

## INSOLVENCY JURISDICTION.

*Before Mr. Justice Braund.*

## IN THE MATTER OF J. T. H. LANGFORD.\*

1936

Feb. 13.

*Insolvency—Suspension of insolvent's discharge until payment of a dividend of not less than four annas in the rupee to the creditors—Basis of calculation by the Official Assignee—Presidency-Towns Insolvency Act (III of 1909), s. 39 (1) (c).*

A dividend can only be paid to a creditor who has proved his debt and it is only by virtue of his position acquired by proving that a creditor can receive a dividend at all. As therefore a dividend can only be calculated upon the amount of an admitted proof, the Official Assignee is bound in the case of each creditor who has proved to look to the amount of his proof and to nothing else, notwithstanding that that creditor's name may appear in the debtor's schedule for a larger sum.

When the Official Assignee has sufficient assets in his hands to pay (or complete the payment of) a dividend of not less than four annas in the rupee, he ought to declare and pay such dividend. In calculating the dividend he ought to take as his basis of calculation (a) the actual amount of the admitted proofs of those creditors who have proved, whatever may be the amounts for which they are included in the schedule; (b) the actual amounts appearing in the schedule in respect of all other classes of claimants against the estate, unless he shall have had actual notice that they dispute such amounts, and (c) such other contingent matters as are provided for by the Act.

*Paul* for the insolvent.

Official Assignee in person.

BRAUND, J.—This is a case which raises a question of some interest and importance affecting the practice of the office of the Official Assignee in insolvency.

Upon insolvency a debtor is required to file a Schedule "of and in relation to his affairs" [section 24 (1) of the Presidency-Towns Insolvency Act]. In practice the Schedule takes the form of a list of the insolvent's debts and a list of his assets. In itself the Schedule has no binding force upon either the

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\* Insolvency Case No. 47 of 1933.

Official Assignee or the creditors. For the creditors must ultimately prove their debts ; and the Official Assignee is, of course, free either to admit or reject their proofs in whole or in part. The Schedule must be filed within thirty days of the order of adjudication or of the date of service of the order, as the case may be. Though it is the duty of the Insolvent to prepare his Schedule with every possible care, it would be unreasonable to suppose that the Act contemplates that the Schedule will in every case contain an exact statement of the debtor's liabilities and assets ; and, indeed, it is not difficult to imagine a case in which that would be quite impossible. In practice, the Schedule, though a useful guide to the insolvent's affairs, is rarely quite accurate.

In due course the Insolvent gets his conditional discharge upon the terms, more often than not, that it shall be suspended "until a dividend of not less than four annas in the rupee has been paid to the creditors."

The present question arises upon the words "to the creditors." The practice of the Official Assignee is, and has always been, to take (a) in the case of each creditor whose debt is included in the Schedule and who has proved, the amount of the scheduled or the proved debt of that creditor *whichever is the larger* and (b) in the case of proving creditors whose names are not contained in the Schedule, the amount of the proved debt. The present question is whether the Official Assignee is right in a case in which a creditor whose debt appears in the Schedule *has proved* in taking the schedule figure of his debt in cases in which that figure exceeds the amount for which the debt has actually been admitted to proof.

The first thing to be observed is that the condition of suspension is that "a dividend of not less

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than four annas in the rupee " shall have been " paid to the creditors." It is often loosely referred to as a condition that the debtor shall *pay* not less than four annas in the rupee. The condition of suspension in fact is the payment of the dividend by the Official Assignee and not the payment by the Insolvent to the Official Assignee. Until the dividend has been paid by the Official Assignee the discharge cannot become effective.

But a dividend can only be paid to a creditor who has proved his debt [see section 69 (1) of the Presidency-Towns Insolvency Act]. It is only by virtue of the position acquired by his proof (so far as it has been admitted) that a creditor can receive a dividend at all. In my opinion, therefore, when in section 39 (1) (c) the Act speaks of payment of a dividend to " the creditors " it can mean nothing else than to " the persons who have proved debts." And inasmuch as a dividend can only be calculated upon the amount of an admitted proof, the Official Assignee is, in my opinion, bound in the case of each creditor who has proved to look to the amount of his proof and to nothing else; notwithstanding that that creditor's name may have appeared in the Schedule for a larger sum.

Upon this view everything, I think, falls into its proper place. For, by section 71 (1) of the Act, it is made part and parcel of the process of paying a dividend that the Official Assignee must retain in his hands sufficient to meet (a) the claims of creditors in distant places (b) claims not yet determined—which would perhaps include scheduled debts not yet proved—(c) disputed proofs or claims and (d) administration expenses.

In my view, therefore, the true position is as follows. When the Official Assignee has sufficient

in his hands to pay (or complete the payment of) a dividend of four annas in the rupee, he ought to declare and pay such dividend as he can, not being less than the four annas in the rupee. I do not say now whether the insolvent can actually compel him to or not. That I hope will arise shortly. In calculating that dividend he will take as his basis of calculation (a) the actual amount of the admitted proofs of all creditors who have proved, whatever may be the amounts for which they are included in the Schedule and (b) the actual amounts appearing in the Schedule in respect of all other classes of claimants against the estate, unless he shall have had actual notice that they dispute such amounts, as for instance by their having submitted a proof (not yet admitted) for a larger sum.

By the industry of the Insolvency Registrar I have been referred to two unreported insolvency cases No. 176 of 1923 and No. 201 of 1924. Neither of these cases, however, deals with this point. They merely deal with the question of whether a creditor can, through other creditors falling out, eventually be allowed to get more than the amount per rupee specified in the suspended discharge order. It was decided that they could. That is quite a different question from the present one.

In the circumstances I shall allow this petition and direct the Official Assignee to make the necessary calculations upon the foregoing footing.

Inasmuch as the matter is one of some public interest, I think it is right that the costs of this petition should come out of the estate as administration expenses and I fix the petitioner's advocate's fee at three gold mohurs.

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