Present: Lyall Grant J. and Maartensz A.J.

1929.

EBRAHIM *v.* RAMAN CHETTY.

163—D. C., Colombo, 3,755.

Insolvency—Appeal by insolvent—Cross objections—Civil Procedure Code, s. 772.

Where an insolvent appealed from an order suspending his certificate, the Court may consider objections filed by a creditor-respondent to the appeal, following the procedure laid down in section 772 of the Civil Procedure Code.

APPEAL from an order of the District Judge of Colombo.

Croos Da Brera, for appellants.

Weerasooria, for respondents.

November 11, 1929. LYALL GRANT J.—

This is an appeal by two insolvent traders against an order suspending their certificates of conformity for a period of one year.

The principal reason for the suspension appears from the judgment appealed against to be the fact that the insolvents failed to produce the business books which were required to make their financial position clear, and that owing to this failure the whole situation is obscure.

The learned District Judge also refers to certain transactions in India which he considers suspicious though he cannot definitely brand them as fraudulent.

He also says that there is a suspicion that one creditor was unduly favoured.

I agree with the learned District Judge that owing to the absence of the insolvents' business books it is not possible fully to understand their position and that they have given no satisfactory explanation of their failure to produce the books.

I think the suspension of the certificates for a year is fully justified.

The creditor-respondent to the appeal filed a notice of objections to the grant of the certificate in the form laid down by section 772 of the Civil Procedure Code.

The objections taken were—

(1) That on the findings of the District Judge the insolvents have failed to conform to the provisions of the Insolvency Ordinance.

(2) That on the said finding the conduct of the insolvent traders in relation to the estate before as well as after their insolvency does not entitle the insolvents to a certificate of conformity.

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(3) That on the evidence in the case—(*a*) The insolvents have with intent to diminish the sum to be divided among the creditors parted with property; (*b*) the insolvents have withheld the production of their books of account relating to their rubber transactions; (*c*) the insolvents have continued trading, though they were fully aware of their insolvent position; (*d*) the insolvents fraudulently removed their stock in trade after obtaining by false pretences the release of the seizure effected by N. R. M. N. Ramanathan Chetty; (*e*) the conduct of the insolvents has been fraudulent.

A preliminary objection was taken to the hearing of these objections by the insolvents' Counsel. He argued that section 772 of the Civil Procedure Code did not apply to insolvent proceedings. In support of this contention he referred to two Full Bench decisions of this Court.

In the matter of the insolvency of M. L. Marikar Abdul Azis [1] a decision of this Court was overruled and the principle laid down that the Civil Procedure Code did not take the place of the Supreme Court rules made under section 6 of the Insolvency Ordinance.

This case was referred to and followed in the Full Bench case of *In re Goonewardene*.[2]

In both these cases the point at issue was whether security was required in insolvency appeals, but the principle laid down in the former case would govern the question now before us.

As against these cases we were referred to *Salgado v. Peiris*,[3] another Full Bench case where it was pointed out that the regulations affecting appeals existing at the time of the Insolvency Ordinance of 1853 were expressly repealed by the Civil Procedure Code and the opinion was expressed that by inference the Civil Procedure Code was made applicable to insolvency cases and that the Code governs appeals from the Courts in insolvency cases.

This case is not referred to in the judgment in *In re Goonewardene* (*supra*), a judgment delivered by one Judge only and agreed to by the other Judges.

On the whole, however, whatever one's own view on the matter may be, I think we must consider ourselves bound by the latest Full Court decision.

The position therefore is that there is no procedure laid down to govern insolvency appeals. In these circumstances it seems to me that the Court must consider the objection according to

[1] *1 N. L. R. 196.* [2] *24 N. L. R. 431.*
[3] *12 N. L. R. 379.*

general principles. The only local model which we have to guide us is the rule governing appeals contained in the Civil Procedure Code.

It was argued for the insolvents that, in the absence of rules containing provisions similar to those of section 772 of the Civil Procedure Code, as there is here no appeal by the creditor-respondent, only the points raised by the insolvent in appeal can be considered and not those raised by the creditor-respondent.

It was suggested that if the creditor-respondent wished to raise other points he could only do so by way of cross appeal.

I confess I do not see the necessity for this procedure.

There is nothing to be gained by a cross appeal which would only complicate procedure.

The only interest of the insolvent-appellant is that he should have due notice of the questions to be raised against him on appeal.

He has had such notice and the matter is as fully before the Court as if a cross appeal had been taken.

If the Court has power to make a rule under section 6 containing provisions similar to those contained in section 772 of the Civil Procedure Code, it cannot be contended that section 6 confines the Court's attention to matters actually raised in the petition of appeal itself.

The question, though of considerable importance in other cases, need not detain us here as we have come to the conclusion that the District Judge's decision is a reasonable one with which we are not prepared to interfere, although on the facts he might perhaps not inequitably have refused a certificate.

The appeal is dismissed and the objections taken by the creditor-respondent are overruled. The respondent will have his costs of the appeal.

MAARTENSZ A.J.—I agree.

Appeal dismissed.