

Present: De Sampayo A.J. and Pereira J.

1912.

SOYSA *v.* FERNANDO.

80—D. C. Colombo, 2,480.

Insolvency—Grant of a certificate to the insolvent—Certificate not void though no assignee was appointed.

A grant of a certificate of conformity to an insolvent was held not to have been vitiated by reason of the fact that no assignee was appointed at the time of the grant.

THIS was an appeal by the insolvent against an order of the District Judge of Colombo (H. A. Loos, Esq.) suspending the certificate issued to him for twelve months.

E. W. Perera, for the appellant.—The proceedings in this action are all irregular as no assignee was appointed; consequently no assignee's report was before the Court. Counsel cited *Pitche Tamby v. Abdulla*,¹ *In re Presslie*,² *In re de Croos*.³

W. H. Perera, for the respondent.—The appellant was present at the certificate meeting, but he did not raise this objection in the lower Court. The objection is not even raised in the petition of appeal. It is the practice of the District Court not to appoint an assignee where there are no complicated accounts and the amount involved is very small. Counsel cited *Grenier*, vol. 3 (1873), p. 98.

Cur. adv. vult.

July 9, 1912. DE SAMPAYO A.J.—

The District Judge has allowed a certificate to the insolvent, but has suspended it for twelve months, and the insolvent appeals from the latter part of the order. In his examination the insolvent stated that in 1903 he borrowed Rs. 300 and built a house on a land which he presented to his daughter on her marriage in 1903. He is also

¹ (1908) 11 N. L. R. 205, at page 208.

² (1895) 1 N. L. R. 321.

³ (1903) 6 N. L. R. 271.

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recorded to have stated that he borrowed Rs. 400 in 1908 for the expenses of the wedding of that daughter. The District Judge thereupon remarked that it was impossible to understand how the insolvent could have borrowed money in 1908 to spend on a wedding which took place in 1903, and he thought that the insolvent was trying to conceal the true state of his affairs. At the hearing of this appeal an affidavit from the insolvent was tendered to us, explaining that what he had said was that he borrowed the Rs. 400 in 1908 for the wedding expenses of his second daughter. This Court does not countenance attempts to correct records by affidavits. But apart from that, the error in the record, if there is an error, is not very material, because there is another and sufficient ground for the suspension of the certificate. The insolvent transferred to the daughter the only property he had and continued to borrow large sums of money, and the District Judge thinks that he acted dishonestly in borrowing money which he had not the slightest prospect of ever being able to repay. I do not think that we ought to interfere with the discretion of the District Judge in suspending the issue of the certificate.

An objection was also taken at the argument to the effect that the whole proceeding was irregular, because no assignee has been appointed, and no report was therefore available to the Court in adjudicating on the question of a certificate. In the regular order of procedure no doubt the assignee would be appointed at the first public sitting, as provided in section 66 of the Insolvency Ordinance of 1853, before the examination of the insolvent takes place and before the certificate meeting is called. But it was held in *D. C. Kandy, 520*,¹ that the provision of section 66 as to the time of appointment was merely directory. The practice of our Courts sanctions the certificate meeting sometimes being held before or without the appointment of an assignee. There was the less reason in this case for the appointment of an assignee, because the insolvent's only assets consisted of a few bits of furniture valued by himself at Rs. 10. The decisions of this Court pointing out the importance of a report from the assignee before the consideration of the issue of a certificate to the insolvent were cited to us, but they are no authority for the proposition that any order as to the certificate is vitiated if there is no assignee and therefore no report. It is, however, unnecessary to go into this matter further, because the insolvent, who took part in the proceedings at the certificate meeting, took no objection either there or in the petition of appeal, and is not entitled to upset all the proceedings now on a mere technical point. I think the appeal should be dismissed.

PEREIRA J.—I agree.

Appeal dismissed.

¹ (1878) 3 *Grenier* 98.