

1942

*Present : Soertsz and de Krester JJ.*IBRAHIM BAI, Appellant, and HERFT, *et al.*, Respondents.

77—D. C. Kandy, I 3.

Insolvency—Grant of certificate to insolvent—Right of a creditor to prove a debt thereafter—Insolvency Ordinance, s. 93.

A creditor is entitled to prove a debt in the course of an insolvency case even after the granting of a certificate to the insolvent, provided he obtains from the Court a sitting for the proof of the debt after due notice thereof has been given.

A PPEAL from a judgment of the District Court of Kandy.

N. Nadarajah, K.C. (with him H. W. Thambiah), for the proving-creditor, appellant.

No appearance for the proved-creditors, respondents.

March 6, 1942. SOERTSZ J.—

This is an appeal by one Ibrahim Bai who, professing to be a creditor of the Insolvent in a sum of Rs. 1,560, sought to prove that debt in the course of an insolvency case. He made his application on April 4, 1941. The learned District Judge refused to allow this application on the ground that it was too late for him to prove a debt in view of the fact that a certificate in the 3rd class had been granted to the Insolvent. The learned Judge appears to have taken the view that once a certificate is granted there is in effect a termination of the insolvency proceedings and that thereafter it was not open to anyone to come in claiming to prove a debt.

This view appears to me to be unsupported by the law. Section 93 is relied on by Counsel for the appellant as enabling his client to come in at any time to prove his debt. This view is supported by the commentary in Archbold on Bankruptcy, page 192, 1865 Edn. The comment is made on a provision upon which our own Insolvency Ordinance is based.

It is to this effect. "By rule 53, every sitting held for making a dividend of a bankrupt's estate shall be a sitting for proof of debts and the notice of such sitting in the London Gazette shall express that debts may be proved at such sitting. Therefore, there is no time, in fact, limited for proving; if the creditor proves at any time before a final dividend is declared, he will be entitled to his dividend, and even where a creditor through accident omits to prove at the final dividend, he will be permitted to prove but without disturbing any payments made by the assignee, and placing the creditors not paid in the same situation as if the creditor had originally proved."

It seems clear, therefore, that it is open to the appellant to prove the debt he seeks to prove provided he obtains from the Court a sitting for the proof of the debt after due notice thereof has been given in the *Government Gazette* and in such other manner as the Court may deem fit.

The appeal is therefore allowed and the case is remitted for that purpose. There will be no costs of appeal.

DE KRETZER J.—I agree.

Appeal allowed.
