[HIGH COURT OF AUSTRALIA.]

BOND . . . . . APPELLANT;
APPLICANT,

AND

GEORGE A. BOND AND COMPANY LIMITED RESPONDENT.
RESPONDENT,

BOND . . . . . APPELLANT;
RESPONDENT,

AND

GEORGE A. BOND AND COMPANY LIMITED AND BOND'S INDUSTRIES LIMITED } RESPONDENTS.
PETITIONERS.

ON APPEAL FROM THE COURT OF BANKRUPTCY, DISTRICT OF NEW SOUTH WALES AND THE TERRITORY FOR THE SEAT OF GOVERNMENT.

H. C. OF A. 1930.

SYDNEY, *Aug.* 5, 15.

Gavan Duffy, Rich, Starke, and Dixon JJ.

Bankruptcy—Constitutional law—Powers of Federal Parliament—Duties of Registrar—Jurisdiction in bankruptcy—Investiture of State Court—Power of Court to delegate to Registrar powers of administrative nature—Delegation by Judges of State Court—Powers conferred on Registrar—Agreement between Commonwealth and States as to State officers acting as Registrars—Appointment of Registrars—Bankruptcy notice—Power of Registrar to issue—Sequestration order founded on bankruptcy notice issued by Registrar—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 51 (XVII.), 77 (III.)—*Bankruptcy Act* 1924-1929 (*No.* 37 *of* 1924—*No.* 28 *of* 1929), *secs.* 12 (5), 18, 23, 24, 52, 53—*Commonwealth Public Service Act* 1922-1928 (*No.* 21 *of* 1922—*No.* 41 *of* 1928), *sec.* 78—*Bankruptcy Rules* 1928 (*S.R.* 1928, *No.* 8).

Held, (1) that sec. 77 (III.) of the Constitution considered with sec. 51 (XVII.) confers ample power upon the Parliament to bestow upon State Courts all powers appropriate to bankruptcy jurisdiction and all authority incidental to

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the exercise of such powers, including a power enabling such Courts in their bankruptcy jurisdiction to direct and authorize the performance of ministerial acts; (2) that so much of secs. 12 (5) and 23 of the *Bankruptcy Act* 1924-1929 as enables a State Court exercising Federal jurisdiction in bankruptcy to give directions or authority to the Federal Registrars to perform ministerial acts and places upon the Registrars an obligation to conform to such directions and execute such authority, is valid; (3) that the issue of a bankruptcy notice for the purpose of secs. 52 (*j*) and 53 of the *Bankruptcy Act* 1924-1929 is entirely ministerial.

By *Rich* and *Dixon* JJ.: (1) *Quære*, whether sec. 24 of the *Bankruptcy Act* 1924-1929 is *ultra vires* and void; (2) even if sec. 24 be invalid, the validity of sec. 12 (5) would not be affected; (3) since the amendments made by the *Bankruptcy Act* 1929 the *Bankruptcy Rules* 1928 must be treated as merely prescribing the form of bankruptcy notice and giving efficacy to it when issued on behalf of the Court by a Registrar with the authority of the Court.

Le Mesurier v. *Connor*, (1929) 42 C.L.R. 481, considered.

Judgment of *Maxwell* A.J. and order of *Long Innes* J. affirmed.

APPEALS from the Court of Bankruptcy, District of New South Wales and the Territory for the Seat of Government.

George Alan Bond appealed against a judgment of *Maxwell* A.J., dismissing an application by the appellant to set aside a bankruptcy notice under sec. 53 of the *Bankruptcy Act* 1924-1929 served on him on behalf of George A. Bond & Co. Ltd. on 9th January 1930 (*Bond* v. *George A. Bond & Co. Ltd.*). He also appealed against a sequestration order made against him by *Long Innes* J. founded on his failure to comply with the requirements of such bankruptcy notice (*George A. Bond & Co. Ltd. and Bond's Industries Ltd* v. *Bond*). The appeals were consolidated. The bankruptcy notice, which was in the form prescribed by the *Bankruptcy Rules* 1928 (First Schedule, form No. 5), and was entitled "In the Court of Bankruptcy, District of New South Wales and the Territory for the Seat of Government," was as follows:—"Take notice that within seven days after service of this notice on you, excluding the day of such service, you must pay to George A. Bond and Company Limited of Layton Street, Camperdown, the sum of £89,578 18s. 3d., being the sum of £89,893 18s. 3d. claimed by it as being the amount due on a final judgment obtained by it against you in the Supreme Court in Equity, dated 6th September 1929, whereon execution has not been stayed, less the sum of £315 admitted by the said

creditor as a set-off, or you must secure or compound for the said sum to its satisfaction, or to the satisfaction of the Court; or you must satisfy the Court that you have a counter-claim, set-off or cross-demand against it which equals or exceeds the sum claimed by it, and which you could not set up in the action in which the judgment was obtained. Dated this 9th day of January 1930. By the Court, N. C. Lockhart, Registrar." The bankruptcy notice also contained the prescribed indorsement, namely, "That the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you. If, however, you have a counter-claim, set-off, or cross-demand which equals or exceeds the amount claimed by George A. Bond and Company Limited in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within four days apply to the Court to set aside this notice by filing with the Registrar an affidavit to the above effect." The objection which the appellant raised before *Maxwell* A.J. to the bankruptcy notice was that Mr. Lockhart, as Registrar in Bankruptcy of the Bankruptcy Court in New South Wales and the Territory of the Seat of Government, had no power to issue the notice.

Bond appealed to the High Court from the decision of *Maxwell* A.J. dismissing the application to set aside the bankruptcy notice, and also against the sequestration order founded thereon made by *Long Innes* J., the grounds of appeal being the same in each case, namely, "That his Honor had no jurisdiction to make and was in error in making the said order because (1) his Honor was never lawfuly authorized to exercise any part of the jurisdiction of the 'Court' under the *Bankruptcy Act* 1924-1929, and (2) no act of bankruptcy on the part of the appellant was proved before his Honor, and (3) the purported appointment of Norman Charles Lockhart as Registrar in Bankruptcy by whom was issued the bankruptcy notice relied upon by the petitioning creditors was invalid and the purported validation of such appointment by the *Bankruptcy Act* 1929 was *ultra vires* the Parliament of the Commonwealth, (4) the Parliament of the Commonwealth has no power to

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legislate as to the practice and procedure of the Supreme Court of New South Wales in relation to matters in bankruptcy and insolvency and the said bankruptcy notice was issued under rules made by the Governor-General of the Commonwealth and not otherwise, and (5) sec. 18 of the *Bankruptcy Act* 1924-1929 is invalid by reason of the fact that it purports to invest the Supreme Court of New South Wales with Federal jurisdiction in bankruptcy throughout the Commonwealth and purports to authorize any of the Judges of the said Court to exercise such jurisdiction throughout the Commonwealth." By a proclamation dated 6th July 1928, and made as under sec. 12 (1) of the *Bankruptcy Act* 1924-1927, the State of New South Wales and the Federal Capital Territory was declared a District for the purposes of the Act; and by a proclamation of the same date, made as under sec. 18 (1) of that Act, the Supreme Court of New South Wales was specially authorized by the Governor-General to exercise jurisdiction in bankruptcy throughout the Commonwealth; and by a further proclamation and made as under sec. 18 (2) of such Act each of the Judges of the Supreme Court of New South Wales was appointed to exercise the jurisdiction in bankruptcy conferred upon the Supreme Court.

The arrangement set out in the *Commonwealth Gazette* of 25th July 1928, which was made between the Governor-General in Council and the Governor in Council of the State of New South Wales pursuant to sec. 78 of the *Commonwealth Public Service Act* 1922-1924, provided: (1) that officers of the Public Service of the State of New South Wales may be appointed from time to time to execute in that State the duties of any of the following offices under the *Bankruptcy Act* 1924-1927, namely, the office of Registrar, Deputy Registrar, Official Receiver and any other offices under that Act; (2) that appointments to be made in pursuance of this arrangement shall be made by the Attorney-General of the Commonwealth with the concurrence of the Attorney-General, or some other Minister, of the State; (3) that all officers appointed in pursuance of this arrangement shall hold their offices during the pleasure of the Attorney-General of the Commonwealth and without salary; (4) that the Commonwealth will pay to the State of New South Wales

in respect of the execution by officers of that State of the duties of officers under the *Bankruptcy Act* 1924-1927 such sums as are from time to time agreed upon by the Attorney-General of the Commonwealth and the Attorney-General of the State.

The appointment set out in the *Commonwealth Gazette* of 9th August 1928 was an appointment by the Attorney-General of the Commonwealth, with the concurrence of the Attorney-General, or other Minister, of the State, to take effect from 1st August 1928; the officers so appointed to hold office during the pleasure of the Attorney-General of the Commonwealth and without salary from the Commonwealth. This *Gazette* notified the appointment of Norman Charles Lockhart as Registrar in Bankruptcy for the Bankruptcy District of New South Wales and the Territory for the Seat of Government.

Following upon the decision of the Court in *Le Mesurier* v. *Connor* (1), in which case substantially the same questions were dealt with by the Court, the *Bankruptcy Act* 1924-1928 was amended in material sections by the *Bankruptcy Act* 1929, assented to on 17th December 1929. On 18th December 1929, by a document signed by three Justices of the Supreme Court of New South Wales, a State Court invested with Federal jurisdiction under the *Bankruptcy Act* 1924-1929, Norman Charles Lockhart, Registrar in Bankruptcy, was directed and authorized "to exercise the following powers, duties and functions of an administrative nature exercisable by the said Court . . . To issue bankruptcy notices under the said Act and make orders under section 52 (*j*) thereof giving leave to effect service of bankruptcy notices."

Prior to the hearing of the bankruptcy petition the debt due from Bond to George A. Bond & Co. Ltd. was assigned by that Company to Bond's Industries Ltd. and the petition was amended accordingly.

The consolidated appeal now came on for hearing before the Full Court of the High Court.

Weston (with him *Hutton*), for the appellant. The question is whether the Registrar had jurisdiction to issue the bankruptcy notice. The Commonwealth Parliament has no power to legislate

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as to the practice and procedure of the Supreme Court of New South Wales as such in relation to matters in bankruptcy and insolvency. The defects in the *Bankruptcy Act* 1924-1928 as pointed out in *Le Mesurier* v. *Connor* (1) were not cured by the *Bankruptcy Act* 1929. In *Le Mesurier's Case* the material sections in the Principal Act were declared to be invalid as being an attempt to vest Federal jurisdiction in a State Court and at the same time to interfere with the procedure of that Court with respect to the jurisdiction so vested in it. The amending Act of 1929 does not affect the substance of the matter, the alterations made being merely verbal. The bankruptcy notice was issued under rules made by the Governor-General of the Commonwealth by virtue of sec. 223 of the *Bankruptcy Act*. Sec. 23 of the Principal Act was a material part of the statute which led to the decision in *Le Mesurier* v. *Connor*. In its new form under the amending Act the section is not materially altered. Sec. 24, which deals with the Registrar, is still introduced by the words "subject to rules." As to the appointment, under the Commonwealth *Bankruptcy Act*, of Mr. Lockhart to act as Registrar in New South Wales, see the *Commonwealth Gazettes* of 25th July 1928 and 9th August 1928 respectively and the Constitution, sec. 77. The appointment is invalid.

Teece K.C. (with him *Abrahams*), for the respondents. The *ratio decidendi* of the majority judgment in *Le Mesurier* v. *Connor* (1) was that the Constitution did not empower the Parliament to make the Registrar, a Commonwealth officer, a functionary of the State Court and to authorize him to act on its behalf and administer part of its jurisdiction. This defect has been remedied by the *Bankruptcy Act* 1929. The Registrar is no longer an officer or functionary of the State Court, nor is he authorized by Parliament to administer part of the jurisdiction vested in the State Court. He is now wholly a Commonwealth officer in whom certain administrative or ministerial functions are vested, and who can be authorized by the Court to exercise certain ministerial powers, duties and functions. It is quite constitutional for Parliament to invest a State Court with judicial functions, strictly so called, in bankruptcy,

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and to vest ministerial duties in a Commonwealth officer either *simpliciter* or under the control or direction of a State Court. This is, in effect, what the *Bankruptcy Act* as now amended has done. On the distinction between judicial functions and administrative or ministerial functions, see *Huddart Parker & Co. Pty. Ltd. and Appleton* v. *Moorehead* (1). As to the meaning of the term "officer of the Court," see *Re Ash* (2). The issue of a bankruptcy notice is a purely ministerial act; it is not, strictly speaking, a Court process: it is a preliminary step on which to found a petition for a sequestration order. Once Parliament vested a State Court with Federal jurisdiction and thereby made its jurisdiction Federal, Parliament could at will regulate the procedure and control the method of relief (*Lorenzo* v. *Carey* (3)). And it is in pursuance of this power that Parliament has prescribed the method by which and the officers by whom bankruptcy notices may be issued. Alternatively, Mr. Lockhart, who issued the bankruptcy notice in this case, is not only a Commonwealth officer but also Registrar in Bankruptcy of the Supreme Court of New South Wales, and a bankruptcy notice issued by him was issued by an officer of a State Court vested with jurisdiction in bankruptcy. That Court, being vested with jurisdiction in bankruptcy, can do by its officers all things necessary to bring a debtor within its jurisdiction.

Brissenden K.C. (with him *Badham*), for the Commonwealth intervening, adopted the latter argument put by counsel for the respondents.

Weston, in reply. Sec. 4 of the *Bankruptcy Act* 1924-1929 is important as showing the essential link between the Act and the Rules: if the Rules are invalid then the Act cannot operate for lack of machinery. The bankruptcy notice is not in the form prescribed by the State Act or Rules thereunder. The officer of the Court acted under a supposed Federal power, and never in any way purported to exercise jurisdiction flowing from any other source. Sec. 6 of the Federal Act absolutely deprives the State Court of any jurisdiction in this matter. There is now no concurrent

(1) (1909) 8 C.L.R. 330, at pp. 356-358, 377-379.
(2) (1913) 110 L.T. 48; 21 Mans. 15.
(3) (1921) 29 C.L.R. 243, at p. 253.

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power in the State of New South Wales in the matter of bankruptcy. Sec. 19 of the Federal Act should be construed as regulating how jurisdiction is to be exercised in certain matters rather than as showing the existence of the jurisdiction. Unless the Rules are *intra vires*, there cannot be a bankruptcy notice under the Act, which is silent on the point. The power to act given to the Registrar is to act for the Court, and his act, if valid, is the act of the Court. There can be no application of the rule of severability in this case. The appointment of the officer in question was *ultra vires*, and the defect was not cured by the *Bankruptcy Act* 1929.

Cur. adv. vult.

Aug. 15.

The following written judgments were delivered :—

RICH AND DIXON JJ. These are appeals against two orders made by the Supreme Court of New South Wales under the style of " the Court of Bankruptcy, District of the State of New South Wales and the Territory for the Seat of Government." The first of these orders, which was made by *Maxwell* A.J., dismissed an application by the appellant to set aside a bankruptcy notice which had been issued against him. The second, which was made by *Long Innes* J. is a sequestration order founded upon the appellant's failure to comply with the bankruptcy notice. The appeals turn upon the question whether the bankruptcy notice was valid, and was effectual to give rise to an act of bankruptcy.

The notice followed the form prescribed by rule 137 of the *Bankruptcy Rules* 1928 (S.R. 1928, No. 8). It was entitled " In the Court of Bankruptcy, District of the State of New South Wales and the Territory for the Seat of Government." The notice was expressed to be " By the Court," and to have been issued under the authority of " N. C. Lockhart, Registrar." It was dated 9th January 1930. Mr. Lockhart is a State officer who had been appointed before the passing of the *Bankruptcy Act* 1929 under an arrangement made as in pursuance of sec. 78 of the *Commonwealth Public Service Act* 1922-1928 to execute the duties of Registrar in Bankruptcy of the District of New South Wales. This means that *de facto* he was appointed Registrar in Bankruptcy as under the *Bankruptcy Act*

1924-1928, which in the *Bankruptcy Act* 1929 is called the Principal Act. Sec. 7 of the *Bankruptcy Act* 1929 provides "any appointment of a person as Registrar in Bankruptcy made or purporting to have been made under the Principal Act shall be, and be deemed to have been, as valid and effectual as if it had been made under that Act as amended by this Act."

The *Bankruptcy Act* 1929 was passed in consequence of the decision of this Court in *Le Mesurier* v. *Connor* (1). In that case the majority of the Court considered that secs. 12 (5), 23 and 24 of the *Bankruptcy Act* 1924-1928 were interdependent provisions, and that they made it plain that the Registrar was to form part of the organization of the Court and was to exercise his powers and functions, whether derived directly from the statute, or from the authority of the Court, as its officer and in the administration of its jurisdiction. Adopting this view of these provisions, the majority of the Court held that they were nugatory in relation to the Courts of the States, and that a person appointed as under them had no authority to issue a bankruptcy notice. The *Bankruptcy Act* 1929 amended sec. 12 (5) of the Principal Act as from its commencement, so that it now provides that "the Registrars and Deputy Registrars shall be controlled by the Court and shall have such duties as the Attorney-General directs or as are prescribed." The *Bankruptcy Act* 1929 repealed sec. 23, and substituted the following: "23. The Registrar may exercise such of the powers, duties and functions of an administrative nature exercisable by the Court as the Court directs or authorizes him to exercise." It amended sub-sec. 1 of sec. 24 so that authority in respect of the subjects which it enumerated is conferred upon the Registrar in the following terms: "Subject to rules, a Registrar may exercise in addition to the powers, duties and functions which the Court under the provisions of this Act may direct or authorize him to exercise, the following powers, duties and functions." It amended sub-sec. 2 of sec. 24 so that instead of requiring that the orders and acts of a Registrar should be deemed the orders and acts of the Court, that sub-section now provides that they should be as valid and as effectual to all intents and purposes and may be enforced as if they were orders or acts of the Court.

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Immediately after these amendments were made, three Judges of the Supreme Court of New South Wales authorized Mr. Lockhart as Registrar in Bankruptcy to issue bankruptcy notices. The question is whether these provisions, or any of them, together with this authority, suffice to enable the issue of the bankruptcy notice against the appellant.

The provisions of secs. 12 (5), 23 and 24 as amended are now attacked as *ultra vires* upon the ground that they do no more than repeat in other language the substance of the enactment contained in these sections before they were amended, and therefore remain open to the objection which the majority of the Court in *Le Mesurier* v. *Connor* (1) thought fatal to them. In the case of sec. 24 there is much to be said, no doubt, for the view that its provisions are *ultra vires*, because they are an attempt, however disguised, to authorize the Registrar to exercise powers which belong to the Court and to attach to his acts and orders the same efficacy and the same consequences as the law gives to judicial acts and orders. But sec. 12 (5) appears to have been amended for the purpose of changing entirely the Registrar's relation to the Court. It is not easy to get a clear appreciation of the meaning and legal effect of the indefinite expression "controlled by the Court," but it seems to amount to no more than requiring the Registrar to comply with the Court's orders and directions. Instead of forming part of its official system and exercising the authority of an office in the Court, the Registrar is now to be a stranger to the Court and its organization. But the Registrar is, nevertheless, to be amenable to the Court's orders and directions, if it choose to give him any. The purpose of the amendment of sec. 12 (5) and of sec. 23 appears to have been to put the Registrar at the disposal of the Court as a person bound by law to comply with its requirements. Such a scheme has the strange result of making the office of Registrar in Bankruptcy, an office which, in spite of its name, is not attached to a Court at all. Unlikely as otherwise it might seem that the Legislature should mean that there should be Registrars who did not belong to Courts, it must yet be remembered that sec. 12 (2) of the *Bankruptcy Act* 1924-1928, when it constituted the Registrars in Bankruptcy, did so

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not in respect of Courts, but in respect of Districts. Moreover, the amendments were evidently drawn to remove the vice found in the provisions to be amended, and it must have been plain that this could not be done if, either in substance or in form, the Registrar were given an official position in a State Court. When it appeared that it was beyond the power of the Parliament to make the Registrar an officer of State Courts exercising the authority and jurisdiction of those Courts, it seems to have been thought that it was possible at least to utilize that official for the purpose of executing such commands and exercising such authority as the Courts might lay upon or commit to him. If this be the true meaning of the amendment made in sec. 12 (5), it appears to follow that its provisions and those of sec. 24 are no longer mutually interdependent, as in their previous form they were held to be. The intention to subject the Registrar to this kind of judicial "control" is not dependent upon the intention disclosed by sec. 24 to give him powers of his own. The former intention can be completely effectuated, although the latter is frustrated. If, therefore, sec. 24 be invalid, the validity of sec. 12 (5) would not be affected. The vague and untechnical language of sec. 23 as it now stands, gives rise to some difficulty. What are the Court's "powers, duties and functions of an administrative nature"? The phrase includes, of course, all strictly ministerial acts. But how much further does it extend?

Much of the judicial power which the Parliament can vest in Courts alone might, in bankruptcy matters, be described as administrative in one sense; and it is not settled that the Parliament can authorize Courts to delegate any part of what is strictly judicial power. But it is apparent that the vague expression "of an administrative nature" has been employed in order to exclude from the power of delegation conferred by sec. 23 those powers, duties and functions which, because of their judicial character, might be considered incapable of such delegation. It is clear, too, that the provision is distributive and means to give a power to delegate every separate duty or function which its language comprehends irrespective of the others.

If, then, as may be the case, such a provision would be invalid if it dealt with anything but strictly ministerial functions, there

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seems no reason why sec. 23, first should be interpreted as extending beyond such functions, and then should be invalidated *in toto* for so extending. The issue of the bankruptcy notice for the purpose of secs. 52 (*j*) and 53 is entirely ministerial, and it is therefore unnecessary, having regard to what has been already said, to consider whether Parliament could enable the Court to authorize a stranger to its organization to perform on its behalf any act of another character. But a law enabling the Court in Bankruptcy to authorize the performance of a ministerial act by a Federal officer, and requiring him to perform it when so authorized, is a law made with respect to bankruptcy. Such a law is, therefore, authorized by sec. 51 (XVII.) of the Constitution, unless sec. 77 has the effect of excluding such a matter from the operation of that placitum. But none of the reasons given in the judgment of the majority in *Le Mesurier* v. *Connor* (1) justifies this restriction of the power to deal with bankruptcy which pl. XVII. would otherwise confer. The restriction upon the application to State Courts of the general powers of the Parliament to legislate with respect to the enumerated subjects of legislative power arises from the position of State Courts as judicial organs of another Government, and from the special provisions contained in Chapter III. of the Constitution describing the powers of the Parliament in relation to them. Sec. 77 (III.) considered with sec. 51 (XVII.) confers ample power upon the Parliament to bestow upon State Courts all powers appropriate to bankruptcy jurisdiction and all authority incidental to the exercise of such powers. Such a legislative power must extend to enabling Courts in their bankruptcy jurisdiction to direct and authorize the performance of ministerial acts. It is for Parliament to determine who shall be under a duty to obey such directions and execute such authority, and it is no objection to an enactment made in the exercise of the legislative power that a novel and unusual method of proceeding results from the choice of persons which Parliament has made.

For these reasons so much of secs. 12 (5) and 23 of the *Bankruptcy Act* 1924-1929 as enables the State Court exercising Federal jurisdiction in bankruptcy to give directions or authority to the Federal

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Registrars to perform ministerial acts, and places upon the Registrars an obligation to conform to such directions and execute such authority, is valid. Apart, therefore, from a difficulty which arises under the *Bankruptcy Rules* 1928, the bankruptcy notice issued by Mr. Lockhart pursuant to the authority conferred upon him by the Judges of the Supreme Court would be effectual. But Division 2 of Part III. of the *Bankruptcy Rules* 1928 appears at first sight to authorize and require the Registrar to issue bankruptcy notices on behalf of the Court in Bankruptcy upon his own responsibility in virtue of his office. These Rules were, of course, drawn upon the footing of the provisions of the Act 1924-1928 before the amendment of 1929. Since the amendments made by the Act of 1929, the more important of which are retrospective, the Rules must be treated as doing no more than prescribing the form of bankruptcy notice and giving efficacy to it when issued by a Registrar, who, pursuant to an authority conferred upon him by the Court under the amended provisions, has issued it on behalf of the Court. An examination of the language in which the Rules are expressed has discovered nothing inconsistent with this interpretation. It is unnecessary for any purpose now material to consider whether rules 139 (4) and 140 can be supported. It follows from what we have said that the bankruptcy notice in this case was effectual to found an act of bankruptcy.

Both appeals must be dismissed with costs.

Our brother *Gavan Duffy*, having read our judgment, desires us to say that he accepts our statement as to the true scope and effect of the majority judgment in *Le Mesurier* v. *Connor* (1), and he agrees with us in thinking that, if the present case is not governed by *Le Mesurier's Case*, the bankruptcy notice validly operates to found an act of bankruptcy, and the appeals should be dismissed.

STARKE J. Unless this case is governed by the decision of this Court in *Le Mesurier* v. *Connor* (1), these appeals ought to be dismissed. The *Bankruptcy Act* 1924-1928 has been amended to meet that decision, and my brothers *Rich* and *Dixon*, who were two of the majority of the members of the Court who decided that case,

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think that the amendment has achieved its purpose. I am content to accept their view. Consequently, in my opinion, and for reasons which I stated in *Le Mesurier* v. *Connor* (1) and need not repeat, the bankruptcy notice and the sequestration order in question on this appeal have been lawfully issued and made.

Appeals dismissed with costs.

Solicitors for the appellant, *J. Stuart Thom & Co.*

Solicitors for the respondents, *Dawson, Waldron, Edwards & Nicholls.*

Solicitor for the Commonwealth, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

J. B.

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App 20 ATR 1293

Appl *FCT v Hurley Holdings (NSW) Pty Ltd* 23 FCR 435

Foll *A A T Case 30/93; No 8854* (1993) 26 ATR 1174

Dist *Northumberland Development Co Pty Ltd v FCT* (1994) 126 ALR 97

Dist *Northumberland Development Co Pty Ltd v FCT* (1994) 29 ATR 395

Foll *Haig v Commissioner of Taxation* (1994) 29 ATR 619

Dist *FCT v Northumberland Development Co Pty Ltd* (1995) 138 ALR 89

Expl/Appl *Whitaker v Federal Commissioner of Taxation* (1996) 33 ATR 394

Appl *Whitaker v Federal Commissioner of Taxation* (1996) 63 FCR 1

Appl *Whitaker v Federal Commissioner of Taxation* (1996) 140 ALR 257

Dist *Whitaker v Comr of Taxation* (1998) 82 FCR 261

[HIGH COURT OF AUSTRALIA.]

FEDERAL WHARF COMPANY LIMITED . APPELLANT;

AND

THE DEPUTY FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

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ADELAIDE, *Sept.* 20, 22.

Rich J.

Income Tax (Cth.)—Compulsory acquisition of land—Interest on amount of compensation—Whether income—Income Tax Assessment Act 1915-1921 (*No.* 34 *of* 1915—*No.* 32 *of* 1921)—*Income Tax Assessment Act* 1922-1928 (*No.* 37 *of* 1922—*No.* 46 *of* 1928)—*Harbors Act* 1913 (*S.A.*) (*No.* 1149), *sec.* 26.

Sec. 26 of the *Harbors Act* 1913 (S.A.) provides that when property is compulsorily acquired, interest computed from the time when the Minister enters into occupation thereof on behalf of the Crown to the time when the compensation is paid "shall be added to the amount of any compensation to be paid in respect thereof."