

THE
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APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Kernan.*

LAKSHMANAN (PETITIONER), APPELLANT,
and

MUTTIA AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Civil Procedure Code, ss. 34b, 352—Insolvency—Procedure on claim made
by creditor—Proof of debt.*

1887.
April 15.

It is open to a creditor, at any time while the assets of an insolvent are undistributed, to produce evidence of his debt and to apply to be admitted on the schedule under s. 352 of the Code of Civil Procedure.

APPEAL against the order of T. Weir, District Judge of Madura, on civil miscellaneous petition No. 441 of 1886.

This was an application in the insolvency of one Lakshmanan Chetti by a scheduled creditor, who had been *ex parte* throughout the proceedings and had not up to the date of the present application taken any steps to prove his debt.

Bhāshyam Ayyangār for appellant.

Respondents were not represented.

The further facts of this case and the arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Kernan, J.).

JUDGMENT.—In this case the appellant is state, in the application of the insolvent, under section 345, to be a creditor, and

* Appeal against Order 10 of 1887.

LAKSHMANAN
MUTTIA.

the amount due to him is stated in that application. A receiver was appointed, and there are assets to divide. The appellant applied to be paid, either by dividend or in full, which is not stated, but it is not material. The Judge held that the appellant is out of court, because he did not prove his debt. No doubt section 352 requires creditors to "produce evidence of the amount and particulars of their pecuniary claims." But the Act does not fix any special time for making such affidavit. Section 352 says the creditors shall then, that is, after, but not necessarily immediately after, the court declares the applicant insolvent, produce such evidence. The Court does not appear to have fixed any time to determine under section 352 who the creditors are, nor does it appear that any schedule was framed under that section. But if such schedule was framed, it is still open to the creditor at any time while the assets are undistributed, to produce the evidence of his debt and apply to be admitted on the schedule under section 352. This is the course in all bankruptcy and insolvency proceedings. Section 356 of course is to be read with the other sections. The Judge should have, on the appellant's application, directed him to produce evidence of the particulars and amount of his debt within a reasonable time. If the appellant did not do so, then he need not be named as a creditor on the schedule under section 352. The appellant is an admitted creditor. We reverse the order of the District Judge and direct him to proceed on the application of the creditor according to the above directions. Appellant should apply, as soon as possible, to the District Judge for liberty to produce his evidence on a day to be fixed, and that his name be placed on the schedule, and for payment.

No costs of this application are granted.