

1914. September 17, 24. WARD, J.

*Insolvency.—Voluntary surrender.—Law 13 of 1895, sec. 3.—
Notices in local paper.—Twenty-one days.—Creditors represented.*

Where, on the hearing of an application for voluntary surrender, 21 days had not elapsed since the publication of the third notice in the local newspaper, but several creditors appeared to ask for the appointment of a provisional trustee, the Court postponed the application until 21 days had run and accepted the surrender.

Application for voluntary surrender.

The third notice in the local newspaper appeared twenty days only before the date of the application. The facts appear from the judgment.

G. Wille, for the applicant, moved.

H. H. Morris, for creditors, appeared to ask for the appointment of H. Cohen as provisional trustee.

Wille: The surrender cannot be accepted to-day as twenty-one days have not elapsed, in terms of section 3 of Law 13 of 1895, since the publication of the third notice in the local paper. I therefore ask for a postponement to enable sufficient time to elapse. The object of the provisions in section 3 is to prevent creditors being prejudiced. The very fact that several creditors for substantial amounts appear to-day shows that they are not prejudiced.

[WARD, J.: Have there been any decisions on the section?]

Yes, a great many, and generally the Court has refused applications where twenty-one days have not elapsed since publication of the last notice. I submit, however, that the section merely requires the notices to be published twenty-one days before the hearing of the application; there is nothing requiring the notices to state the date of the application, but only the "date and place where the petition will be filed." On this view of the section, WESSELS, J., on similar facts, granted a postponement in *Ex parte K. P. le Roux* (January 7th, 1913, W.L.D. not reported). The JUDGE-PRESIDENT in *Ex parte H. Rootenberg* (July 9th, 1914, W.L.D., not reported), refused a similar application, but this view of the section was not placed before the Court. I do not oppose the appointment of a provisional trustee.

Cur. adv. vult.

Postea (September 24).

WARD, J.: This matter, which came before me on the 17th September, 1914, is an application for the voluntary surrender of the estate of the applicant. The advertisements show that those in the *Gazette* are in order, but that the advertisements in the local paper do not comply with the terms of section 3 of Law 13 of 1895, inasmuch as the twenty-one days mentioned therein have not elapsed at the date of the application. A period of twenty days had run to the date of the hearing of the application. The assets of the estate amount to £827 10s. and the liabilities to £1,091 7s. 3d. leaving a deficiency of £263 17s. 3d. Creditors to the amount of £435 9s. 9d. have agreed that the order for surrender is necessary and have asked for the appointment of a provisional trustee.

The point for decision is whether in view of the fact that the twenty-one days have not elapsed, and in view of the wish of the creditors, the surrender should be accepted. In *Ex parte K. P. le Roux*, heard on the 7th January, 1913, the same error was made in the advertisements and WESSELS, J. postponed the matter for one week to allow the twenty-one days to elapse. The surrender was then accepted. In *Ex parte H. Rootenberg*, heard on the 9th July, 1914, by the JUDGE-PRESIDENT (DE VILLIERS, J.P.), the same error again occurred in the advertisements and in this instance the JUDGE-PRESIDENT refused the application and ordered the advertisements to be made *de novo* without prejudice to the rights of creditors to apply for compulsory sequestration.

We have therefore two previous decisions in the matter and in this instance in view of the fact that the creditors support the surrender and ask for a trustee to be appointed I am prepared to accept the surrender and as the twenty-one days have now run I will accept it from this date and follow the order in *Ex parte le Roux*. I shall appoint H. Cohen provisional trustee, and order that the costs of the applying creditors come out of the estate.

Applicant's Attorney: *Hardy Philip*; Attorney for creditors: *M. Cohn*.

[G. H.]