

*Before Mr. Justice Phear and Mr. Justice Macpherson.*

1868

IN RE GHOLAM RASUL KHAN AND ANOTHER. INSOLVENTS.

July 29.

*Petition of Appeal—Sec. 73, Insolvent Act (11 and 12 Vic., c. 21.)*

A Commissioner has no power, under sec. 73 of the Insolvent Act, to extend the time for presenting a petition of appeal from an order of the Insolvent Court.

THIS was an appeal from an order of *Markby, J.*, sitting as a Commissioner of the Court for the relief of insolvent debtors, dated the 30th of May 1868. On 30th June 1868, the insolvents obtained an order from the Commissioner, granting one week's further time for the purpose of presenting their petition of appeal. The petition was filed on the 2nd of July 1868.

Mr. *Woodroffe*, for opposing creditors, applied that the appeal should be dismissed, on the ground that the petition had not been filed within the time allowed by the 73rd section of the Insolvent Act, which limits the time for filing such petition to one calendar month from the date of the order of the Commissioner.

Mr. *Low* for the insolvents.

The judgment of the Court was delivered by

PHEAR, J.—We think that the objection raised by Mr. *Woodroffe* must prevail. It seems to us, that the words of the 73rd section, which give an appeal from any order or proceeding of the Insolvent Court, give that appeal only when the petition of appeal is presented within one calendar month from the date of such order or proceeding. The Commissioner has no power to extend the time for appeal. This petition, not having been presented within the time allowed by section 73, must be dismissed, and the decision of the Commissioner must be held to be final. We express no opinion on the merits of the case.

Attorneys for insolvents: *Messrs. Stack & Co.*

Attorneys for opposing creditors: *Mr. Carrapiet.*