1936 *Present :* Moseley J. and Fernando A.J.

81—D. C. (Inty.) Colombo, 4,038.

ALMEIDA *v.* AMIT.

Insolvency—Failure to disclose insurance policy—No right to claim benefit of policy—Ordinance No. 7 of 1853, s. 70.

Where an insolvent failed to disclose in his balance sheet an insurance policy taken by him, he is not entitled to claim the benefit of the policy on maturity or to be reimbursed the amount of a mortgage on the policy redeemed by him.

APPEAL from an order of the District Judge of Colombo.

Thiagarajah, for insolvent, appellant.

Marikar (with him *Neville Perera*), for assignee, respondent.

Cur. adv. vult.

November 27, 1936. FERNANDO A.J.—

The appellant in this case was adjudicated insolvent and was awarded a certificate of conformity on February 4, 1930. Before the adjudication he had taken out a policy of insurance on his life, but did not disclose this

fact in the balance sheet which he filed. It would appear, however, that he was examined by the opposing creditors, and he then stated that he had a policy which had lapsed by his failure to pay the premiums. This statement was apparently accepted by the creditors, and the assignees, as correct, and no further inquiries appear to have been made with regard to this policy of insurance.

In 1934, by letter X 2, the Insurance Company informed the appellant that the policy had matured and that there was sum of Rs. 729.82 due to him on the policy subject to a mortgage in favour of V. E. A. A. Muttiah Chetty, one of the opposing creditors. On receiving this information, the insolvent appears to have obtained a discharge of the mortgage from Muttiah Chetty, but the Insurance Company refused to pay the sum to the insolvent, unless he obtained an order of Court empowering the Company to pay that sum to him. When this application was made, the Court ordered notice to issue on the assignee, and the assignee thereupon objected to the money being paid to the insolvent, and claimed the money on behalf of the creditors.

At the argument, Counsel for the insolvent claimed that even if he was not entitled to the money due from the Insurance Company, he was at least entitled to be reimbursed the amount which he had paid to the mortgagee.

The learned District Judge held that under section 70 of the Ordinance, the entire property of the insolvent both present and future vested in the assignee, with the result that the money utilized by the appellant in paying off the mortgage was money that vested in the assignee, and that therefore the appellant was not entitled to be repaid that sum. On the facts as stated, however, it would appear that this money was paid by the appellant about four years after the issue of the certificate. I do not think the District Judge was right in holding that money belonging to the appellant at that date was money that vested in the assignee under section 70. That section has been taken *verbatim* from section 141 of *12 & 13 Vict. c. 106* quoted at length at page 243 of *Archbold's Bankruptcy* (11th ed.) at page 471. The index prepared by Archbold states that future property of the bankrupt up to the certificate passess to the assignees, and he refers to page 320 where section 141 is construed in these words, "as to personal property not only all such as he is possessed of at the time of his bankruptcy, but also all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate". He also states at page 415 "that the certificate of conformity allowed under this action subject to the provisions wherein contained, shall discharge the bankrupt from all debts due by him, when he became bankrupt", and continues in the next paragraph in these words, "the former of these clauses was held to extend to discharge the goods as well as the person of the bankrupt"; and he cites the case of *Davis v. Shapley* [1] as authority for the proposition that "where the goods of a certificated bankrupt acquired after the bankruptcy were seized under a *fieri facias* upon a judgment in respect of a debt due before the bankruptcy

[1] *1 B. and Adol. 54.*

the Court set aside the *fieri facias* on motion". In view of this statement of the law in England, I would hold that "future property" referred to in section 70 means nothing more than any property acquired by the insolvent before the issue of the certificate, and does not include property acquired by him after the certificate has been issued. I would accordingly hold that the learned District Judge was wrong in the interpretation placed by him on that section.

Counsel for the respondent, however, argued that the policy of insurance had not been disclosed by the insolvent, and that when the policy became due, the money due under that policy did vest in the assignee in spite of the fact that the insolvent had himself kept it alive by paying the premiums, and he referred to the case of *Tapster v. Ward*[1] The facts in that case were that Tapster had a policy of assurance on his own life. He had paid one premium only when he commenced proceedings for the liquidation of his affairs under the Bankruptcy Act. He did not include the policy in the statement of his affairs, and no notice of it was given to the official receiver who became entitled to all the property of the bankrupt after the liquidation. Having concealed the existence of the policy, or having said nothing about it, the bankrupt went on paying the premium on that policy, and the policy was available against the Assurance Company at the date of the bankrupt's death. Cozens-Hardy M.R. after referring to earlier English cases cites from the judgment of Farwell L.J., commenting on a case where he had allowed money paid by the wife of a bankrupt by way of premium on a policy to be repaid to her. The quotation is in these words, "My judgment proceeded on the knowledge of the trustee of the existence of the policies, of the necessity of paying the premiums and the fact that the wife was paying them. There was something in that case very like an implied request that the wife should pay, but in a case like the present where the trustee is absolutely ignorant of the existence of the policy, and where the trustee is absolutely ignorant of any payment made for premiums in respect of it, I am unable to see that we should be in the least justified in making such an extension of the doctrine of *ex parte* James (*law Reports 9 Ch. App. 609*) as we are asked to do". It seems to me that the position here is exactly the same. The insolvent did not disclose the policy in his balance sheet. When questioned about the policy, he said that the policy had lapsed, and the assignee must have assumed that this statement was true in fact, and took no action on the policy. He was not aware that any premiums had to be paid, and the insolvent did not disclose the fact that he was paying those premiums. As Cozens-Hardy said in that case, "the appellant has no right at law or in equity to the policy, and neither at law nor at equity has he any lien upon the policy money for the premiums which have been paid". It may be true that he has paid off a mortgage on that policy, but I cannot see any difference in principle between paying off the mortgage, and paying the premiums due on that policy. The insolvent having failed to disclose the policy, and having paid off the mortgage or settled with the mortgagee on some terms which are not clear, cannot take advantage of his own fraud to claim any benefit under the policy. The learned District Judge thought

[1] *101 Law Times 503.*

that he had acted foolishly in paying the mortgage, but on the fact, it seems clear to me that his conduct savours of fraud rather than of folly. I would therefore, hold that the appellant is not entitled in law or equity to claim to be reimbursed for money if any paid by him to the mortgagee. I would accordingly dismiss the appeal with costs.

MOSELEY J.—I agree.

Appeal dismissed.