Present: De Sampayo and Schneider JJ. 1922.

In re A. H. ISMAIL.

29—D. C. (Inty.) Colombo, 2,992.

Insolvency, s. 114—Remuneration of assignees.

In fixing the remuneration to be paid to an assignee, the Court has to exercise its discretion taking into consideration the circumstances of the case. The scale recommended in *In re Sinne Lebbe Bros.*[1] is only a general rule, which is subject to variation in special cases. Where the provisional assignee did work for one month, the Court fixed his commission at 1 per cent.

THE facts appear from the judgment.

Hayley, for assignee, appellant.

July 3, 1922. DE SAMPAYO J.—

This is an appeal by one of the provisional assignees objecting to the rate of commission allowed to him by the District Judge. The insolvent was A. H. Ismail, and the estate to be liquidated was a very large one. On August 19, 1920, the Court appointed H. K. Armstrong and K. Ramanathan as provisional assignees, and a large number of claims having subsequently been proved, the creditors on September 21, 1920, chose their own assignee, and the office of the provisional assignees then ceased. During the month that intervened the provisional assignees realized assets to the value of Rs. 1,570,365·73, of which Rs. 1,489,400 were the proceeds sale of American gold dollars, and they dealt with the accounts of the insolvent and did other work, which, judging from the report they sent in, the District Judge describes as requiring skill, judgment, and responsibility. But considering the short time they acted and all the other circumstances of the case, the District Judge fixed their commission at 1 per cent. on the amount realized by them, each assignee thus receiving Rs. 7,852·50 as remuneration, in addition to Rs. 1,000 which had been granted previously to each of the assignees. One of the assignees, H. K. Armstrong, appeals from that order, contending that the provisional assignees were entitled to commission according to a much higher scale. This contention is wholly based on the judgment in *In re Sinne Lebbe Bros.* (*supra*), in which Creasy C.J. and Stewart J. being pressed, as they said, with the necessity of some general scale of remuneration for assignees being framed and recommended for general adoption recommended as follows: "Where the insolvent's estate does not exceed £1,000,

[1] (*1863–1868*) *Ram. Rep. p. 204.*

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the assignees to receive a commission of 5 per cent.; where the estate exceeds £1,000 but does not exceed £3,000, the commission to be 5 per cent. on the first £1,000, and 3 per cent. on all beyond; where the estate exceeds £3,000, the commission to be 5 per cent. on the first £1,000, 3 per cent. on the second and third £1,000, and 2 per cent. on all beyond."

These recommendations were approved, and were considered such as should be given effect to by Lawrie and Withers JJ. in *Smith & Co. v. Macintoe*[1]. These judgments were pressed upon the District Judge, but he thought that "the sum asked for as remuneration for a month's work was extravagant," and added that he fixed the commission at 1 per cent. in the exercise of his discretion. Section 114 of the Insolvency Ordinance itself required the Court to exercise such discretion, for it authorized the Court to allow to the assignees of any insolvent estate as remuneration for their services "such sum as shall, upon consideration of the amount of the said estate and the nature of the duties performed by such assignees, appear to be just and reasonable." In this case the District Judge in exercising his discretion took all these matters into consideration, the only noticeable thing as regards the amount of the estate being the large sum realized by the provisional assignees by the sale of gold dollars, but it is not disputed that at that time these gold dollars were in great demand and could be readily disposed of. In the case *In re Sinne Lebbe Bros.* (*supra*) their Lordships themselves laid down a caution as follows: "We recommend this (the scale in question) as a general rule only, subject to variation in special cases; but we think that very strong proof of assignees having necessarily incurred peculiar trouble and risk should be given before any large sum is allowed." This not only conserves the discretion of the Court, but appears to me to destroy the practical utility of the scale recommended, and referring to that same case Lascelles C.J., in *De Witt v. Jevunjee*,[2] observed: "It is quite clear that the Court did not, and indeed could not, derogate from the discretionary power vested in the Court by section 114 of the Insolvency Ordinance." In my opinion the District Judge exercised his discretion very properly, and the sum allowed is "just and reasonable," especially when it is remembered that the creditors' assignee, who will have a very large quantity of complicated and difficult work to do in order to carry the liquidation of the estate to its final conclusion, will have to be paid further remuneration for his services.

I think this appeal should be dismissed.

SCHNEIDER J.—I agree.

Appeal dismissed.

[1] *(1896) 7 Tam. Rep. 11.*

[2] *(1914) 2 Bal. N. C. 56.*