that Zainab Bee Bee was merely a benamidar on behalf of the insolvent. We have carefully considered the evidence on this point and we are satisfied for the reasons given in the order appealed from that the decision of the learned trial Judge on this point was correct. The appeal, although in views of our decision on the other points, this question does not arise, is accordingly dismissed with costs. The case was a heavy one and we allow 20 gold mohurs per day for two days.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

MAMOOJEE MOOSAJEE AND OTHERS
v.
N. M. MEERA MOIDEEN BROS.

Presidency-Towns Insolvency Act (III of 1909), section 29 (4), Rule 154 of the Insolvency Rules of the High Court—Court cannot alter substance of composition scheme—Court must reject scheme, even if approved by majority of creditors, on public grounds.

Held, that according to Rule 154 of the Insolvency Rules of the High Court, it has no power to vary the substance of a composition scheme submitted to it for approval or rejection. The Court has therefore no power to substitute the Official Assignee for the trustee proposed in the scheme for its administration.

Held, further, that the interests of the creditors and their wishes are not the sole concern of the Court in questions of approving schemes of composition; the Court ought to regard the interests of the public and of commercial morality. If the insolvent's conduct is fraudulent or grounds exist for framing charges against him, a composition scheme ought not to be approved.

In re Beer, [1913] 1 K.B. 628; *Ex-parte Reed*, 17 Q.B.D. 244—*followed.*

Dantra—for Appellants.

Patel and *Sen*—for Respondents.

RUTLEDGE, C.J., AND BROWN, J.—This is an appeal from an order of the Original Side of this Court

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* Civil Miscellaneous Appeal No. 210 of 1925.

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approving of a composition whereby the firm should be discharged on payment of six annas in the rupee of total liabilities, such payment to be made in two instalments.

The order is attacked on two grounds. First that the Court made an alteration in the substance of the scheme, which stated that the payments should be made through a Trustee, whereas the Court ordered that the administration of the scheme was to remain in the hands of the Official Assignee, and that this is contrary to the terms of Rule 154 of the Insolvency Rules of this Court. We have read the succeeding rules to see if there was anything which would affect the rigour of this rule and give the Court a wider power to vary the scheme proposed. But we have been unable to find it. The only question then is this, was the substitution of the Official Assignee for the Trustee proposed for the scheme an alteration in the substance of the scheme? In our opinion it clearly was. That being the case, the Insolvency Judge had no power to make such an important variation, but should have adjourned the matter to enable the creditors to put up a new composition scheme to be administered by the Official Assignee. This is sufficient to set aside the order appealed from.

The second ground is that the conduct of the insolvents has been so unsatisfactory that it is not in the interests of justice that they should be discharged without full and proper enquiry into their dealings with their business and property.

The learned Judge in insolvency has stated that "there are very suspicious circumstances in this insolvency," but considers that he is bound to carry out the wishes of the majority of the creditors. The majority, both in numbers and in amount of debts proved, is very decided. We feel, however, that the

interests of the creditors is not the sole concern of the Court in questions of approving schemes of composition. As has been said by Lord Justice Romer [*In re Beer* (1)] : " Undoubtedly the Court ought to take into serious consideration the position of the bankrupt when it is proved that he has been guilty of misconduct, in order to see whether it is to the interest of the public that the bankruptcy should be annulled. In a case of this kind the Court ought to have regard to the interests of the public and of commercial morality—to the conduct of the bankrupt on the one hand and to the interest of the creditors on the other. And if the Court comes to the conclusion that however beneficial to the creditors the scheme may be, yet it is not to the interest of the public or of commercial morality that the bankruptcy should be annulled, it is their duty to refuse to annul it." [See also *ex-parte Reed* (2)].

We have read the Official Assignee's Report and compared the part dealing with the conduct of the insolvents with the evidence on the record which amply justifies the main features of the report. So far from recommending that the composition be sanctioned, he asks that charges be framed against the insolvents under section 103 of the Act. *Primâ facie* grounds for believing the insolvency to be a fraudulent one seem to be on the record and the learned trial Judge has not considered the question whether charges under section 103 could be framed. If such charges are substantiated then under section 39 (1) the Court is bound to refuse the discharge and under section 29 (4) in all such cases the Court shall refuse to approve of the proposal. Unless the Court was satisfied that there was no justification for framing such charges it seems clear to us that the Court ought not to approve of the composition

(1) [1903] 1 K.B. at p. 634. (2) 17 Q.B.D.244.

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as such a step effectually bars any enquiry into any charge under section 103.

It has been urged that great confusion will result as the surety has already paid five annas in the rupee to the Official Assignee in this case, as there was no stay of execution pending the appeal. We cannot help that. We are of opinion that it is not in the public interest or in that of commercial morality to approve of this scheme.

The appeal is allowed and the order appealed from set aside with costs five gold mohurs.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

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Feb. 14.

R.M.M.S.T.M. CHETTYAR
v.
THE OFFICIAL ASSIGNEE.*

Presidency-Towns Insolvency Act (III of 1909), *section* 58 (5)—*Penal provisions of section* 58 (5) *not applicable unless after adjudication—Power of Court to commit for contempt—Conduct of the appellant showing wilful intention to obstruct—Discretionary powers, exercise of in committal for contempt when interfered with on appeal.*

On the application of a creditor to adjudicate the appellant insolvent, the Official Assignee was appointed *interim* Receiver to take immediate charge of the account books and assets of the appellant. Before notice of appointment was served on the appellant, he sent the account books and other valuable securities to his principals in Pudukottah. There was no legal proof, however, that he sent the books after he had notice of the petition to adjudicate him insolvent, though there were grounds to suspect that he did so with intention to obstruct the Official Assignee in discharge of his duties.

Held, that the failure to hand over the books and the securities to the Official Assignee before the order of adjudication was passed, however culpable such failure might be, would not amount to contempt of Court punishable under the provisions of section 58 (5) of the Presidency-Towns Insolvency Act.

Held, further, that if there is definite legal evidence that the appellant had notice of the petition to adjudicate him and of the appointment of the *interim*

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* Civil Miscellaneous Appeal No. 51 of 1926.