

1893.
January 31.

In the Matter of the Insolvency of EDWIN RICHARD PERIS.

D. C., Colombo, 1,855.

Insolvency—Appeal—Commencement of term of suspension of certificate.

The term of suspension of a certificate to an insolvent commences from the date of its award by the District Judge, and not from the date of confirmation of the award in appeal.

THIS was an appeal by the insolvent against an order of Mr. F. Dias, Acting District Judge of Colombo, refusing to issue him a certificate awarded by his predecessor, but suspended for a term of three months. The grounds of the refusal and other facts material to this report are fully stated in the judgment of WITHERS, J.

One Vyraven Chetty, a proved creditor, appeared as respondent in the case.

Dornhorst, for appellant.

Wendt, for respondent.

31st January, 1898. WITHERS, J.—

1898.
January 31.

The facts of the case are briefly these. On the 11th October last the Acting District Judge concluded his decision on the question of a certificate to the insolvent in these words: "I award him a certificate of the third class, which will however be suspended for three months."

An appeal was lodged against this order by the insolvent two days after, and this Court affirmed the order.

Pending appeal a proved creditor applied to the lower Court for a certificate in Form R, schedule to Ordinance No. 7 of 1853, to entitle him to issue a writ of execution against the insolvent.

This is a form of certificate that the insolvent is not protected by the Court from process against his person.

A certificate was taken out, and on the 7th December the same creditor applied for a warrant against the insolvent's person. This application was allowed. On the 11th January of this year the insolvent applied for the delivery of the third class certificate which had been awarded to him.

The Acting District Judge refused this application in these words: "Disallowed. The three months for which the certificate has been suspended have not yet expired. The three months must be reckoned from the date of the judgment in appeal, namely, the 19th November, 1897."

On the same day the insolvent was brought up before the Court under the warrant which had been issued to arrest his person, and on the order of the Acting District Judge he was committed to custody.

The present appeal is against the two orders made on the 11th January.

I omitted to mention that on the 14th October an *ex parte* application was made on behalf of the insolvent, that protection should be extended to him pending appeal. His application was allowed: thus he was protected by the Judge's order until the 19th November. Between that date and the end of the three months from the 11th October he was without protection.

The simple question for us to decide is, whether the term of suspension dates from the order of the District Court suspending the allowance of the certificate for three months, or from the order in appeal confirming the order of the Court below. I have no hesitation that the term runs from the date of the Court below. To suspend the allowance of a certificate for three months is to say in so many words: "Three months hence I will award you a certificate of a certain class." At the end of that time the insolvent is entitled to have the certificate issued to

1898. him if there has been no appeal. And if there is an appeal, the
January 31. Ordinance nowhere enacts that the term of suspension is to be
WITHERS, J. extended to the order in appeal and to commence therefrom. The
Judge, no doubt in a proper case, would allow an insolvent
protection for purposes of the appeal if protection were necessary.

The appeal, in my opinion, succeeds. The insolvent must be released from custody and a certificate of the third class delivered to him.

LAWRIE, J.—

I do not feel any difficulty. The order of the learned District Judge pronounced on the 11th October, 1897, was clear and unambiguous.

There was first a finding that the insolvent was entitled to a certificate of the third class, and second an order that the issue of that certificate should be suspended for three months.

These were final orders by a competent Court, which were good unless reversed in appeal.

The insolvent thought he had been hardly dealt with, that in appeal he would be able to show that he was entitled to the immediate issue of a higher class certificate, but the Supreme Court affirmed the order of the District Judge.

That order, therefore, remained untouched, that on the 11th January, 1898, a third class certificate should be given to the insolvent.

I think the District Judge was wrong to refuse to issue the certificate on the day specified in his order of the 11th October.

