INSOLVENCY JURISDICTION.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Starling.

DOSSA GOPAL (ORIGINAL APPLICANT AND INSOLVENT), APPELLANT, *v.* BHANJI DAMJI (OPPOSING CREDITOR AND OPPONENT), RESPONDENT.*

1901. *June* 28 *and July* 5.

Insolvency—Second insolvency where insolvent has not got final discharge under the first—Duty of serving notices, when on the insolvent and when on the creditors—Practice—Procedure.

A person may become insolvent a second time before he has received his final discharge under the first insolvency. *Morgan* v. *Knight*(1) followed.

The appellant had been adjudicated an insolvent at the instance of a creditor under section 9 of the Indian Insolvent Act (statute 11 & 12 Vic., c. 21) on the 21st January, 1898. On the 4th October, 1900, one of his creditors obtained a rule calling upon the insolvent to show cause why he should not forthwith proceed with the matter. The Commissioner made the rule absolute and directed the insolvent forthwith to proceed with the matter of his insolvency. On appeal,

Held, that the order of the lower Court should be reversed and the rule discharged. When a person himself files a petition in insolvency he has the carriage of it. He must serve notices on the creditors at his own expense and bring the petition to a hearing. But when a person has been adjudicated an insolvent at the instance of a creditor, it is for the petitioning creditor to serve notices, but it is still the duty of the insolvent to attend when required and point out the persons who are to be served.

APPEAL from Russell, J., as Commissioner in insolvency.

On 21st January, 1898, the appellant, Dossa Gopal, was adjudged an insolvent on the petition of a creditor under section 9 of the Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21).

Some years previously he had on his own petition obtained the benefit of the Act, but had only obtained his personal discharge under section 47.

After his adjudication in 1898 the insolvent having done nothing in the matter of his insolvency except to file his schedule, one of his creditors obtained a rule on the 4th October, 1900, calling upon the insolvent to show cause why he should not forthwith proceed with the matter.

Thereupon, on the 10th October, 1900, the insolvent obtained a rule calling upon his creditors to show cause why his adjudication

*Appeal No. 1131, Insolvency matter.

(1) (1864) 33 L. J. (C. P.) 168.

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should not be annulled on the ground that, being already an insolvent who had not obtained his final discharge by way of certificate, he could not be made an insolvent a second time.

On the 14th November, 1900, Russell, J., discharged the rule of the 10th October, 1900, taken out by the insolvent, but made absolute the rule of the 4th October obtained by the creditor.

The insolvent appealed.

Scott, Acting Advocate General, and *Mankar* for the insolvent (appellant), cited *Morgan* v. *Knight* (1); *In re Jekissondas*.(2)

There was no appearance for the respondent.

STARLING, J.:—Dossa Gopal, the appellant, who some years previously had taken the benefit of the Insolvent Act on his own petition and had obtained his personal discharge only, was on the 21st January, 1898, adjudged an insolvent. The insolvent having done nothing in the matter of his insolvency beyond filing his schedule, Bhanji Damji, a creditor, on the 4th October, 1900, obtained a rule calling upon him to show cause why he should not forthwith proceed in the matter of his insolvency. On the 10th October, 1900, the insolvent obtained a rule calling upon his creditors to show cause why the adjudication of insolvency should not be revoked on the ground that, being already an insolvent who had not obtained a discharge by way of certificate, he could not a second time be made an insolvent, relying upon a case of *In re Talakchand Hurnath* decided by Tyabji, J. *Mr. Scott*, who appeared for the appellant, also relied upon the case of *In re Jekissondas Purshotamdas*, decided by Bayley, J., on 11th July, 1888. He also cited *Morgan* v. *Knight*,(1) a case which does not appear to have been present to the mind of Bayley, J., when he decided the case just referred to. *Morgan* v. *Knight* shows that in England there is no objection to a man becoming a bankrupt a second time before he has received his final discharge under the first; the only result being that the trustee under the first bankruptcy will swallow up all the assets collected under the second, and the trustee under the latter will

(1) (1864) 33 L. J. (C. P.) 168.

(2) (1888) Decided by Bayley, J., dated 11th July 1888.

be entitled to nothing until all the debts under the former are paid off. The only reason Mr. Scott could give for this ruling not applying was that in England the persons of the trustees were different, whereas here the same Official Assignee would take possession of the assets of both estates. I can see no reason why that should make any difference. The Official Assignee is an officer of the Court, and in fulfilment of his duty would keep the assets of the two estates separate, but at the same time would apply the assets collected respectively under the two insolvencies according to the practice of the Insolvent Court here in such cases. The appeal on this point, therefore, fails and the adjudication cannot be set aside.

As to the second point, section 12 of the Insolvency Act provides that on the schedule being filed, "the Court shall be at liberty to proceed thereupon in like manner as in the case of an insolvent presenting a petition for relief under this Act"; and Rule 12 of the rules of the Court provides that notices must be served on creditors seven clear days before the hearing, but does not say by whom, though it makes it incumbent upon the insolvent to attend and point out the creditors for service. If the insolvent has filed his petition he has the carriage of it, and it is in his interest to bring it to a hearing; consequently it is his duty and to his interest to serve his creditors, at his own expense, in order to bring it to a hearing. Where he has been adjudicated an insolvent, it is the petitioning creditor who wants the affairs of the insolvent investigated; consequently on him should rest the burden of serving notices, though it is still the duty of the insolvent to attend when required and point out the persons who are to be served. Consequently the order directing the appellant forthwith to proceed with his insolvency must be discharged, but he will still have, when required, to obey the latter part of Rule 12 and point out his creditors for service.

Of course, while holding that under an adjudication the adjudicating creditor is the proper party to serve notices, I do not mean to say that the insolvent may not, if he wishes, do so, nor yet to limit any power the Court may possess, in the event of the adjudicating creditor disappearing, to allow any other creditor, or even the Official Assignee, to serve notices and bring on the matter for hearing.