

of *Starke J.* dated 7th November 1929 should be set aside, and judgment should be entered for the plaintiff against the defendants for £12,145 4s. 10d., the plaintiff to have the costs of the action and of the appeal to the High Court; and will humbly advise His Majesty accordingly. The defendants must pay the costs of the appeal to His Majesty in Council.

PRIVY  
COUNCIL.  
1932.  
JAMES  
v.  
COWAN.

[HIGH COURT OF AUSTRALIA.]

HAMMILL . . . . . APPELLANT;  
APPLICANT,  
  
AND  
  
STEELE AND ANOTHER . . . . . RESPONDENTS.  
RESPONDENTS,

ON APPEAL FROM THE COURT OF BANKRUPTCY.

*Bankruptcy—Deed of arrangement—Appointment of debtor as manager of business—  
Power to dismiss clerks &c.—Dismissal of manager by trustees—Bankruptcy  
Act 1924-1930 (No. 37 of 1924—No. 17 of 1930), Part XII.*

H. C. OF A.  
1932.

A debtor assigned her estate to trustees for the benefit of her creditors under the provisions of Part XII. of the *Bankruptcy Act 1924-1930*. The deed of arrangement provided that “the trustees shall employ the debtor as manager” of the business which she had been carrying on, and provided that they should have power to employ any person “as clerk agent traveller workman servant or in any other capacity” and “to suspend or dismiss any such person (including the debtor) employed in any of the capacities aforesaid in their discretion.”

MELBOURNE,  
Oct. 7.  
Gavan Duffy  
C.J., Starke  
and Dixon JJ.

*Held* that the trustees had power under the deed to dismiss the debtor from the position of manager.

Decision of the Court of Bankruptcy affirmed.



H. C. OF A. APPEAL from the Court of Bankruptcy (District of South Australia).

1932.

HAMMILL  
v.  
STEELE.

On 9th January 1931, by a deed of arrangement, made pursuant to the provisions of Part XII. of the *Bankruptcy Act* 1924-1930, Louisa Hammill assigned her estate to Robert Moore Steele and William Cormack Calder as trustees for the benefit of her creditors. The deed of arrangement recited: "Whereas the debtor in the course of carrying on her business of a draper and grocer under the trade or firm name of 'The Hammill Stores' at Broken Hill . . . has incurred debts for the amounts set out in the . . . second schedule hereto to the creditors which she is unable at present to pay in full and has proposed to the creditors to make the conveyance and assignments hereinafter contained to the trustees in order that her business may be carried on and the said debts gradually liquidated out of the profits or sale of assets thereof with a view to the preservation so far as possible of the goodwill of the said business and a reconveyance and reassignment thereof to the debtor when the said debts and interest have been paid as aforesaid And whereas the creditors have accepted the said proposal and have agreed in consideration of such conveyance and assignment to grant to the debtor the release hereinafter contained And whereas both the debtor and the creditors are mutually willing and desirous that the said business should so far as consistent with the object of this arrangement be carried on and developed as nearly as possible upon the same lines as hitherto and should only be realized and wound up if the creditors should deem it necessary." Clause 8 of the deed of arrangement provided: "The trustees shall employ the debtor as manager of the said business . . . And shall have power to employ any person as clerk agent traveller workman servant or in any other capacity at such reasonable salaries or wages or rates of remuneration and upon such terms in all respects as they shall think fit and to suspend or dismiss any such person (including the debtor) employed in any of the capacities aforesaid in their discretion." On 22nd February 1932 the trustees purported to dismiss the debtor from her position as manager.

The debtor applied to the Court of Bankruptcy (District of South Australia) for the determination of the question whether, upon the true construction of the provisions of the deed of arrangement, the



trustees had power to dismiss the debtor from the position of manager of the business. The application was heard by his Honor Judge *Paine*, who held that under the provisions of clause 8 of the deed the trustees had power to dismiss the debtor from her office as manager of the business.

From that decision the debtor now appealed to the High Court.

*Eager*, for the appellant. The question turns upon the construction of clause 8 of the deed. Under that clause the trustees purported to give the debtor one month's notice of dismissal. The power given in the second part of that clause does not extend to the manager, but only extends to the persons who may be employed as "clerk agent traveller workman servant," or in any other similar capacity (*In re Ellis* (1); *Ex parte Barnes* (2)).

*Ligertwood* K.C. and *Wright*, for the respondents, were not called upon.

THE COURT delivered the following judgment:—We all think the decision appealed against is right. The appeal will be dismissed with costs.

*Appeal dismissed accordingly.*

Solicitors for the appellant, *Ernest Roy Hudson*, Broken Hill, by *Beecher Noel Webb*.

Solicitors for the respondents, *Baker, McEwin, Ligertwood & Millhouse*.

H. D. W.

(1) (1925) Ch. 564.

(2) (1896) A.C. 146, at pp. 150-153.

H. C. OF A.

1932.

—

HAMMILL

v.

STEELE.