perera swear that they were trading in partnership under the name of M. J. Perera; that Jayesinghe was the only active partner, and that the insolvent did not know and never had any dealings with M. J. Perera personally, but dealt only with and gave the three cheques to Jayesinghe.

On June 2 the insolvent filed a declaration of insolvency; he was adjudicated insolvent on July 2, and was granted his certificate on August 31.

The three cheques were, as appears from the endorsements on them, negotiated and were dishonoured on May 23, 25, and 27 respectively. On July 29 Jayesinghe, in the name of M. J. Perera,

sued the insolvent on the cheques ; on August 7 the summons was reported served ; the defendant did not appear ; decree *nisi* was obtained and served ; and on October 21 the decree was made absolute. On November 13 writ of execution was issued against the debtor's property, but nothing was realized ; on December 13 writ against his person was issued, and then for the first time Jayesinghe heard of the insolvency proceedings ; so he has sworn, and I see no reason to doubt it. He says that the reason why he did not hear of them sooner was that there was an error in the description of the insolvent in the District Court register.

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On January 15, 1909, Jayesinghe, not in his own name, but as "M. J. Perera," filed an application to this Court under section 129, and filed an affidavit in support, which purported to be signed by M. J. Perera, but was in fact sworn by himself. On January 28 the application was ordered to stand over for a fortnight with liberty to the applicant to join in a new application with his partner. The present application is by the two partners.

The insolvent in his affidavit sworn on January 29 swears that he had no transactions whatever with Jayesinghe, and that when he took steps to have himself adjudicated insolvent he informed M. J. Perera that he was unable to pay his debts, and had to avail himself of the provision of the Insolvency Ordinance. Jayesinghe in his affidavit of January 29 swears that he carried on business in partnership with M. J. Perera, and was in sole charge of it, his partner taking no part in the management ; and that in all his business dealings he always signed as M. J. Perera ; and in his affidavit of February 5 he swears that he had dealings with the insolvent, and that the latter bought tea from him, and never, to his knowledge and belief, had any transactions with his partner. M. J. Perera in his affidavit of February 5 swears that he is partner with Jayesinghe, and entirely left the business of a tea merchant in his hands, and was not an active partner in his business ; that he did not know the insolvent personally, and had never spoken to him, except on January 29, 1909, nor had any dealings with him, and that the insolvent did not draw the three cheques in his favour personally ; and that he had no knowledge of the insolvency, and had no notice of it from the insolvent.

In reply to these affidavits the insolvent in an affidavit of March 15 swears that he informed "M. J. Perera proper," before he was adjudicated insolvent, that he was unable to meet his engagements with his creditors, and would therefore seek the protection of the Court under Ordinance No. 7 of 1853, and that he never had any dealings with Jayesinghe, and that he gave the cheques to "M. J. Perera proper."

Two things seem to be fairly clear in this business. One is that there has been false swearing on one side or the other, which ought to be inquired into. The other is that Jayesinghe, at any rate, did

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not know of the insolvency proceedings until after the certificate was given, and had no opportunity of proving his debt or opposing the grant of the certificate, and that his ignorance was not altogether without excuse. The insolvent had not denied that he had notice of the action and of the judgment against him; and all these proceedings and those which are said to be now pending with reference to the judgment could have been avoided, if he had done that which the barest politeness and honesty towards a creditor made imperative, and had informed either the plaintiff or the Court of the insolvency proceedings.

In my judgment the certificate granted to the insolvent should be recalled and cancelled, and the District Court should appoint another public sitting for the allowance of a certificate.

WENDT J.—I agree.

Application allowed.
