1924.

Present: De Sampayo J. and Garvin A.J.

ARUMUGAM CHETTY *v.* SILVA.

D. C. Galle, 478.

Application by creditor for recall of a certificate of conformity—Application should be made within six months of the order of Court allowing the certificate—Insolvency Ordinance, s. 129.

An application under section 129 of the Insolvency Ordinance by a creditor for the recall of a certificate of conformity should be made within six months of the order of the Court allowing such certificate, and not from the date of the actual issue of the certificate.

THE facts appear from the judgment.

Samarawickreme (with him *Tissaverasinghe*), for applicant.

Elliot, K.C. (with him *M. W. H. de Silva*), for the insolvent.

May 22, 1924. DE SAMPAYO J.—

In this matter we have to decide a new point in the law of insolvency. On May 29, 1923, the Court made an order allowing to the insolvent a certificate of conformity of the third class, but the certificate was drawn up and signed only on June 14, 1923. The applicant is one of the insolvent's creditors, and on December 14, 1923, he applied to this Court under section 129 of the Insolvency Ordinance, No. 7 of 1853, that the certificate be recalled and delivered up to be cancelled. Mr. Elliott, for the insolvent, took the preliminary objection that the application was out of time, as it was not made within six months of the allowance of the certificate. If the date of the issue of the certificate is to be taken as the date of its allowance, the application is within the required time, but if the order of the Court is taken to be the allowance of the certificate, the application is out of time.

Section 129 of the Ordinance is in these terms—

> " At any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may be made by the Supreme Court, any creditor of the insolvent, or any assignee, may apply to the Supreme Court that such certificate may be recalled and delivered up to be cancelled ; and the Supreme Court may, on good cause shown, order such certificate to be recalled and cancelled."

Mr. Samarawickreme, who appeared in support of the application, has argued that the expression " any certificate . . . . shall be allowed " in the above section means " any certificate shall

have been issued," and that as the present application was made within six months after the certificate was issued, it was within time. There is no doubt that the provision as regards the certificate being recalled and delivered up to be cancelled appears to favour this argument. But this provision is not necessarily inconsistent with the view, which I think is the right view, that the allowance of the certificate has reference to the order of the Court allowing the certificate. For the Ordinance apparently intends to provide a time limit for the application by reference to the date of the order, though the object of the application may be to have the certificate recalled and delivered up. The Ordinance probably contemplates the possibility, which in practice is actually the case, that the certificate may be taken out long after the date of the order of Court, and it is thought desirable not to give more than six months' time after the order of the Insolvency Court for applying to the Supreme Court to exercise its powers with regard to a certificate already issued. Limitation of time is of course quite distinct from the remedy available, and it is obviously necessary that there should not be too long a delay after the consideration of the question of allowing a certificate by the District Court for asking the Supreme Court to consider the question anew.

There are other provisions in the Ordinance which appear to me to show that this is the real intention of section 129. The expression "allow" or "allowance" occurs in various other sections of the Ordinance, and refers to the order declaring the insolvent entitled to a certificate and not to the certificate itself or its issue. For instance, section 124, which relates to the holding of the certificate meeting itself, directs that the Court shall appoint a public sitting for the "allowance" of the certificate, and provides that the assignee or any creditor may be heard against the "allowance" of such certificate, and that the Court shall find the insolvent entitled thereto and "allow" the same. It also provides that notice of the holding of the meeting and the purport thereof shall be advertised in the *Gazette*. I think that these provisions clearly refer to the decision and order of Court with regard to the certificate and not the document which is afterwards drawn up and delivered to the insolvent. Then, again, sections 126 and 127 have regard to the discharge of the insolvent from all provable debts upon the certificate of conformity being "allowed." There must necessarily be some delay, long or short, before the certificate is drawn up and issued, and it cannot be supposed that in the interval the insolvent will remain liable for those debts and may be arrested in execution. Nor can it be urged that the insolvent may obtain the protection of the Court, for by section 36 the Court is only empowered to give such special protection until the insolvent's last examination and until his certificate is allowed. After all, the drawing up and signature of the certificate is a ministerial act which is done in

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pursuance of the order allowing the certificate. It is true that there is no express provision, as in the case of decrees in civil actions, that the certificate shall be dated the same date as the Court's order, but in my opinion, even without such an express provision, the certificate operates from the date of the order. Some guidance on this point may be derived from *ex parte Bell re Laforest 38 L. J. Bankruptcy, p. 50.* The Bankruptcy Act of 1861 substituted an order of discharge for the certificate of conformity under the Act of 1849 from which our Ordinance is borrowed. The above case decides that the date of the order of discharge is the date on which the order is pronounced and not the date on which it is actually drawn up, and that if any property devolves on the bankrupt after the date of the order of discharge and before it is drawn up, the bankrupt and not the assignee will be entitled to it. The practical object of the certificate is indicated by section 131, which enacts that if the insolvent be arrested or have any action brought against him for any such debt he shall be discharged, and he may plead that the debt accrued before his insolvency, and may give the Ordinance and the special matter in evidence ; and that the certificate shall be sufficient evidence of the insolvency, petition for sequestration, and other proceedings precedent to the obtaining of such certificate. The certificate is evidence of the order of Court and is intended to be used for the purpose of the insolvent himself, and the creditors have no real concern with it. The governing factor always is the Court's order, and I cannot conceive that in the matter of an application under section 129 it was intended that this Court shall deal with the certificate and leave the Court's order untouched. Mr. Samarawickreme appreciated this difficulty, and argued that the " allowance " of the certificate meant the Court's order plus the actual issue of the document. There is, in my view, no reasonable foundation for this idea. Even if there was, the period of six months should surely be counted from the date of the Court's order which is admitted to be a necessary and integral part of the allowance of the certificate.

I am of opinion that the allowance of the certificate really is the order of the Court declaring the insolvent entitled to the certificate and directing its issue, and that the period of six months limited for the application under section 129 must be taken to commence from the date of such order. I am the more inclined to take this view because I think this provision must be construed restrictively as against a creditor who is given other special opportunities to oppose the granting of the certificate, as, for instance, at the certificate meeting and by appeal to this Court.

I would uphold the objection taken on behalf of the insolvent and refuse this application, with costs.

GARVIN A.J.—I agree.

Objection upheld and application refused.