

1895.  
August 19  
and 26.

In the Matter of the Insolvency of J. G. DE SILVA.

D. C., Galle, 266.

*Decree for alimony—Arrest thereunder—Insolvency—Release of insolvent—Discretion of Court with regard to it.*

Under a writ in execution of a decree requiring a husband to secure alimony to his wife, it is irregular to arrest him.

He cannot be adjudicated an insolvent on the alimony due as a debt, for it is not a debt provable in insolvency.

It is in the discretion of the Court to allow the immediate release of a man absolutely or on conditions after he is declared insolvent, but where it refused to grant an insolvent his release on the ground that he was under arrest for alimony, held, that this reason was unsound, and the order of refusal could not stand.

IN an action against the above-named insolvent by his wife for a separation *a mensa et thoro*, the insolvent had been condemned to restore to his wife certain articles of jewellery or to pay her their value, and to secure to her certain sums of money for past and future alimony, and to pay her costs of suit. In execution of that decree the insolvent had been arrested and committed to prison. Having lain in prison twenty-one days he was adjudicated an insolvent, and he now applied to the Court for protection and release from custody. The District Judge disallowed the motion because, in his opinion, a person was not entitled to release by bankruptcy from a debt for alimony. The insolvent appealed.

*Sampayo*, for appellant.

*Dornhorst*, for respondent.

*Cur adv. vult.*

26th August, 1895. WITHERS, J.—

The District Judge considers that he has no jurisdiction to order the release of the appellant, because he has been arrested under a writ of alimony. This is not one of those cases mentioned in the 36th section of Ordinance No. 7 of 1853, in which it is provided that the Court shall not order the release of an insolvent who is in custody.

He was not committed for disobedience in complying with the Court's order that the insolvent should secure his wife certain sums for past alimony and a certain sum for permanent alimony in the future.

The truth is, it was irregular to arrest the husband under a writ in execution of that part of the decree which required him to secure alimony. He could not be adjudicated an insolvent on that as a debt, for it is not a debt provable in insolvency.

Having been in custody for more than twenty days for so much of the decree as was provable in insolvency, he was (other conditions being fulfilled) entitled to be adjudicated insolvent ; and in fact the District Judge has so adjudicated him insolvent.

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WITNESS, J.

It was urged that it was in the discretion of the Court to allow the man's immediate release absolutely or on conditions. So it was, but the Judge refused to grant his release on the ground that he was under arrest for alimony.

But, as I have just observed, the arrest under a writ in execution of the decree for alimony was irregular. Hence the Judge's reason appears to me to be an unsound one, and as no case has been made why he should not be allowed to go at large pending insolvency proceedings as to debts which are provable against him, I think it would only be reasonable to permit his release.

BROWNE, J.—Agreed.

