

1926.

Present: Schneider A.C.J. and Lyall Grant J.

In re the Insolvency of A. A. M. SALEEM.

91—D. C. Colombo, 3,554.

Insolvency—Examination of insolvent after final sitting—Right of creditors—Discretion of Judge.

In insolvency proceedings, after the conclusion of the second sitting and final examination, the creditors are not entitled to ask for a further sitting to examine the insolvent; but the Court may examine him before the certificate meeting so as to be satisfied that he is entitled to a certificate.

Per SCHNEIDER A.C.J.—I am not convinced of the correctness of the procedure of fixing a special meeting for the examination of the insolvent after the second sitting had been closed and the certificate meeting fixed.

*In re Insolvency of H. P. de Silva*¹ followed.

A PPEAL from an order of the District Judge of Colombo.

Hayley (with Choksy), for appellant.

Garvin, for opposing creditor, respondent.

October 1, 1926. SCHNEIDER A.C.J.—

I agree with my brother that this appeal should be dismissed with costs.

Of the four cases which were cited to us at the argument, only one is precisely in point, namely, that *In the matter of the Insolvency of H. P. Silva*¹ referred to in my brother's judgment. I would adopt, in this case, the procedure directed in that judgment, because it seems to me that the appellant has suffered no prejudice by the order of the learned District Judge, and that substantial justice will be done by that order. But I would state that I am not convinced of the correctness of the procedure of fixing a special meeting for the examination of the insolvent after the second sitting had been closed, and the certificate meeting fixed. It seems to me that there is no sanction for this procedure in the provisions of the Insolvency Ordinance, No. 7 of 1853. In a case like the present, the learned District Judge might have acted under section 41 of the Ordinance to which our attention was drawn by Mr. Garvin, appearing for the respondent. But apart from that section, it was

¹ (1905) 2 Bal. Rep. 85.

within the competence of the Judge to examine the insolvent himself at the certificate meeting if he was not satisfied with the affidavit filed in this case by the insolvent. The learned District Judge in making the order appealed from followed the procedure indicated in the case reported in *Balasingham's Reports*.¹

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As I have already stated, there is no sufficient reason for interfering with this order.

LYALL GRANT J.—

This is an appeal from an order of the District Court of Colombo in an insolvency case.

After the final examination of the debtor and after a date had been fixed for the certificate of conformity meeting, some opposing creditors filed objections to the grant of a certificate.

It was at first objected that these objections had been filed less than three clear days before the certificate meeting, but this objection was abandoned on appeal.

It was further objected in the District Court that a Court had no power to allow a creditor to examine the insolvent after the second sitting and final examination had been concluded. The learned District Judge over-ruled this objection and it is from this ruling that this appeal has been taken.

The case of *In re the Insolvency of Nadarajah*,² is an authority for holding that the insolvent cannot be examined at the certificate meeting.

In the present case, however, the certificate meeting has been adjourned, and the application was one for a sitting to examine the insolvent. The District Judge has held that the creditors are not entitled to such a sitting, but he considers that it is the duty of the Judge himself to examine the insolvent before the certificate meeting for the purpose of satisfying himself thoroughly that the insolvent is entitled to a certificate, and that he is at liberty to allow creditors to examine the insolvent if he so pleases.

In *In the Matter of the Insolvency of H. P. Silva (supra)* the Supreme Court expressed the opinion that the District Judge should not close the second sitting until the insolvent had satisfied the Court with regard to his insolvency. The reasons given were that "before the Court can issue a certificate of conformity, it must be able to certify, as set out in the form of the certificate of conformity attached to the Ordinance, that the insolvent did on a certain day finish his examination and upon such examination make a full disclosure and discovery of his estate and effects

¹ (1905) 2 Bal. Rep. 85.

² (1922) 24 N. L. R. 435.

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. . . . It is of the utmost importance that persons should not receive a certificate of conformity unless they have made a full disclosure and discovery of their estate and effects, and in everything have conformed to the Ordinance, and further that the Judge of the Court should be satisfied that there is 'no reason to question the truth or fullness of the discovery' made by the insolvent."

In that case the Court did not think it necessary to set aside the closing of the second sitting, but it directed that prior to the date fixed for the allowance of a certificate, a date should be fixed by the Court to enable a meeting to be held, prior to the public sitting for the allowance of a certificate, for the examination of the insolvent either by or at the instance of the creditors-appellants or of the Court itself.

After such examination the creditors were to be allowed to file grounds of opposition to the issue of a certificate of conformity to the insolvent.

The order in the present case is based upon that judgment and I think it is right.

As stated by the learned District Judge, the order is made not as a concession to the creditors, who appear to have been negligent in regard to their rights, but in the interests of public order.

I would dismiss the appeal with costs.

Appeal dismissed.

