1942 *Present* : **Soertsz and de Kretser JJ.**

HAMID *v.* COLOMBO APOTHECARIES COMPANY, LIMITED

59—D. C. (*Inty*) *Nuwara Eliya*, 31.

Insolvency—Trader leaves the country after transferring property—Intent to defeat and delay creditors—Act of Insolvency.

Where the adjudication of a person as insolvent is based on the debt of the petitioning-creditor to which he swears in his affidavit and the debt is admitted, no further proof of the debt is necessary.

Where a trader leaves Ceylon after he had transferred his property to another and remains away from the Island for some time,—

Held, that it was a fair inference that he had done so with the intention to defeat and delay his creditors and that he had committed an act of insolvency.

The expression "fraudulent transfer" explained.

APPEAL from an order of the District Judge of Nuwara Eliya.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for insolvent, appellant.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen* and *Ivor Misso*), for respondent.

Cur. adv. vult.

September 24, 1942. DE KRETSER J.—

The appellant seems to have carried on business in Nuwara Eliya under the name of "K. Abram Saibo & Company". In January, 1942, he was indebted to the respondent in the sum of Rs. 4,475.93 and interest for goods sold to him between August, 1941, and December, 1941.

By four deeds dated November 3, 1941, and January 14, 1942, all attested by V. Ponnasamy, Notary Public, he transferred his entire assets, including his stock-in-trade and credits, to one K. Seyed Ibrahim, for Rs. 51,786.13, which was to be paid at the rate of Rs. 1,250 a month. He left for India about the end of January, 1942.

On January 26, 1942, his proctor Mr. Ponnasamy, addressed a letter to the respondent informing him of a proposed meeting of creditors to be held at his office on February 9, 1942, for the purpose of seeing if they would accept composition and inviting him to be present. His liabilities amounted to Rs. 134,793 and accordingly only 40 cents in the rupee would be available, said Mr. Ponnasamy, who did not, however, disclose how his client, the appellant, would be able to pay even this sum. Even assuming that Seyed Ibrahim was solvent and remained solvent and paid his instalments regularly, and presuming also that the appellant who was in India would honestly meet his creditors, they would have to take even the 40 cents in the rupee in instalments, extending presumably over three and a half years.

The letter disclosed that the appellant had had to "run away to India on several occasions during the past three years", owing to chronic diarrhoea, leaving his business in the hands of others; that when he returned from India in December he was bedridden and had recently left for India for treatment. So that on previous visits to India the business remained his and was available to his creditors. The letter alleged that the "transfer" to Seyed Ibrahim (note the singular) was "in order to safeguard your interests and in order not to allow the business and the stock-in-trade and credits to be wasted". Earlier it alleged that, owing to his (appellant's) inexperience and the strain of previous debts he had been incurring losses daily. These losses, presumably, were not due to his ill-health or the greater incompetence of those he left in charge of the business.

It is difficult to imagine that a creditor could receive a more alarming letter.

On May 19, 1942, the respondent set out the fact of his debt and recited all other facts known to him and, annexing the letter he had received, petitioned for the adjudication of the insolvent. Order was made accordingly, and May 29 was the date fixed for showing cause. On that date, Mr. Ponnasamy undertook to "file papers", on June 6, on which date he filed his proxy and a statement of objections; he stated that he was unable to proceed to inquiry and moved for a postponement. The application was objected to, and the trial Judge made order as follows:—

> "Today is the fourteenth day after the service of the notice of adjudication, and cause, if any, should have been shown to-day at the latest. The order of adjudication will stand."

On June 8, Mr. Ponnasamy filed a medical certificate, issued in India on June 3, to the effect that the insolvent could not attend for two months. There is no note of any application by him based on this certificate.

On June 10, a notice under section 44, issued on K. Seyed Ibrahim Saibo (the transferee), was reported not served as he was said to be in India.

On June 15, a petition of appeal was filed. This questioned the regularity of the summons having been left at the place of business, a procedure not questioned at the hearing and amply justified by section 30, and it also raised the point that the material before the court was

insufficient and the objections had not been inquired into. It invoked the medical certificate, although this had been produced only two days later and no application had been based on it.

Two points were urged before us, viz.:—

(*a*) The Judge should have had *viva voce* evidence for the respondent before confirming the adjudication.

(*b*) The material disclosed no act of insolvency.

In support of (*a*) the case of *Supramaniam Chetty v. Gaffoor & Co.*[1] and *In re the Insolvency of Robert de Zoysa*[2] were cited. Without going into the question as to how far the English cases relied on were governed by Rules made under the English Act, it is enough to say that the procedure indicated is one which may well be followed. The question is whether anything more need have been done in the present case.

Section 16 of our Ordinance expressly invokes the forms given in the Schedule. According to the form given, the petitioning-creditor is not required to state specifically the act of insolvency which he relies on but he states that he has been informed and verily believes that the said A. B. did lately commit an act of insolvency, and the accompanying affidavit is required to state in general terms that the several allegations in the petition are true. The petitioning-creditor therefore only swears to the *debt* owing to him, and for the rest he may go on information he believes. When a substantial dispute arises it is only reasonable and proper that he should lead specific evidence and satisfy the court. This the Rules in England provide for.

Now, in this case the statement of objections admitted the debt. No further proof was needed. It also admitted that the appellant had ceased to carry on business after January, 1942. It denied that the letter disclosed any act of insolvency. That was a matter for the Court to consider. The Court had already decided that acts of insolvency were disclosed and Mr. Ponnasamy had addressed no argument on the point. The statement denied that the transfer was fraudulent and made with intent to defeat his creditors but said nothing about delaying his creditors. It stated with reference to only one of the deeds that it conveyed the stock-in-trade for valuable consideration and that the consideration had been utilized for paying creditors. It did not specify the creditors, and the respondent had not been paid anything. No information was given as to the consideration on the other transfers. I fail to see how the respondent could have advanced his case by going into the witness-box. The appellant, on the other hand, might have disclosed some facts known to Mr. Ponnasamy, who was acting for him, and have called the transferee, if he were not himself in India.

The simple position therefore is whether the admitted facts disclose acts of insolvency. A man is presumed to intend the natural consequences of his acts. The admitted acts are capable of more than one construction and no argument was addressed to the Judge to show that his view of them was wrong. Having heard Counsel, I am unable to say that the Judge was wrong. The appellant had left Ceylon and remained away for some months. He had transfered all his property. The first would have

[1] *3 S. C. D. 5.*

[2] *2 C. L. W. 307.*

been an act of insolvency if done with intent to defeat or delay his creditors. In my opinion, a judge may form the opinion that he intended *both* when he adopted a course he had not adopted previously and when he did so without notice to his creditors or any attempt at composition before his transfers. The transfers, besides being made with the intent above specified, should be fraudulent. "Fraudulent" in this connection should be given the meaning it had in the corresponding English Statute.

Archbold, in his *Law an Practice of Bankruptcy,* sets out the law on pages 55 to 62. Under the term "fraudulent" were classed all voluntary conveyances without valuable consideration which were rendered void as against creditors by certain statutes and all conveyances which a Court of Equity would declare fraudulent, as well as all cases which appear from the facts themselves to be, or which from the conclusion of law arising from these facts would be deemed to be fraudulent as against third parties, "*however fair they might be as between the parties themselves*". So, if a trader makes a conveyance of all his property to trustees, in trust for his creditors, although he did not in fact intend to delay or defeat his creditors, yet such being the necessary consequence of an assignment of all his property, the law will presume that to have been his intention. It is worse when the property is not conveyed to trustees. Other cases are cited by *Archbold.*

I am unable, therefore, to say that no act of bankruptcy has been disclosed or proved, and I fail to see that the adjudication can be held to have been wrongly made.

The appeal is accordingly dismissed with costs.

SOERTSZ J—I agree.

Appeal dismissed.