1928.

Present : Garvin and Lyall Grant JJ.

In re INSOLVENCY OF ABDUL MAJEED.

173—D. C. (Inty.) Matara, 41.

Insolvency—Adjudication—Affidavit by insolvent—Sufficiency of proof—Ordinance No. 7 of 1853, s. 26.

An adjudication under section 26 of the Insolvency Ordinance is not defective merely because it proceeds upon an affidavit furnished by the insolvent.

APPEAL from an order of the District Judge of Matara.

N. E. Weerasooria, for appellant.

L. A. Rajapakse, for respondent.

November 14, 1928. GARVIN J.—

In this case the appellant was adjudicated an insolvent upon his own application. The application was in the usual form, and to it was attached the usual statement of assets and liabilities duly verified by the required affidavit. The learned District Judge thereupon, acting in pursuance of section 26, adjudicated him an insolvent. Sittings were fixed for the proof of debts ; creditors appeared ; and debts were proved. On August 28 a certain creditor appeared to prove a debt ; having done so, his Counsel took the objection that the adjudication was bad and should be annulled. The principal grounds upon which his objection was based would seem to be, first, that the material before the Court, to which I have already referred, was insufficient, and secondly, that in any event the Court was wrong in acting upon the material, for the reason that the dates upon which the creditors referred to in the list of assets incurred their respective liabilities to the insolvent were not set out. This objection purports to be based on the case of *Majeed v. Chetty*,[1] upon which it is sought to rest the argument that an affidavit is of itself insufficient to justify the Court holding that the insolvent had an available estate sufficient to pay 5 shillings in the pound, and that the law requires evidence in addition to an affidavit before such an averment can be considered to have been established. Upon an examination of the case of *Majeed v. Chetty* (*supra*), which has been submitted to this Court in two cases to which I shall presently refer, and after a consideration to which I have myself submitted this judgment, I do not think that it affords any

[1] *5 Bal. Notes of Cases 1.*

foundation for the contention that it is an authority for any such proposition. In *Sedris v. Ramanathan*[1] the case was specially considered in the judgment of Bertram C.J., and his estimate of the case is expressed in the following words:—"I think it is clear that in *Majeed v. Chetty* (*supra*) what the Court must have meant was, not that in no case would the petitioner's affidavit be sufficient evidence of the facts alleged, but that the affidavit in the particular case was not sufficient." A similar view of this case was taken by de Sampayo J. in the case of *In re the Insolvency of Abdul Cader*.[2]

The learned District Judge's judgment was obviously influenced by the view submitted to him of the case of *Majeed v. Chetty* (*supra*), the only other observation made by him which might be said to be independent of the case of *Majeed v. Chetty* (*supra*) consists in the statement that the recovery of the sums due on the promissory notes and as the price of goods sold and delivered is highly uncertain.

Now, no additional material was placed before the learned District Judge in this case. It would seem, therefore, that while he was satisfied, and still is satisfied, with the oath of the insolvent that the sums claimed by him to be assets of his estate are really due, a doubt has entered his mind as to whether they may eventually prove to be recoverable. I am unable to see any material on this record to justify such a doubt. There certainly was no material of any kind to raise such doubt placed before the Court by the opposing creditor.

As to the contention that the adjudication is defective, in that the exact dates on which certain liabilities arose have not been fully set out in the schedule, it is sufficient to say that while I agree that it is necessary in the interests of all concerned that a compliance with the requirements of section 20 should be insisted upon, I am unable to say that the omission to specify such dates is necessarily fatal to an adjudication, which a Court has made after consideration of all the material placed before it.

For these reasons, I think that the order annulling this adjudication must be set aside and the appeal allowed with costs.

LYALL GRANT J.—

I agree. The Court here made an adjudication upon certain material supplied to it by the applicant-insolvent, and in doing so exercised its discretion; later, without having any further material placed before it, it proceeded to exercise its discretion in a different way. I should require very strong argument to convince me that the Court having once exercised its discretion could re-open the matter so as to exercise it in a different way.

Appeal allowed.

[1] *23 N. L. R. 315.*

[2] *23 N. L. R. 381.*