APPEAL FROM ORIGINAL CIVIL.

Before Costello A. C. J. and Edgley J.

AHMAD ALI

v.

ABUL KASEM FAZLUL HUQ.*

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July 30; *Aug.* 2, 3.

Insolvency—Proof of debt—Assignment of debt—Composition—Annulment of composition and readjudication—Assignee from one of two joint creditors—"Person interested"—Presidency-towns Insolvency Act (III of 1909), s. 31(1).

In order to be entitled to maintain an application to have a composition annulled or a debtor readjudicated insolvent, the applicant must establish that he is a "person interested" within the meaning of s. 31 (*1*) of the Presidency-towns Insolvency Act.

In any event it is discretionary with the Court whether such an application shall be granted or not.

Where the debtor owed some money to K and N jointly, but through inadvertence it was mentioned in the schedule as due to K alone, and the proof was not formally admitted by the Official Assignee under cl. 25 of Sch. II,

held that an assignee from K alone was not a "person interested" within the meaning of s. 31(*1*) of the Act.

In re *Frost*. Ex parte *Official Receiver* (1) and In re *Iliff* (2) referred to.

APPEAL from an order of Remfry J. by the applicant.

The facts of the case and arguments in the appeal are fully set out in the judgment.

N. C. Chatterjee, *S. B. Sinha* and *S. P. Chowdhury* for the applicant.

S. N. Banerjee (*Sr.*) and *J. N. Majumdar* for the debtor.

H. C. Majumdar for the adjudicating creditor.

*Appeal from Original Order, No. 26 of 1937, in Insolvency Case No. 109 of 1926.

(1) [1899] 2 Q. B. 50. (2) (1902) 51 W. R. (Eng.) 80.

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COSTELLO A.C.J. This is an appeal against a judgment of Remfry J., whereby he dismissed an application which originated by a notice dated April 7, 1937 and purported to be made in an insolvency matter described as Case No. 109 of 1926, in which the insolvent was one Abul Kasem Fazlul Huq.

The present application was made by one Syed Ahmad Ali, described as a creditor, and in it he asked for an order readjudicating the debtor insolvent and annulling a composition or scheme of arrangement: and that the properties of the debtor should vest in the Official Assignee without prejudice to the validity of any transfer or payment made or anything done or in pursuance of the composition or scheme. There was a claim in the alternative for the enforcement of the composition or scheme. It is quite clear, however, from the course of the proceedings that what the applicant really desired was that the debtor should be re-adjudicated insolvent. The notice was supported by an affidavit affirmed by Syed Ahmad Ali on March 20, 1937. The case made by him, put shortly, is as follows:—

Mr. Abul Kasem Fazlul Huq was, on June 8, 1926, adjudicated an insolvent by the Court on his own application. The debts due and owing by the debtor to various creditors amounted in all to over two lakhs of rupees, out of which the debtor had admitted claims of creditors amounting to the sum of Rs. 1,77,546. It is stated in the affidavit that one Keshab Lal Addy, since deceased, late of 58, Wellington Street, in Calcutta, was a creditor to the extent of Rs. 4,000. The claim of the said Keshab Lal Addy was admitted by the insolvent. The affidavit then went on to say that a scheme of composition was sanctioned by this Court on August 26, 1926, and two trustees were appointed subject to their furnishing security for the sum of Rs. 1,26,238-10-9 within three months from that date. These two trustees failed to furnish the required security. Accordingly, another order was made by this Court on

March 8, 1927, whereby three other persons Lutfi Ali Chaudhuri, Syed Mahammad Zinal Huq and M. Wajid Ali were appointed trustees and they were ordered to furnish security in the sum of Rs. 97,033. These trustees did furnish security. In para. 6 of the affidavit filed by Syed Ahmad Ali, the material provisions of the scheme of arrangement are stated thus :—

(*a*) That the scheduled creditors of the insolvent were divided into two groups, namely, group A and group B. Group A included the attaching creditors who had attached the insolvent's salary and the attached money had been brought into Court and were in the hands of the Registrar of this Hon'ble Court. The rest of the creditors were placed in group B.

(*b*) The creditors in group A were to receive rateably the money in the hands of Registrar of this Hon'ble Court realised as the result of the said attachments.

(*c*) The trustees would pay Rs. 15,500 rateably to the creditors in group B before October 31, 1926 and a like sum by December 31, 1926.

(*d*) After payment of the said sum of Rs. 15,500 each to the creditors in group B the trustees would pay Rs. 6,000 rateably to all the creditors in groups A and B alike on or before the 30th June in every year until every creditor shall be paid eight annas in the rupee of their respective claims.

That is how the terms of the scheme of composition were set forth in the affidavit and the statement is substantially accurate. An allegation was made in the affidavit that by reason of the scheme and the order annulling the adjudication the creditors had been kept at bay. It was further alleged that in order to end an *impasse* several creditors included in the schedule put in by the insolvent had at various times applied to this Court for the annulment of the scheme of composition and for the readjudication of the insolvent. These applications had been adjourned from time to time until eventually they were all withdrawn on March 9, 1927.

The applicant based his right to intervene in the matter of the insolvent upon the grounds that the creditor Keshab Lal Addy had died on February 15, 1931, intestate, leaving him surviving Bama Charan Addy (since deceased) who was his only son and sole heir. Bama Charan himself died on February 5, 1935, after having made a will dated December 15,

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1934, and a codicil thereto dated December 23, 1934, in which he named as sole beneficiary his son, Gopi Nath Addy, who by the provisions of the will and the codicil became entitled to the whole of the estate and the effects inherited by Bama Charan Addy from his father Keshab Lal Addy including the debt said to be owing by the insolvent to Keshab Lal Addy, so that, by the death of Bama Charan, Gopi Nath became entitled, in his own right, to the benefit of the claim which originally Keshab Lal Addy had against the insolvent.

The allegation which really indicates the foundation of the alleged right of the present applicant to come before the Court in connection with this particular insolvency is set out in para. 15 of the affidavit as follows:—

> By a deed of assignment made on and bearing date March 17, 1937, the said Gopi Nath assigned his said claim against the insolvent to your petitioner (*i.e.*, Syed Ahmad Ali) absolutely.

It is to be observed, therefore, that the case made in this affidavit was that Abul Kasem Fazlul Huq was indebted to Keshab Lal Addy in the sum of Rs. 4,000. It is, perhaps, convenient that I should now refer to a further affidavit made by Syed Ahmad Ali in answer to an affidavit made by one Sukha May Das Gupta on April 16, 1937, and a further affidavit by Sukha May Das Gupta on April 17, 1937. In his second affidavit Syed Ahmad Ali says in para. 5:—

> It will appear from the schedule annexed hereto that the debtor owed Rs. 4,000 to Keshab Lal Addy of 58, Wellington Street. It will further appear from the said schedule that the debtor had admitted therein that Rs. 4,000 was due and owing by him to Keshab Lal Addy alone. The statement made in the said affidavit that through inadvertence the name of Keshab Lal Addy was mentioned in the schedule is not true and has been made at this late stage in order to further delay payment of the said debt. I deny that the unsecured debt mentioned in sch. A of the said affidavit has any connection with the debt of Rs. 6,000 due by the debtor to Keshab Lal Addy and his brothers. I say that the said debt of Rs. 4,000 was due to Keshab Lal Addy alone and by reason of the assignment mentioned in my affidavit affirmed on March 20, 1937, the said debt is now owing to me and I am entitled to get payment of the same.

In para. 7 he seeks to emphasize the matter by saying that Rs. 4,000 was due to the original creditor Keshab Lal Addy and that the said debt having been

assigned to him he was entitled to get payment of the same. When one looks at the deed of assignment of the 17th of March which, as I have stated, purports to be the foundation of the applicant's right to come before the Court, one finds therein these recitals :—

Whereas one Keshab Lal Addy, a Hindu governed by the *Dâyabhâga* school of Hindu law, departed this earthly life on or about February 15, 1931, intestate and leaving him surviving his only son and heir Bama Charan Addy since deceased who took out Succession Certificate to the estate of the said Keshab Lal Addy from the Hon'ble High Court of Judicature at Fort William in Bengal on September 21, 1931. And whereas the said Bama Charan Addy breathed his last on February 5, 1935, after having duly made and published his last will and testament dated December 15, 1934, and a codicil thereto dated December 23, 1934, and leaving him surviving his only adopted son and heir Gopi Nath Addy. And whereas the said Keshab Lal Addy had lent and advanced a sum of Rupees four thousand (Rs. 4,000) only to one Mr. A. K. Fazlul Huq in the year 1924 for which the said Mr. A. K. Fazlul Huq executed a promissory note in favour of the said Keshab Lal Addy. And whereas the said Mr. A. K. Fazlul Huq was adjudicated insolvent by the Hon'ble High Court at Calcutta in its Insolvency Jurisdiction on June 8, 1926, on his own petition and thereafter filed his schedule in which he put in the name of the said Keshab Lal Addy as a creditor for the sum of Rs. 4,000 which debt he admitted in his schedule. And whereas the said Mr. A. K. Fazlul Huq entered into a composition with his creditors which composition was sanctioned by the said Honourable Court and the said adjudication order was annulled by the order of August 25, 1926, upon the conditions as to security to be furnished by the trustees appointed by the said order and whereas the said trustees could not furnish security as mentioned in the said Order. And whereas the said composition has not been carried out and the creditors generally and the said Keshab Lal Addy in particular was not paid any portion of the composition agreed upon. And whereas the said Keshab Lal Addy died on or about February 15, 1931. And whereas by the will and codicil of the said Bama Charan Addy, the whole of the estate and effects inherited by him the said Bama Charan Addy from his father the said Keshab Lal Addy including the said debt due and owing by the said Mr. A. K. Fazlul was bequeathed to the assignor. And whereas testamentary proceedings of the said will and codicil of Bama Charan Addy are now pending in the High Court of Calcutta. And whereas the assignor is now entitled to the said debt or claim of Rs. 4,000 due and owing by the said Mr. A. K. Fazlul Huq to the said Keshab Lal Addy (since deceased) as a legatee and in case the said will and codicil be not probated then as the sole heir. And whereas the assignor has agreed with the assignee for the transfer of the said debt or claim to the assignee for the sum of Rs. 1,500. Now this indenture witnesseth that in consideration of the sum of Rupees fifteen hundred only, the assignor doth hereby assign, sell, transfer and convey to the assignee all his right, title, interest, claim and demand whatsoever into and upon the said debt of Rs. 4,000 only.

It is to be seen, therefore, that both in the affidavits filed by Syed Ahmad Ali and in the deed of assignment the case made was that what the applicant was entitled to was a debt of Rs. 4,000 only which had

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originally been lent to Abul Kasem Fazlul Huq upon a promissory note for that amount and that indeed was the case put before us in the opening stages of this appeal. The learned Judge came to the conclusion that the applicant had not established the position that he was a "person interested" within the contemplation of s. 31 (*1*) of the Presidency-towns Insolvency Act which is the enactment under which this application purported to be made. That section is in these terms :—

> If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit,

and I would stress those words—

> on application by any person interested, readjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the Official Assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

It will be recalled that the words of the notice on which the present proceedings are based were obviously designed to follow the lines of the provisions laid down in s. 31 (*1*). The chronology of this matter is shortly as follows: The original order of adjudication was on May 8, 1926. The schedule of affairs was filed by the debtor on August 6, 1926, and there were in all some fifty-five creditors. The debtor proposed a scheme of composition under which the creditors would eventually receive dividends to the extent of eight annas in the rupee. The total amount of debts as shown in the schedule was Rs. 2,17,346 and, as stated in the affidavit of Syed Ahmad Ali, they were divided up into two groups A and B, A being the creditors who had already obtained attachment in execution of the decrees which they had obtained against the debtor and group B being the other creditors.

On August 19, 1926, the Official Assignee submitted a report which one can only describe as being of a very perfunctory description. It is headed "Re—Abul Kasem Fazlul Huq, *Ex parte* v. The Creditor".

As to which of the creditors the Official Assignee was referring to, we have no information. In the course of the report, the Official Assignee stated that, in order to pay eight annas in the rupee to the creditors, the insolvent's estate requires Rs. 1,26,238-10-9 pies. Later he says:—

> The terms of proposal appear to be reasonable and calculated to benefit the general body of creditors. The public examination of the insolvent has not been held. The claims of all the creditors are admitted.

Some discussion has taken place as to whether by that last statement the Official Assignee meant it to be understood that he himself had admitted the claims of all the creditors or whether he was merely saying that the claims of all the creditors were admitted by the debtor. I shall refer to that point again in a moment. To continue the history of the matter, apparently in some degree, at any rate, upon the faith of that report of the Official Assignee, an order was made on August 25, 1926, sanctioning the scheme of composition which had been put forward by the debtor and annulling the adjudication. There was a condition, as I have previously stated, that the two trustees who originally were S. M. Masiah and N. C. Chunder should give security to the extent of some three lakhs of rupees. No security was, in fact, furnished by those trustees. Accordingly, on March 1, 1927, an application was made for the removal of those two trustees and for the appointment of new trustees. It was then that the three persons, whose names I have already given, were, on March 8, 1927, appointed trustees in place of the original trustees. A security bond was entered into by them on March 21, 1927. I might observe, in passing, that the learned Judge seems to have taken a view as to the effect of this security bond, which is not one to which we can subcribe. It is, however, not necessary to pursue that matter any further having regard to our opinion on the main part of the case. I have pointed out that in the affidavit of Syed Ahmad Ali there is reference to the fact that there were previous applications made to this Court for the re-adjudication of the

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debtor and annullment of the scheme of composition. The first of these applications was made on September 10, 1931. The second was made on April 9, 1935, and the third was made on May 1, 1935, and all three of them were kept alive and pending in this Court until May 9, 1937. It will be seen, therefore, that one of them had been in existence but held in suspense for a period of some six years. But they all disappeared on the 9th March of this year and almost within one week from that date there comes into existence the Deed of Assignment which purports to give and was designed to give a right to Syed Ahmad Ali to acquire an interest and the right to take proceedings in connection with the affairs of Abul Kasem Fazlul Huq.

The case for the applicant comes to this that the scheme of composition was never made effective and was never carried out or, at any rate, not properly carried out by the trustees who were appointed as long ago as March 8, 1927; in other words, coming into Court ten years after the trustees have been appointed, Syed Ahmad Ali was claiming that he had a right to participate in the scheme and to receive at the hands of the trustees a dividend to the extent mentioned in the scheme of composition. It comes to this that for his outlay of Rs. 1,500 Syed Ahmad Ali was claiming to obtain sooner or later the sum of Rs. 2,000, being 8 annas in the rupee of the original debt of Rs. 4,000 said to have been due by Abul Kasem Fazlnl Huq to Keshab Lal Addy.

The contention put forward by Mr. Chatterjee before us in this appeal was that the scheme being a failure, the trustees had not carried out their duties, the creditors had not received the dividends as they ought to have done and in the affidavit made by Sukha May Das Gupta on behalf of Abul Kasem Fazlul Huq it had been admitted that nothing had been paid to some of the creditors including Keshab Lal Addy and Nil Mani Addy. Mr. Chatterjee's

argument, following the lines indicated in the affidavit of Syed Ahmad Ali and in the recitals in the Deed of Assignment, was to the effect that the debt which ultimately had become the property of Syed Ahmad Ali was definitely one due in respect of a separate transaction whereby Keshab Lal Addy had lent to Abul Kasem Fazlul Huq the specific sum of Rs. 4,000 upon the security of a particular promissory note for that actual amount. The case thus put forward was said to be substantiated by an entry in Exhibit A to the Schedule of Affairs of Abul Kasem Fazlul Huq affirmed on August 6, 1926. Exhibit A is a list of unsecured creditors with their names arranged in alphabetical order and numbered. Against No. 32 we find this entry—

Name.	Address and occupation.	Amount of debt.	Date when contracted, year.
		Rs.	
Keshab Lal Addy	58, Wellington Street ..	4,000	1924.

And in the column which is headed "Admitted or "Disputed", the word "Admitted" is written in manuscript. The sheet on which these entries appear is signed by Abul Kasem Fazlul Huq. There were, however, two other exhibits to the Schedule of Affairs, Exhibit B, which is a list of creditors fully secured (with which we are not concerned) and Ex. C, which is a list of creditors partly secured, in which we find an entry against No. 2—

1. Name of creditor.	2. Address and occupation.	3. Amount of debt.	4. Date when contracted. Month. Year.	5. Consideration.	6. Particulars of security.
Keshab Lal Addy and Bros.	58, Wellington Street.	Rs. 6,000	February, 1924	Cash ..	Pledge of Life Insurance Policies.

7. Month and year when given.	8. Estimated value of security.	9. Balance of debt unsecured.
1924.	Rs. 2,000.	Rs. 4,000.

Now, Sukha May Das Gupta in the affidavit sworn by him as Abul Kasem Fazlul Huq's manager on

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April 10, 1937, has given this explanation with regard to the entries to which I have just referred. He says in para. 5 :—

> I say that Keshab Lal Addy and Nil Mani Addy, who were brothers, jointly lent and advanced to the debtor two sums of money, *viz.*, Rs. 5,000 and Rs. 1,000 on two promissory notes dated respectively May 5, 1924 and August 4, 1924, executed by the said debtor in their favour. The said debtor secured payment of the said two debts by assignment of two life policies Nos. 205133 and 201894 in Scottish Union and National Insurance Co. on the life of the debtor abovenamed. In the Schedule of Affairs the said debtor included Keshab Lal Addy and brother in part " C " thereof and showed them to be a secured creditor for Rs. 2,000 and an unsecured creditor to the extent of the balance, *viz.*, Rs. 4,000 in respect of the said two promissory notes. The said unsecured claim of Rs. 4,000 was included in Part I of the Schedule of Affairs and through inadvertence the name of Keshab Lal Addy was mentioned there as the unsecured creditor for Rs. 4,000. It is untrue and I deny that the said Keshab Lal Addy alone is a creditor for Rs. 4,000 or that his claim for Rs. 4,000 was admitted by the debtor as alleged. As a matter of fact both Keshab Lal Addy and Nil Mani Addy were entitled to the said sum of Rs. 4,000.

Now, having regard to the case made in the affidavit of Syed Ahmad Ali, one can only form the opinion that what has happened here is that Syed Ahmad Ali, in seeking to take the place of one of the creditors in the insolvency of Abul Kasem Fazlul Huq, had picked out a debt which he thought was originally due to one individual Keshab Lal Addy, having seen the entry in List A and upon the strength of that he acquired or endeavoured to acquire such right as the present legal representative of Keshab Lal Addy might possess in regard to that particular debt, and hence we get the Deed of Assignment of March 17, 1937. It is impossible for a Court—in my opinion—to take the view that this was a genuine transaction in the sense that it was a business transaction or something in the nature of a speculative investment on the part of Syed Ahmad Ali. Having regard to the catena of circumstances and the conjunction of dates and, indeed, all the concomitant facts of this matter, one can only come to the conclusion that in acquiring or attempting to acquire a right to come into Court as a "person interested" within the contemplation of s. 31 (7) of the Presidency-towns Insolvency Act, Syed Ahmad Ali was not altogether free from some

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ulterior motive. Into that aspect of the matter, however, the Court need not enter and we must deal with this application and the appeal, which is now before us, solely upon the basis of whether or not in the first instance Syed Ahmad Ali is a "person interested" and, secondly, whether even so, this is a case in which we ought to exercise in his favour the discretion which s. 31 (*1*) undoubtedly gives to the Court.

I have already stated what the case was as made by Mr. Chatterjee. But with a total disregard of consistency or even coherence, Mr. Sinha arguing on behalf of the appellant in succession to Mr. Chatterjee has put forward an entirely different case. He has sought to induce us to take the view that the alleged debt of Rs. 4,000 was really part of a larger debt owing by the insolvent to Keshab Lal Addy and his brother Nil Mani Addy and that Syed Ahmad Ali is entitled to make a claim upon the basis of that debt, because the insolvent in the last column of the list, (which is Ex. A) had entered or caused to be entered the word "Admitted". In our view, however, even if that is the position, it is not sufficient to entitle the applicant to succeed in this case. I think the explanation given by Sukha May Das Gupta as to how it came about that there is this entry of Rs. 4,000 in the sheet, Ex. A, is correct to this extent that the debtor with a desire to be quite frank as to his affairs had in effect stated his debt to the Addys twice over. He had stated it in Ex. C in full, namely the sum of Rs. 6,000. He had there stated that that sum was secured to the extent of Rs. 2,000, leaving a balance unsecured of Rs. 4,000. That being the position, he evidently thought it necessary or, at any rate, desirable to include that sum of Rs. 4,000, amongst the debts contained in Ex. A, that is to say, the list of unsecured creditors. I have stated that there never was any separate debt of Rs. 4,000 due from the insolvent to Keshab Lal Addy. The only debt owing to him was a joint debt due to him and to Nil Mani Addy as set forth in the proof of claim

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filed by a son of Nil Mani Addy on behalf of his father and his uncle, that is to say, on behalf of the brothers Keshab Lal Addy and Nil Mani Addy. That proof of claim and the particulars of account annexed thereto show that on May 5, 1924, there was a sum of Rs. 5,000 lent on a promissory note. A further sum of Rs. 1,000 was similarly lent on August 4, 1924. Various items are then put in, three of them being for interest due on the note, one for money paid for keeping alive policy No. 205133 and the other for a premium which was then due. This proof of claim, as far as one can see, was never formally admitted by the Official Assignee. The learned counsel appearing on behalf of Syed Ahmad Ali has contended that the somewhat ambiguous statement made by the Official Assignee in his report in para. 14 ought to be taken as being a declaration that he himself admitted all the claims of the creditors including the claim of Keshab Lal Addy and Nil Mani Addy. I am entirely unable to accept that contention. In my opinion, the Official Assignee was meaning no more than that the debtor himself had admitted the claims of all creditors. I go further and say that, even if it were the fact that that statement in para. 14 was intended to mean that the Official Assignee had himself admitted the claims of the creditors, that would not, in my opinion, be sufficient or acceptable to the Court as testimony that he himself, in his capacity as Official Assignee, had formally admitted the claim of any particular creditor. Upon looking at the form put in on behalf of Keshab Lal Addy and Nil Mani Addy and verified by the solemn application made before a Commissioner of this court by the son of Nil Mani Addy, we find that there is a space provided under the heading "Admitted to rank for dividend for". "this.....day "of.....so on," with a space for the signature of the Official Assignee, indicating that the Official Assignee ought to have stated upon the form itself whether or not he was admitting the claim on behalf of this particular creditor. It is significant and completely destructive of the case originally made by Syed Ahmad

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Ali in his affidavit and put forward on his behalf by Mr. Chatterjee that this form is headed "Creditor No. 32" showing quite clearly that the sum of Rs. 4,000 appearing on the sheet, Ex. A, was indeed a part of the debt claimed by the two Addys jointly and not a debt due to Keshab Lal Addy alone. The space prepared for the signature of the Official Assignee is blank. There is nothing whatever before us to show that this claim was even considered seriously by the Official Assignee, still less that he ever accorded to it his formal sanction as a claim which ought to rank as dividend in the insolvency or under any scheme of composition. In this connection it is important to bear in mind the provisions of cl. 25 of Sch. 2 of the Presidency-towns Insolvency Act, which is in these terms :—

> The Official Assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

There is also Rule 128J of the Calcutta Rules made under the Presidency-towns Insolvency Act (III of 1909) which says :—

> Proof of Debts :—Subject to the power of the Court to extend the time, the Official Assignee within twenty-eight days after receiving a proof which has not previously been dealt with by him shall, in writing, either admit or reject it wholly, or in part, or require further evidence in support thereof : Provided that where the Official Assignee has given notice of his intention to declare a dividend he shall, within fourteen days after the date mentioned in such notice as the latest date upto which proof must be lodged, examine and in writing admit, or reject every proof whch has not been already admitted or rejected, and give notice of his decision rejecting a proof wholly or in part to the creditor affected thereby.

There is nothing before us in these proceedings to show that the Official Assignee ever complied with either the provisions contained in cl. 25 or those of r. 128J. Moreover, in the circumstances of the present case, the provisions of r. 128J itself are material. That Rule says :—

> Every person claiming to be a creditor under any composition or scheme, who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any, or if there is

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no such trustee, with the Official Assignee who shall admit or reject the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt and his proof has been admitted.

Now, if there is no evidence that the proof which was put in by Keshab Lal Addy and Nil Mani Addy was ever admitted by the Official Assignee, *a fortiori* it follows that any claim made by an alleged assignee from Keshab Lal Addy and Nil Mani Addy would be in a worse position. And in a still worse position would be an alleged assignee from one only of these two judgment-creditors, for example, an alleged assignee from Keshab Lal Addy. In an even worse position again would be an alleged assignee not from either of the original judgment-creditors, but from someone who is said to be the descendant in interest of one out of two judgment-creditors. One has only to state the facts in order to see how extremely unsubstantial and indeed utterly without any solid foundation is the claim put forward by Syed Ahmad Ali to be a "person interested" (in the strict sense of the expression) in the insolvency matter of 1926 or in the scheme or composition which has been in existence for more than a decade. A matter of this kind, if it had occurred in England, would fall within the purview of r. 271 of the Bankruptcy Rules, 1915, which says: —

> If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the trustee a request to that effect which shall be a sufficient authority for payment of the dividend to the person therein named.

That rule was no doubt made in order to avoid difficulty of the kind created by the decision in the case *In re Frost. Exparte Official Receiver* (1), where it was held that there was no jurisdiction to make an order in a case where certain creditors of a bankrupt, whose proofs had been allowed in the bankruptcy, assigned their debts to the respondent, who had applied to the County Court in which the bankrupt's estate was being administered for an

(1) [1899] 2 Q. B. 50, 52-3.

order under s. 63 of the Bankruptcy Act, 1883, that the trustee should pay to the respondent the dividend payable in respect of the debts so assigned. Bigham J, as he was in those days, said :—

The respondent in this case is the assignee of certain debts due by the bankrupts, and as such is undoubtedly entitled in some way to receive the dividends in respect of those debts. Now she says she is entitled to recover them by requiring the Official Receiver as trustee to make out cheques for those dividends in her favour. I am of opinion that she is not entitled to receive them in any such way. I think the case is entirely governed by s. 58, sub-s. (*1*) which points out how dividends are to be distributed, namely, amongst the creditors who have proved their debts. The respondent in this case has proved no debt at all ; therefore, in my opinion, she does not come within the category of persons who are entitled to receive dividends from the trustee. She has no doubt a right to require the creditors who have assigned their debts to her to hand over to her the cheques which they may receive from the trustee, or the proceeds of those cheques. And she has probably, as my brother Wright has suggested, a right to put upon the file a proof to stand in the place of the proofs made by her assignors. If she does that, she will become a creditor who has proved her debt within the meaning of s. 58, sub-s. (*1*) and will then, though not till then, be entitled to receive from the trustee the money which he has to distribute in respect of the debts assigned.

In this connection also I would refer to the case of *In re Iliff* (1). In that case the applicant, who was the assignee of a proof in the bankruptcy, had asked the Official Receiver, as trustee in the bankruptcy, to examine into the proof and the assignment, and, if satisfied therewith, to put a proof on the file in the name of the assignee in substitution for the proof of the assignor, that being the procedure suggested by the Court in the case of *In re Frost* (*supra*).

The Official Receiver, having examined into the matter, expressed his willingness to place the assignee's proof on the file if ordered to do so by the Court.

The assignee thereupon applied to the County Court....for an order directing the Official Receiver to place his proof on the file in place of the proof of the assignor.

The County Court Judge refused to make any order on the grounds that it was no part of the business of the Court, and that the Official Receiver ought to deal with the proof on his own responsibility.

The matter came before a Divisional Court consisting of Wright and Darling JJ. and it was then held that—

In future cases of this kind after the Official Receiver or trustee has examined into the assignment, and satisfied himself as to its genuineness,

(1) (1902) 51 W.R. (Eng.) 80.

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the assignee should apply to the Court to give leave to the Official Receiver to place a proof by him (the assignee) on the file in place of the proof of the assignor.

That would seem to give some indication of the kind of procedure which ought to have been adopted in the present case for the purpose of establishing that Syed Ahmad Ali was indeed a "person interested" within the purview of s. 31(*1*) of the Presidency-towns Insolvency Act. In all the circumstances of the case, we are definitely of opinion that the conclusions arrived at by the learned Judge at the first instance were correct. It does not appear that Syed Ahmad Ali has in any way whatever established a right to come in on the basis of his being a creditor and ask the Court to set aside the scheme or composition entered into so long ago or to ask for the re-adjudication of the debtor.

The appeal must be dismissed with costs.

EDGLEY J. I agree.

Appeal dismissed.

G. K. D.