

Present: Jayewardene and Maartensz A.JJ.

In re the Insolvency of JAYASEKERE.

179—D. C. Galle, 507.

Insolvency—Refusal of certificate—Second adjudication on same debt.

Where a person had been refused a certificate in insolvency proceedings, a second adjudication cannot be obtained on a debt which had been proved in the first insolvency.

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

Soertsz (with him Jansz), for appellant.

March 2, 1926. JAYEWARDENE A.J.—

This is an appeal against an order refusing to adjudge the appellant insolvent. In case No. 507 of the same Court the appellant was adjudged insolvent, but he was refused a certificate on October 2, 1923. The present application was initiated by the appellant filing a declaration of insolvency on November 7 last. On the 10th of the same month one Dewarahandi Endoris de Silva filed a petition and applied that the estate of the appellant be adjudged insolvent and placed under sequestration in terms of section 10 of the Insolvency Ordinance, 1853. He stated that the appellant was indebted to him in a sum of Rs. 1,000 on a promissory note dated January 3, 1923. The application was referred by the learned District Judge. He said that the debt of the petitioning creditor was not a new debt but one of January, 1923, and was proved in the previous insolvency proceeding in which the appellant was adjudged insolvent on May 15, 1923. It is contended before us that the order of the District Judge is wrong as there is nothing in the Ordinance to prevent a second adjudication of a person who has failed to obtain his certificate or discharge in a previous insolvency. Reliance is placed on two local cases *In re Abdul Cader Lebbe Abubakker Lebbe*,¹ and *In re Frederick Pulley ex parte Neate*,² and in the latter of these cases the court said: "It must be taken as law settled by decision in *Morgan v. Knight*³ that a second adjudication against an undischarged insolvent is not *ipso facto* void; at most it may be voidable under certain circumstances." The decision in *Morgan v. Knight* (*supra*) has been accepted as laying down the correct principle although the decision previous to it.

¹ (1881) 4 S. C. C. 103.

² (1887) 8 S. C. C. 118.

³ (33) L. J. C. P. 168.

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were conflicting. Taking this to be the law, can it be applied to the present case? The petitioning creditor here was also the petitioning creditor in the previous insolvency (No. 507) and his debt is the very same debt on the strength of which he obtained the adjudication of the appellant in the previous case. Under the English law a second adjudication has been permitted when, after the first adjudication, the insolvent had been allowed to trade or carry on business without any interference by the assignee of the first insolvency, and he has incurred fresh liabilities and acquired property, and in almost all the reported cases questions have been raised as to the right of the proved creditors of the first insolvency to share in the property acquired subsequent to such insolvency and disclosed as assets in the second insolvency: *Ex parte Ford*,¹ *Cohen v. Mitchell*,² *In re Clark ex parte Beardmore*,³ *Bird v. Phillpott*,⁴ and the second of the local cases mentioned above also dealt with the same point.

I do not think there is any authority for holding that a second adjudication can be obtained on a debt which has been proved, or could have been proved, in the first insolvency. The order refusing to adjudge the appellant insolvent is on the facts of this case right, and the appeal must be dismissed.

MAARTENSZ. A. J.—I agree.

Appeal dismissed.

¹ (1876) 1 Ch. Div. 521.
² (1890) 25 Q. B. D. 262.

³ (1894) 2 Q. B. 393, 521.
⁴ (1900) 1 Ch. Div. 822.