1931 *Present:* **Akbar J. and Maartensz A.J.**

WILSON *v.* VIJAYALAKSHAMI, *et al.*

16—D. C. (Inty.) Colombo, 3,507.

Insolvency—Firm carrying on business in India and Ceylon—Adjudication of insolvency in High Court of Madras—District Court of Colombo appointed auxiliary—Pooling of assets—Distribution of Ceylon assets.

A firm carrying on business in India and Ceylon was adjudicated insolvent in the High Court of Madras and the District Court of Colombo was appointed an auxiliary Court for the purpose of distributing the assets in Ceylon.

On application of the official assignee an order was made in India pooling the assets of the insolvent, wherever situate.

Held, that the District Court of Colombo had power to order that, when assets in Ceylon become liable for distribution such assets should be distributed rateably in Ceylon between the Ceylon and Indian creditors, in order to enable the official assignee in Madras to pay a dividend to Ceylon creditors out of the Indian assets.

APPEAL from an order of the District Judge of Colombo. The facts appear from the judgment.

F. A. Hayley, K.C. (with him *Nadarajah*), for appellants.

H. V. Perera, for third, fourth, and fifth respondents.

J. R. V. Ferdinands, for sixth, seventh, and eighth respondents.

September 10, 1931. AKBAR J.—

The insolvents in this case were a firm carrying on business under the Vilasam of "A. R. A. R. S. M." They were adjudicated insolvents by the High Court of Madras on June 22, 1925, and in these proceedings on August 25, 1925, on the ground that they carried on business in Colombo too. Under section 122 of the English Bankruptcy Act of 1914, on November 13, 1925, the District Judge of Colombo made order that the District Court of Colombo should act in aid of and as auxiliary to the High Court of Judicature, Madras, and that the provisional assignee in Ceylon should be appointed as an attorney of the Madras official assignee and he ordered him to file a power of attorney for that purpose, which was done. On December 19, 1929, on the application of the official assignee, the High Court of Madras made order directing the official assignee to pool all the assets of the insolvents wherever situate and distribute dividends to all the creditors whether in British India or outside. This order was made, as a matter of fact, on the application of the official assignee, because the order recites this application and further recites that no order was made on the application of the Ceylon creditors. A copy of this order was filed in the District Court of Colombo and on April 1, 1930, the District Judge endorsed this order of the Madras

High Court, but he added that any dividend meeting was to be advertised in Ceylon and also such dividend will be open to question in Ceylon " and only any surplus assets will be allowed to leave the Court " (whatever that may mean). On May 9, 1930, the official assignee of Madras and the provisional assignee in Ceylon, who held the power of attorney of the official assignee moved the District Court of Colombo (after referring to the orders of Court regarding the pooling of the assets and stating that according to the orders of the Madras High Court, the official assignee in Madras was unable to pay a dividend to the Ceylon creditors out of the Indian assets unless the Colombo District Court ordered that, when assets in Ceylon become liable for distribution, such assets would likewise be distributed rateably in Ceylon between the Ceylon and the Indian creditors) that the Court may make order accordingly. This application was resisted by the first to the fifth respondents, and the District Judge by his order dated September 30, 1930, refused the application of the official assignee but he made no order as to the costs of the inquiry. The District Judge incidentally found fault with the provisional assignee in Ceylon for neglect of duty, in that he had failed to recover the assets in Ceylon with due diligence. Mr. Hayley quite naturally complains that these strictures were unjustified, because the provisional assignee was not heard in his defence and that the application made to Court on May 9, 1930, was merely preliminary to the distribution of assets, and that the provisional assignee was quite prepared to render a true account of his stewardship. Mr. Hayley offered to read certain affidavits in support of his contention that the provisional assignee had not been remiss in his duties. In view of the opinion that we had formed that the District Judge was wrong in passing these strictures without giving the provisional assignee a chance of being heard, we refused to allow this affidavit to be read. It is not necessary to refer to this aspect of the case any further. With regard to the immediate application before the District Judge, I am of opinion that the District Judge should have allowed the application. It is quite clear to me from the trend of the judgment of the District Judge and the arguments of the respondents' counsel in the District Court, as recorded by the District Judge, that the main objection against the application was based on the ground that the first to the fifth respondents wished to preserve the Ceylon assets for the Ceylon creditors only. It may be that counsel for the above respondents did also object on the mistaken ground that the Indian assets would only be distributed among the Ceylon creditors who had proved their debts in Madras and would not be available for the Ceylon creditors (including the first to the fifth respondents) who had not proved their claims in Madras. As regards the first objection, in my opinion, the District Judge had jurisdiction to allow the application and he should have so allowed it. Not only is section 122 of the English Bankruptcy Act of 1914 applicable to this matter, but all the authorities quoted show that such an order would ordinarily be made in the circumstances of this case. For instance, in the local cases reported in *Ramanathan's Reports, 1872-1876, page 277,* and *Atkinson v. Boustead* [1] and

[1] *V. S. C. C. 13.*

in the English cases *Ex parte Wilson—In re Douglas*,[1] and *In re Hooper and another*,[2] it was held that where a person carries on business in two countries and that person is adjudged bankrupt in both these countries, the bankrupt's estate would be regarded as one estate. For instance, in the last case the Lord Chancellor stated as follows:—" This is simply the case of one bankrupt firm. It happens to be two persons trading together in Portugal and in England, but it is just the same case as if it were one person trading in Portugal, and the same person trading in England; the two persons do not constitute different firms because they were in Portugal and also in England. " Lord Selborne stated " The Portuguese assets were, by the law of England, which we have to administer (and, I may add, in accordance with the general principles of private International law as to movable property), subject to and bound by the English liquidation, except so far as the local law of Portugal might have intercepted any portion of them while within its jurisdiction. Every creditor coming in to prove under, and to take the benefit of, the English liquidation, must do so on the terms of the English law of bankruptcy; he cannot be permitted to approbate and reprobate, to claim the benefit of that law, and at the same time insist on retaining, as against it, any preferential right inconsistent with the equality of distribution intended by that law, which he may have obtained either by the use of legal process in a foreign country, or otherwise. " In this case, too, the two firms are really one and the official assignee in Madras was vested with all the movable property belonging to the insolvent firm, and also the administration of the immovable property in accordance with the law of Ceylon. That was why the Madras High Court asked the District Court of Colombo to help the Madras Court in the collection of the Ceylon assets. As Mr. Justice Lyall Grant points out in case No. 89, D. C. (Interlocutory) Colombo No. 3,507—S. C. Minutes of November 19, 1929, " questions may arise as to the principles of law by which a Court is to be guided in the collection of the Ceylon assets and this question too can very conveniently be decided by the District Court of Colombo." In the case of *In re Marquis of Huntly*,[3] the Court of Appeal pointed out that section 122 was passed to enable one Court to assist another in dealing with matters which were within the jurisdiction of the Court asked to act. In order that the arrangement should be as equitable as possible to all the Ceylon and Indian creditors the order to pool all the Indian and Ceylon assets between the Indian and Ceylon creditors was made by the Madras High Court and approved by the District Court of Colombo. There is authority for such an order in the case of *In re P. Macfadyen & Co.*[4] In that case Mr. Justice Bingham stated " I consider it is clearly a proper and common-sense business arrangement to make, and one manifestly for the benefit of all parties interested ". In that case too the approval of all the creditors was not obtained and the order was made in the discretion of the Court. In this case, however, according to the document XI put in by the respondents' counsel, there was a meeting in Colombo on September 21, 1929, of which the Chairman was the official assignee of Madras,

[1] *(1871–1872) VII., Chancery A. C., p. 490.*
[2] *(1879–80) 5 L. R., A. C., p. 161.*
[3] *(1917) 2 L. R., K. B. D., p. 729.*
[4] *(1908) 1, L. R., K. B. D., p. 675.*

and notice of this meeting was sent to all the creditors in Ceylon, of whom 39 were present. At this meeting the official assignee explained the whole position and pointed out that a dividend had already been declared in India for the Indian creditors, and that there was a large sum in hand out of which the Ceylon creditors could receive a first dividend of one anna per rupee. The remaining Indian assets were estimated at 8 lakhs and the Indian liabilities at 37 lakhs. In Colombo the anticipated assets were 1½ lakhs and the liabilities 17 lakhs. 23 creditors aggregating 8½ lakhs agreed to the pooling and 15 creditors aggregating 6 lakhs wanted time to consider, and only one creditor was against the pooling. Two of the respondents to this appeal seem to be amongst those who wanted time to consider. This was the only document put in during the argument, and one must presume that when the Madras High Court made the pooling order on December 19, 1929, and when it was endorsed by the District Court of Colombo on April 1, 1930, such order and endorsement were made by the two Courts with a full realization of the benefit to all the creditors.

In my opinion the application of the appellants made as a preliminary to the enforcement of these two orders (namely, for an order to make the Ceylon assets available for distribution) was a reasonable one and should have been allowed. Mr. Perera then pressed the second objection, namely, that it should be made clear that all Ceylon creditors, who had proved their claims in the District Court of Colombo should be allowed to participate irrespective of the fact that they may not have proved their claims in Madras. I cannot see why they need have any apprehension on this subject, because the proceedings show, especially the application of the official assignee in 1929, for the pooling of the assets, that the official assignee was to distribute all the assets whether in India or outside for the benefit of all creditors whether in India or outside. Further, the fact that the provisional assignee in Ceylon became the attorney of the official assignee in Madras and represented him in these proceedings shows that the official assignee was bounded by the proof of debts in the District Court of Colombo. Any apprehension on this point can be set at rest, because Mr. Hayley on behalf of the appellants has assured us that this was the intention of the official assignee who is one of the appellants in this case. As a matter of fact the claim of the fourth respondent to this appeal when it was proved in the District Court of Colombo on December 20, 1927, was communicated to the official assignee in Madras. So that the fears of Mr. Perera seem to have no foundation in fact. He then contended that it should be made clear that the Ceylon assets were to be subject to, and distributed only on, the orders of the District Court of Colombo. On this point too the position is clear because the application which gave rise to this appeal was to the effect that the assets in Ceylon were to be distributed rateably *in Ceylon*. Further, the fact that the official assignee made any application at all shows that he so recognized the jurisdiction of the District Court of Colombo. Any doubt which may be on the point was dissipated by the decision of the Supreme Court in 89 D. C. (Inty.) Colombo No. 3,507 of November 19, 1929, when the Supreme Court held in unmistakable

terms that the District Court of Colombo had jurisdiction to allocate the Ceylon assets in accordance with the arrangement come to between the Madras High Court and the District Court of Colombo under section 122 of the English Act of 1914. The appeal should, therefore, be allowed with costs against the first to the fifth respondents. The costs however, of the sixth, seventh, and eighth respondents will be borne by them both in this Court and in the lower Court.

Appeal allowed.