

*Present* : De Sampayo and Porter JJ.

*In re* THE INSOLVENCY OF ABDUL CADER.

40—D. C. Kandy, 1,628.

*Insolvency—Adjudication of insolvency on the application of insolvent—  
Annulling of order.*

The insolvent applied for an adjudication of insolvency stating that he was able to pay five shillings in the pound, and the District Judge made order accordingly. Thereafter, at the certificate meeting, the District Judge (the successor of the Judge who made the first order) made order annulling the adjudication, on the ground that there was not sufficient proof that the insolvent was able to pay five shillings in the pound.

*Held*, that the order annulling the adjudication was wrong.

THE facts appear from the judgment.

*Soertsz*, for the appellants.

*Weerasooriya*, for the respondent.

June 20, 1922. DE SAMPAYO J.—

This is an appeal in the matter of the insolvency of one Mana Abdul Cader. The appeal is taken by certain proved creditors from an order of the District Judge annulling the adjudication. It appears that on June 2, 1920, the insolvent petitioned against himself. He annexed to his affidavit a list of his assets and the particulars of his liabilities, and stated that in view of these materials he was able to pay five shillings in the pound. The District Judge, who was then presiding in the District Court, after considering the petition, the affidavit, and the list of property, made an order adjudicating the applicant an insolvent. Thereafter, the usual proceedings took place. At the first sitting of creditors a large number of creditors came and proved their claims, and at the second sitting the insolvent was examined. The second sitting was then closed, and the Court fixed the certificate meeting for March 16 of the present year. The opposing creditors gave notice stating their grounds of opposition, and the whole matter of the grant of the certificate to the insolvent came on for consideration on the day mentioned. Certain arguments took place, and the Court reserved its order. The District Judge in his order stated the facts upon

1922.

DE SAMPAYO  
J.*In re The  
Insolvency of  
Abdul  
Cader*

which he found that, if the matter of the application for a certificate was to be considered, he would have refused a certificate. But he concluded his order by annulling the adjudication itself, on the ground that there had not been sufficient proof of the sufficiency of the insolvent's assets to pay five shillings in the pound, that is to say, the District Judge considered that the Judge who adjudicated the insolvency ought not to have been satisfied with the materials before him for that purpose. I cannot see how such an order could be made in the circumstances of the case. Section 26 of the Insolvency Ordinance directs that in a petition filed by a person against himself, the Court, upon proof of the filing of a declaration of insolvency and the sufficiency of his available assets to the extent required by the Ordinance, shall adjudge such person insolvent. It will be noticed that proof is required of two things, namely, of the filing of a declaration and of the sufficiency of the assets. It cannot be contended that there must be proof of the filing of a declaration apart from, and independently of, the actual filing of a declaration, which is a matter of record in Court. The other matter to be proved is on the same footing, and it appears to me that the whole provision of section 26 refers back to the sections providing for the insolvent's petitioning against himself and verifying the necessary facts. Section 25 of the Insolvency Ordinance enables the District Judge to call for further proof before he makes the order for adjudication, that is to say, he may examine the person who is petitioning against himself or any other person as to the probable value of the property available for the payment of debts. But if the Court does not think that such additional proof is necessary, I should say it could only exercise its discretion and accept the materials already put before it as sufficient, and make the order for adjudication. The case of *Majeed v. Chetty*<sup>1</sup> has been cited as an authority on behalf of the respondent. It will be found that that was a case in which an appeal was at once taken from the order adjudicating the petitioner an insolvent. This Court found that the material then was insufficient to satisfy the Court that the petitioner was able to pay the necessary proportion of his liabilities out of the assets that he disclosed. That is quite different from the present case, where the District Judge must be taken to have been satisfied, and where no appeal was taken to this Court to interfere with the order of adjudication then made. The present order is not one made by the Court of Appeal, but by the same Court, by a successor of the District Judge who made the original order, and without any particular application before him for the purpose of annulling the adjudication. As a matter of fact, it would seem that the District Judge thought that in annulling the adjudication he was doing something adverse to the insolvent, whereas he would be granting much relief to the insolvent. That is far from the District Judge's intention, however, because his

<sup>1</sup> 5 *Bal. Notes of Cases.*

judgment sets out at length good grounds for refusing a certificate if that was the matter for him to decide. I think the order made was wrong, and we should set it aside. At the same time, the proceedings should, I think, go back in order that the District Judge may give effect to his findings in connection with the insolvent's conduct in the management of his affairs and affecting his right to a certificate of conformity. We allow the appeal, with costs, and send the case back accordingly.

1922.

DE SAMPAYO  
J.

*In re The  
Insolvency of  
Abdul  
Cader*

PORTER J.—I agree.

*Appeal allowed.*

---