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In the Matter of the Insolvency of JOHN GREGORY DE KROES.

1896.
May 8.

D. C., Colombo, 1,173.

Insolvency—How assignee should deal with assets.

The assignee of an insolvent estate can deal with the assets of the estate only in the way authorized by the Ordinance. He is not entitled to pick and choose the creditors to whom he will pay away the assets. He must declare a dividend, and, with the leave of Court, pay the creditors in accordance with such dividend.

THE assignee of the estate of the abovenamed insolvent received two sums of Rs. 2,365 and Rs. 1,267·20 from Government in respect of certain landed property of the insolvent acquired by Government for public purposes. In February, 1893, the assignee moved the Court for authority to pay out of these sums of money legal expenses in six cases which the Court had authorized him to institute as assignee. The District Judge refused to make an order on the motion, observing that he had no power "either to hinder or direct the assignee in his dealings with the property which had vested in him." In December, 1895, the Acting District Judge, on representations made to him by Mary De Kroes, the insolvent's wife, who claimed the said sums of money as belonging to her separate estate, examined the assignee, who stated that out of the said sums of money he paid away certain creditors of the insolvent and the legal expenses aforesaid. The District Judge suspended his judgment as to whether the payments were actually made or not, and ordered that the assignee do forthwith bring into Court the said two sums. The

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assignee appealed, making Mary De Kroes respondent on his petition of appeal.

Wendt (*Pereira* with him), for appellant. The procedure is irregular. There was no audit under section 113. [*Per Curiam*.—The Court acted under section 78.] The wife was not a proved creditor, and could not move the Court. [*Per Curiam*.—It is immaterial how the Court came by the knowledge on which it acted.] The assignee could not be ordered to pay into Court moneys which his accounts showed had been paid to creditors until the District Judge decided whether the payments to creditors had actually been made or not. It was unnecessary to obtain authority to pay costs of suits instituted by consent of Court under section 82.

Roberts, for Mrs. Kroes, was *not* called on.

8th May, 1896. BONSER, C.J.—

In this case the assignee of an insolvent estate was ordered by the Court to bring into Court certain sums of money belonging to the insolvent estate, which had come into his hands.

He says he had paid away the money to creditors of the estate. The answer to that is, that he had no authority to make the payments, and that he has not paid the money according to law.

An assignee is not entitled to deal with the assets of an estate except in the way the Ordinance authorizes. He is not entitled to pick and choose the creditors to whom he will pay away the assets. He must declare a dividend, and, with the leave of the Court, pay the creditors in accordance with the dividend declared.

Moreover, in this case, the assignee made these payments well knowing he was not entitled to make them. He applied to the District Court for its sanction to these payments, before making them, and that sanction was refused.

As the assignee has made Mr. Roberts' client a party to this appeal, he must pay her costs.

LAWRIE, J.—I agree.