Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Barron and another v. *Stewart (the 'Panama'), from the High Court of Admiralty, delivered the 20th June, 1870.*

Present:—

THE MASTER OF THE ROLLS.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

THE short statement of the Case is this:—The Appellants chartered a vessel; she got into difficulties and was obliged to go to Cardenas, in Cuba, on the 12th October, 1868. When she got there, the master attempted to raise money and found that he could not do it, and the agents of the charterers in Cuba telegraphed to Liverpool on the 24th of November to ask what they were to do in the matter. The telegraphic message which they sent is striking upon the only point on which their Lordships' opinion is asked, for it is to this effect,—"'Panama' wants £200 to clear; also £160 claimed "by Mantle for wages; are ready to advance all, but "he must leave vessel to captain appointed by con-"sul. See owner. Answer." Well, there is an express direction by the agents at Cardenas to the charterers to see the owner, and to take care what answer shall be given. The telegraphic message in answer is sent on the following day:—"Do best— "our interest; appoint new master; secure advance; "bottomry." The agents were quite ready to advance the money; but, nevertheless, the charterers informed them that they must appoint a new master and raise the money by bottomry. Instead of complying with the request, made by the agents at Cuba, to see the owner, the Appellants do nothing

of the sort, although the owner was in the same town and apparently attending his office every day, and they might perfectly well have seen him.

Now, their Lordships do not intend to lay down that it is necessary, if the owner cannot be served with notice, that notice must be given to a mortgagee; that question does not arise; but what they wish to express is, that it was absolutely necessary in this case to give notice to the owner. The excuse given here is that the owner was insolvent. Their Lordships think that this is not technicality, but a matter of substance, and that it is important that the owner should receive notice, in order to enable him to raise money for the purpose of rescuing his vessel from its difficulties at a smaller amount of premium than the maritime premium would necessarily entail.

The excuse alleged is that he was insolvent. Their Lordships think this excuse fails. In the first place, either he had been insolvent and declared so judicially, or he had not. If he had been declared so judicially, the ownership in the vessel is transferred to other persons, and those persons are the persons who ought to receive notice; and the assignees would be the persons who might think it for the benefit of the creditors of the estate that they themselves should supply or obtain the money required.

Neither do their Lordships think that the question raised respecting the demurrage and the expense afford any excuse in this case; because, if the money were obtained in Liverpool, a telegraphic message sent to Cardenas would have caused the money to be paid in twenty-four hours.

It resolves itself, therefore, solely into a question of insolvency, and whether insolvency excuses the giving of notice, there having been no judicial insolvency. Their Lordships are of opinion that if they were to lay down this as a principle, it would produce a serious evil. In the first place, it is very difficult to tell whether a person is insolvent. Is it to depend on the ultimate result of whether he was actually insolvent at the time, and that the opinion of the charterer was correct? The fact of whether a man is insolvent or not may depend upon the result of a single item in a contested account, which may involve a question of difficult legal

decision. Insolvency finally may depend upon the expense of legal proceedings and the time and manner of realizing the assets. These would have to be taken into account.

Their Lordships are of opinion that, until a person has been judicially declared insolvent, the owner is the person to receive notice, that he may be able to extricate himself from these difficulties, and that he should duly receive notice of the intention to raise money by bottomry. In case he is judicially declared insolvent, the ownership rests in other persons; but that in no case can a communication of notice be dispensed with.

Their Lordships, therefore, think that the Judgment of the Court below is correct, affirming that of the Registrar; and their Lordships are of opinion that this Appeal ought to be dismissed with Costs.