[HIGH COURT OF AUSTRALIA.]

JAMES . . . . . APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

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SYDNEY, *Dec.* 15, 16, 22.

Williams, Kitto and Taylor JJ.

Bankruptcy—Bankruptcy notice—Non-compliance—Validity of notice—Payment—Not in accordance with terms of judgment—Agent specified in lieu of creditors—Right of debtor to secure or compound debt to satisfaction of creditors themselves—Debtor not notified—Defect—Formality—Bankruptcy Act 1924-1954, *ss.* 7, 52 (*j*), 53—*Bankruptcy Rules*, *rr.* 6, 144, *Form* 5.

Unless a judgment or order requires a debtor to pay the creditor at a particular place a bankruptcy notice founded thereon should not, by virtue of s. 53 of the *Bankruptcy Act* 1924-1954, so require.

The proviso to s. 53 of the *Bankruptcy Act* 1924-1954 does not authorize the specification of an agent in substitution for, and to the exclusion of, the creditor himself; its terms only authorize the specification of an agent to act on behalf of a creditor in respect of any payment or other thing required by the notice to be made to or done to the satisfaction of the creditor.

A bankruptcy notice which restricts a debtor to paying the debt to a number of creditors at one particular place or does not notify him that he may in the alternative secure or compound the debt to their satisfaction, does not comply with the requirements of s. 53 and is invalid.

A bankruptcy notice by which a debtor is notified alternatively that he must compound for the debt to the satisfaction of a person nominated by one of three named creditors, "the agent for the above-named creditors, or the satisfaction of the Bankruptcy Court" does not follow the prescribed form varied to meet the circumstances in that it fails to notify the debtor that he may secure or compound the debt to the satisfaction of the creditors themselves. Such a defect cannot be cured under s. 7 of the *Bankruptcy Act* 1924-1954 as a formal defect or irregularity, and the notice is invalid.

Decision of the Supreme Court of Queensland (*Matthews* J.), reversed.

APPEAL from the Supreme Court of Queensland.

A writ of summons sued out by Frank James against the Deputy Commissioner of Taxation, Qantas Empire Airways Ltd. and the Commonwealth of Australia was struck out by *Webb* J. on 20th

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June 1955 and James was ordered to pay the costs which were taxed and allowed at £292 2s. 11d.

A bankruptcy notice in respect of the said costs was issued by the three defendants on 15th September 1955, but its terms were not complied with, and on the petition of the Deputy Commissioner of Taxation a sequestration order was made against James on 24th November 1955 by the Supreme Court of Queensland (*Matthews* J.).

James appealed to the High Court.

Further facts appear in the judgment hereunder.

Dr. *F. Louat* Q.C. (with him *I. F. Sheppard*), for the appellant. Statutory provisions similar to s. 53 of the *Bankruptcy Act* 1924-1954 are dealt with in *Halsbury's Laws of England*, 2nd ed., vol. 2, pp. 41-43, where reference is made to *Re a Debtor* (1) and *Re a Debtor* (2). Under s. 53 it is the creditor's satisfaction and not the agent's satisfaction. The bankruptcy notice is not authorized by the Act or the rules and is invalid. It should read " or you must secure or compound for the said sum to their satisfaction with the Deputy Crown Solicitor " :—cf. *Williams* on *Bankruptcy*, 16th ed. (1949), p. 698. The form insists upon including the principals themselves as persons whose satisfaction may be obtained. It is not permissible to confine the function of being satisfied to the Deputy Crown Solicitor ; nor is it permissible under s. 53 to confine the function of satisfaction to the Deputy Crown Solicitor in such a way as to exclude the creditor, the principal : see *Re Evans* ; *Davies* v. *Evans* (3) :—cf. *Williams* on *Bankruptcy*, 16th ed. (1949), 26. A bankruptcy notice must not impose on the judgment debtor a heavier obligation than the judgment creditor would be able to impose on him under the judgment itself. A further defect in the bankruptcy notice is that it requires a joint payment to all the creditors, whereas payment to any one of them is a discharge. He has the right under the judgment to be given a discharge by paying or compounding with any one of the creditors. The judgment being in favour of the three creditors and the obligation of the judgment being one capable of satisfaction by payment to any one of them, the form of the bankruptcy notice does not follow the judgment, in that the notice requires a joint satisfaction whereas the judgment required a joint or several one. The position is *in pari materia* with the position in *Wallace* v. *Kelsall* (4). A bankruptcy notice should not mislead a debtor. The bankruptcy notice

(1) (1911) 2 K.B. 718.
(2) (1912) 1 K.B. 53.
(3) (1931) B. & C.R. 48.
(4) (1840) 7 M. & W. 264, at p. 272 [151 E.R. 765, at pp. 768, 769].

does not require the debtor to secure or compound for the debt to the satisfaction of the creditor as provided in the first proviso to s. 53 (1), therefore there is not any room for the specification of an agent to do that thing. Section 53 (1) authorizes the appointment of an agent, as an added facility to the debtor to act on behalf of the creditor but not to his exclusion. The proviso is a facultative provision, to provide an additional facility for the debtor: see *Re a Debtor* (1). The decision in *Manchester & Sheffield Railway Co.* v. *Brooks* (2); bankruptcy notices were dealt with in *Re a Judgment Debtor* (3).

[TAYLOR J. referred to *Re a Debtor*; *Ex parte The Debtor* v. *Bowmaker Ltd.* (4).

WILLIAMS J. referred to *Re a Debtor*; *Ex parte The Debtor* v. *Bowmaker Ltd.* (4).]

The last case (5) is an extremely modern example of the strictness of the earlier cases with regard to the form and content of a bankruptcy notice. It is not necessary that the debtor was misled, it is sufficient if he might have been misled.

C. G. Wanstall, for the respondent. In no respect could the subject bankruptcy notice be held to have caused substantial injustice, or to be misleading. Section 7 of the *Bankruptcy Act* 1924-1954 is intended to cover irregularities which are not necessarily formal defects, or defects in the nature of formalities. There is in the subject notice a literal compliance with the terms of s. 53 in any event. The notice requires payment to be made to the three creditors at the office of their agent. There is not any departure from the stated ingredients of a bankruptcy notice set out in s. 53 if the address of the creditor be omitted, therefore there is nothing in that section which requires the notice to state the address; it is the effect of the decisions and the principle that the debtor must be told where he can find his creditor. That is a requirement which is covered by the proviso and it is completely regular for the notice to specify the address of the agent who is acting on behalf of the creditors as the address at which payment is to be made. It is valid for the notice to notify the debtor that he must pay the amount to the creditor at a particular place and no other. The debtor is not embarrassed but is assisted thereby. The meaning of the bankruptcy notice is to require the debtor to pay to any one of the creditors at the office at its or his agent, and

(1) (1912) 1 K.B. 53.
(2) (1877) 2 Ex. D. 243, at p. 246.
(3) (1908) 2 K.B. 474, at pp. 478, 481, 483.
(4) (1951) 1 Ch. 313.
(5) (1951) 1 Ch., at p. 315.

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it is not a question of the notice being invalid any more than it would be if it required him to make payment to his creditor, the Commonwealth, whose address is Canberra. Form 5 contains an address of service. This bankruptcy notice facilitates the act of compliance by the debtor because it specifies an address where he can in one act get rid of his liability. The proviso to s. 53 or the use of the proviso adapts the form of the bankruptcy notice to meet the circumstances here necessary. In *Growden* v. *Wiltshire* (1) where the notice required payment to the official liquidator instead of to the company, this Court treated that as an irregularity which was cured by s. 7. There must be something on the face of the document of which it could be said that a debtor could be misled. The bankruptcy notice in the aspect which directs payment to the creditors at the address of their agent, is valid and conforms to all the requirements of s. 53 (*Re a Debtor* (2); *Re a Debtor* (3)). The use of the words of the form, naming the creditor of, has precisely the same effect, and has been so understood by courts, including this Court, as a direction to pay at a particular address. The particularization of an address is not to be held as excluding the common law and the elementary right of paying one's creditor wherever one finds him. The judgment does not prejudice that right; it leaves the matter open. The statement of an address at which the debt can be paid does not limit the debtor's right, because he is still at liberty to pay the creditor if he can find him. Payment to an agent is payment to the principal within the meaning of s. 53 (*Re a Debtor* (4)). There is not any warrant for holding that this bankruptcy notice, which follows precisely the formula stated in that case, is invalid. There is nothing in this judgment which directs an address at which the debt shall be paid. To pay the creditor of (address) is the ordinary meaning of a strict following of Form 5 (*Pepper* v. *McNiece* (5)). The normal and natural meaning of a direction to pay to a person of a place is that it is a direction to pay at that place.

[TAYLOR J. referred to *Re a Debtor* (6).]

A requirement to pay a sum of money to a person of a specified address was dealt with in *Re Stogdon*; *Ex parte Leigh* (7). In *Ex parte Danks* (8), in which a tender had been refused, it was not held that although there had been an act of bankruptcy there

(1) (1935) 52 C.L.R. 286, at pp. 287, 289, 290.
(2) (1912) 1 K.B., at pp. 60-62.
(3) (1911) 2 K.B. 718.
(4) (1912) 1 K.B., at p. 59.
(5) (1941) 64 C.L.R., at pp. 643, 644, 647, 649, 652, 653, 655.
(6) (1912) 1 K.B. 53.
(7) (1895) 2 Q.B. 534, at pp. 535, 536.
(8) (1852) 2 De G.M. & G. 936 [42 E.R. 1138].

should be no sequestration for discretionary reasons. It was held that there was no act of bankruptcy although tender was not payment. When dealing with an address the question is not as to whether the bankruptcy notice is a good one or is in accordance with the terms of the judgment. There is not any obligation as to place in a judgment in common form. There is a number of cases in which, where there has been a departure from the terms of the judgment, that has been the reason why the notice has been held to be bad, but not one of those cases is a case where there was a requirement to pay at a particular place. Even if the word " of " be used payment " at " is nevertheless required. The reason why the notice was held to be bad in *Re H. B.* (1) was that it was not in accordance with the terms of the judgment in respect of the amount claimed. The object in stating the address is no more than informing the debtor where the debt can be paid : it does not form any part of the terms of the judgment (*Re Beauchamp* ; *Ex parte Beauchamp* (2)). There are not any cases in which it was decided that a notice is likely to mislead if it requires payment according to the terms of judgment at a particular place, but it was held to the contrary in *Re a Debtor* (3). The analogy is that a bankruptcy notice which requires payment at a particular address, as in this case, is a valid and conforming notice. If the creditor was found to be elsewhere it would be covered by *Ex parte Danks* (4) and there would not be any act of bankruptcy. Even prior to 1913 the right of a creditor to use an agent in England was not nearly as wide as it is in Australia. Taking s. 42 into account there is not any departure from the terms of s. 53 : there is not any irregularity from those terms in this aspect of the case. What has been done here has been simply to substitute the agent for the creditor, and that is what the creditor is entitled to do under s. 42. That section is sufficient warrant for that form in itself. The defect, if any, was a mere formal defect or irregularity and was curable. Assistance is found in an implication in *In the Estate of Segalov* (*dec'd.*) (5) that if it had there been described as acting on behalf of the company it would not have been criticized. The only way one can compound with the Commonwealth is by compounding with the agent described, the nominated agent. None of the three creditors can be omitted. The composition part of the proviso to s. 53 is not related to any of the historical difficulties which, according to the appellant, gave rise to the proviso. It may well be that the

(1) (1904) 1 K.B. 94.
(2) (1904) 1 K.B. 572, at pp. 578, 579, 582, 583.
(3) (1912) 1 K.B. 53.
(4) (1852) 2 De G.M. & G. 936 [42 E.R. 1138].
(5) (1952) P. 241, at pp. 244, 245.

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proviso was unnecessary. Where one is told to deal with a person's agent one is entitled to assume that the principal is denuding himself of power. The interest which is made the focal point of the attack on this part of the notice is based upon that assumption. This notice implies that the agent has not assumed the whole power of composition; that there is still reserved to the donor of the power his own rights, and the mere fact that he has delegated part of his power to his agent does not mean that to that extent he is excluded.

Dr. *F. Louat* Q.C., in reply.

Cur. adv. vult.

The COURT delivered the following written judgment:

The appellant is a debtor against whom a sequestration order was made by the Supreme Court of Queensland (*Matthews* J.) sitting in bankruptcy on 24th November 1955. The petitioner was the Deputy Commissioner of Taxation for the State of Queensland. The act of bankruptcy alleged in the petition was the failure of the appellant to comply with a bankruptcy notice issued on 15th September 1955. The notice was issued in respect of a final order made by a Justice of this Court on 20th June 1955 in an action in which the appellant was the plaintiff and the above-mentioned Deputy Commissioner of Taxation, Qantas Empire Airways Ltd. and the Commonwealth of Australia were defendants. By this order the writ of summons was struck out and it was ordered that the appellant should pay to the defendants the costs of the action limited to one day. These costs were taxed and allowed at £292 2s. 11d. and it was in respect of this sum that the bankruptcy notice was issued. The bankruptcy notice, omitting formal parts and the indorsement, is in the following terms: "To: FRANK JAMES of 102 Grey Street, South Brisbane in the State of Queensland.

TAKE NOTICE: that within seven days after service of this notice on you, excluding the day of such service, you must pay to the Deputy Commissioner of Taxation, Qantas Empire Airways Limited and the Commonwealth of Australia at the office of their agent, the Deputy Crown Solicitor for the Commonwealth, Fourth Floor, T. & G. Building 135 Queen Street, Brisbane aforesaid, the sum of Two hundred and ninety-two pounds two shillings and eleven pence (£292 2s. 11d.) claimed by them as being the amount due on a final order obtained by them against you in the High Court of Australia (Queensland Registry) on the twentieth day of June, 1955, whereon execution has not been stayed, or you must secure or compound

for the said sum to the satisfaction of the said Deputy Crown Solicitor, the agent for the abovenamed creditors, or the satisfaction of the Bankruptcy Court; or you must satisfy the Bankruptcy Court that you have a counter-claim, set-off or cross-demand against the above-named creditors which equals or exceeds the sum claimed by them, and which you could not set up in the action in which the order was obtained". Several grounds were argued in support of the appeal but it is only necessary to refer to certain objections that were raised to the validity of this notice. It will be seen that the bankruptcy notice requires the debtor to pay the debt to the creditors at a particular address it being the address of their agent, the Deputy Crown Solicitor of the Commonwealth, or alternatively to secure or compound for the debt to the satisfaction of this agent or the Court, or alternatively to satisfy the Bankruptcy Court that the debtor has a counter-claim, set-off or cross-demand against the creditors which equals or exceeds the sum claimed by them and which he could not set up in the action in which the order was obtained. It was contended (1) that the notice was invalid because it directed that the debt must be paid to the creditors at a particular address whereas it should only have directed the debtor to pay the creditors or any of them, giving an address or addresses at which they could be found but not excluding the right of the debtor to pay them or any of them wherever he could find them and adding, if the creditors wished it, the name of an agent to whom payment could be made on their behalf at an address somewhere in Australia; (2) that the notice should have directed the debtor in the alternative to secure or compound for the debt to the satisfaction of the creditors or any of them or the court, adding, if the creditors wished it, that it would suffice if the debtor secured or compounded for the debt to the satisfaction of a named agent on their behalf; (3) that the notice should have informed the debtor that as another alternative he must satisfy the Court that he had a counter-claim etc., against the three creditors or each of them which equalled or exceeded the sum claimed by them and which he could not set up in the action in which the order was obtained.

The validity of these objections depends upon the proper construction to be placed upon certain provisions of the *Bankruptcy Act* 1924-1954 and particularly upon those of s. 53. The relevant provisions of the Act are: s. 7 (1) which provides that: "No proceeding under this Act shall be invalidated by any formal defect or by any irregularity, unless the court before which the objection is made is of opinion that substantial injustice has been caused

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thereby, and that the injustice cannot be remedied by an order of that court"; s. 52 which provides that: "A debtor commits an act of bankruptcy . . . . . (*j*) If a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has served on him in Australia or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and the debtor does not, within seven days or such time as is prescribed after service of the notice in Australia, or within the time limited in that behalf by the order giving leave to effect the service elsewhere, either comply with the requirements of the notice, or satisfy the court that he has a counter-claim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action or proceeding in which the judgment or order was obtained"; s. 53 which provides that: "A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner: Provided that a bankruptcy notice—(i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor"; Rule 6 which provides that: "The forms in the schedules to these Rules, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances require, shall be used"; Rule 144 which provides that: "A bankruptcy notice issued by the Court shall be in accordance with Form 5"; Form 5 in the schedule the text of which, omitting the formal parts and the indorsement, is as follows "To A.B. (or A.B. & Co.) of

TAKE NOTICE THAT WITHIN days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment (*or* final order) obtained by him against you in the Court, dated , whereon execution has not been stayed, or you must secure or compound for the said sum to (his) satisfaction or the satisfaction of the Court; or you must satisfy the Court that you have a counter-claim, set-off, or cross-demand against C.D. which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment (*or* order) was obtained.

Dated this day of 19

By the Court, REGISTRAR"

Section 53 provides that a bankruptcy notice shall be in the prescribed form. The prescribed form is that contained in Form 5 but rule 6 provides that this form may be varied to meet the particular circumstances. Section 53 also provides that the notice shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order. We are here concerned with an order that the plaintiff shall pay the costs to the defendants. It does not provide that the plaintiff must pay the costs to the defendants at any particular place as the bankruptcy notice does. But the prescribed form simply directs the debtor to pay the debt to the creditor " of ". Unless the judgment or order does so the notice should not require the debtor to pay the creditor at a particular place. It is the duty of a debtor to seek out the judgment creditor and pay the judgment debt to the creditor if he is in Australia. The debtor has the correlative right to pay the creditor wherever he can find him so that a debtor could be seriously prejudiced if he was led to believe that he was bound to pay the creditor at one particular place. The objection is not a trifling one particularly in a large geographical area like Australia. It is one of substance. If a judgment creditor can direct payment at one place exclusively it means that, although he and the debtor reside or carry on business in the same vicinity, the creditor can require the debtor to seek him or his agent out in some remote part of the realm. The defect in the present bankruptcy notice is that it directs the debtor that he must pay the creditors at a certain address. Such a direction could only be in accordance with a judgment or order if the judgment or order directed payment at that particular address. The creditors, in order to comply with the form in the schedule, varied so as to apply to joint creditors, would have to give an address or addresses where they or one of them, or some agent authorized on their behalf, could be found during the seven days, where the creditor could be paid or where by agreement the debt could be secured or compounded, and this is so whether the address is the residence or the place of business of the creditor: *Re Beauchamp* (1). The proviso authorizes a creditor to specify in the notice an agent to receive payment on his behalf and an address at which the agent could be found at reasonable hours during the seven days would have to be given. The prescribed form is carefully drawn by describing the creditor as " of " so that the notice will require the debtor to pay the creditor in accordance with the terms of a judgment or order which simply directs the debtor to pay the creditor and will not require the

(1) (1904) 1 K.B. 572, at pp. 583, 584.

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debtor to pay the creditor at a particular address. The notice merely gives an address at which the debtor may, at his option, seek out the creditor and pay him. Section 53 also provides that the notice shall require the debtor either to pay the judgment debt or sum ordered to be paid or to secure or compound for it to the satisfaction of the creditor or the court. This requirement is carefully reproduced in Form 5. But the present notice notifies the debtor alternatively that he must compound for the debt to the satisfaction of the Deputy Crown Solicitor, "the agent for the abovenamed Creditors, or the satisfaction of the Bankruptcy Court." It does not follow the prescribed form varied to meet the circumstances. It fails to notify the debtor that he may secure or compound for the debt to the satisfaction of the creditors themselves. The proviso to s. 53 does not authorize the specification of an agent in substitution for the creditor himself; its terms are appropriate only to authorize the specification of an agent to act on behalf of a creditor in respect of any payment or other thing required by the notice to be made to or done to the satisfaction of the creditor.

Mr. *Wanstall* contended that a bankruptcy notice was sufficient which directed the debtor that he must pay the creditor at a particular address provided there was an authorized agent there to receive payment. He relied on the dicta in the judgments of the Court of Appeal in *Re a Debtor* (1). The actual decision is not in point. It was a case where a French firm of two persons carrying on business in Paris had obtained in the King's Bench Division against an English defendant a judgment adjudging that the plaintiffs recover against the defendant the sum of £202 9s. 7d. and £10 15s. 0d. costs. The plaintiffs issued a bankruptcy notice directing the defendant to pay these sums to the two members of the firm (naming them) "of" a Paris address. It was held that the bankruptcy notice was bad for it required the debtor to pay the creditors out of the realm and therefore beyond the jurisdiction of the court and this was not in accordance with the terms of the judgment, for it is the duty of a judgment debtor to find the judgment creditor and pay him the amount of the judgment provided the creditor is in England but he has no obligation to go out of the realm in order to find him. In *Pepper* v. *McNiece* (2), it was held that in the Commonwealth the realm does not mean the State in which the judgment or order is obtained but Australia generally. But the members of the Court of Appeal proceeded to discuss and explain a previous decision of

(1) (1912) 1 K.B. 53. (2) (1941) 64 C.L.R. 642.

that Court in *Re a Debtor* (1), the effect of which they considered had been misunderstood. There, the judgment creditors and the judgment debtor were both in England and the bankruptcy notice had directed the debtor to pay the judgment debt to the three creditors, Kitchin, Aylard and Craddock, late " of " 5 Copthall Court in the City of London, carrying on business at certain addresses in the City, or to their solicitors Spyer & Sons of 65 London Wall in the City. It was held that the judgment required payment to the plaintiffs and it was not in accordance with its terms for the notice to require payment to the plaintiffs or their solicitors. *Cozens-Hardy* M.R. said : " The judgment required payment to the plaintiffs, and it was not in compliance with the Act for the notice to require payment to the plaintiffs, or their solicitors, who certified, without any other proof, that they had authority to receive it. But so far from deciding that a notice to pay the plaintiffs in the action following the form of the judgment would not be sufficient if payment was directed to be at a particular address where there was an authorized agent to receive it, I think the contrary was in terms asserted " (2). He said : " It really seems to me it would not be open to us, having regard to the decision in *In re Persse* (3), to accept the proposition which has been strenuously argued before us by the respondents to this case, that payment to an agent is not payment to the principal within the meaning of this section. I think, therefore, no difficulty whatever need arise in the case of foreign creditors. They have only to say, in the words of the bankruptcy notice, 'Pay me the proper amount at some address in London', and to have at that address a duly constituted and proper agent duly authorized to receive payment on behalf of the plaintiff " (4). *Fletcher Moulton* L.J. said : " In my opinion that decision did not intend in any way to interfere with what had already been laid down by this Court, namely, that it is sufficient that at the address given there should be an agent properly authorized to receive payment of the money and to give a discharge for the debt . . . The decision turned entirely on the special facts of that case, and it was not intended to throw any doubt whatever on the power of the judgment creditor to arrange that the receipt of the debt shall be by a properly authorized agent at the address given " (5). Both *Fletcher Moulton* L.J. (6) and *Farwell* L.J. (7), referred to the ordinary rule that it is the duty of a judgment debtor to find the judgment creditor and pay to him the amount of the

(1) (1911) 2 K.B. 718.
(2) (1912) 1 K.B., at p. 58.
(3) (1911) 55 Sol. Jo. 314.
(4) (1912) 1 K.B., at p. 59.
(5) (1912) 1 K.B., at pp. 61, 62.
(6) (1912) 1 K.B., at p. 60.
(7) (1912) 1 K.B., at p. 62.

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judgment, provided that the judgment creditor is in England. *Farwell* L.J. said: " The remedy given to the creditor by s. 4 of the *Bankruptcy Act* is an additional remedy, and the Courts have construed that with exceeding strictness. It would be, in my view, very harsh to impose upon the debtor the further liability of pursuing his creditor abroad if the creditor did not choose to remain in England where payment could be made . . . I can find no foundation for the argument that that was a decision (that is the 1911 case) that a creditor cannot demand payment to his duly authorized agent. The natural course for the foreign creditor to take is to direct the debtor to pay to him at the office of the person who is authorized to receive it, and when the debtor attends there to pay, he will be met by the duly authorized agent of the creditor, who will produce his power of attorney " (1). It must be remembered that these dicta must be read *secundum subjectam materiam*. Their Lordships were discussing two bankruptcy notices one of which gave the address of the creditors as " of " an address in Paris and the other the addresses of the creditors as carrying on business in London. Neither notice required the debtor to pay the creditor at a particular place. The remarks were made with reference to the right of a creditor to describe himself as of an address within the realm and to notify the debtor that he could pay the debt there. They held that a foreign creditor would be within the realm for the purpose of the notice, even if he was not there in person during the seven days, provided he had an agent at the address given during this period duly authorized to receive payment. They were not discussing the question whether a judgment creditor could appoint an exclusive place for payment within the realm and refuse a tender of payment elsewhere. There is nothing in the judgments to suggest that a debtor would not comply with a bankruptcy notice issued on behalf of a creditor abroad who appoints an agent within the jurisdiction to receive the debt if the debtor preferred to go to the creditor at his foreign address and pay him there.

It was contended by Mr. *Wanstall* that it would be difficult to describe the Commonwealth as being " of " any particular address. But when it is remembered that the address may be any address where there is an agent authorized to receive payment or where the debt can be secured or compounded the difficulty disappears. It should be easy for the Commonwealth to give a multiplicity of such addresses. The same may be said of Qantas Empire Airways Ltd. Any address anywhere this company carries on business in

(1) (1912) 1 K.B., at pp. 62, 63.

Australia would suffice. No such difficulty would be experienced in the case of the Deputy Commissioner of Taxation who is as accessible as any other individual. A debtor might have difficulty in seeking out the Commonwealth or a corporation and paying them otherwise than at the address given. But it is for him to solve this difficulty and it does not supply a reason for placing him in a different position *qua* a creditor like the Commonwealth from the position he would be in *qua* an individual creditor. He can always pay at the address given whether the creditor be animate or inanimate.

As appears from the statement of the objections Dr. *Louat* contended that where there is more than one creditor the bankruptcy notice must refer to the creditors or either of them if there are two or the creditors or any of them if there are more than two. Accordingly in the present case, there being three creditors, he contended that the present bankruptcy notice should have directed payment of the debt to the creditors or any of them, that it should have notified the debtor that he could secure or compound the debt to the satisfaction of the creditors or any of them, and that it should have notified him that he could apply to the Court if he had a counter-claim etc. against the creditors or each of them. This contention should be rejected. It is based on *Re a Judgment Debtor* (1), but this case if correctly decided is distinguishable. There the judgment in the action was for a partnership debt and the bankruptcy notice required payment to be made to the two partners as individuals and for this reason the majority of the Court thought that it did not follow the terms of the judgment. It is a case depending on its own special facts. Here the order is an order that the plaintiff pay the costs of the action to the defendants. In order that the bankruptcy notice should be in accordance with this judgment it should direct the plaintiff to pay the three defendants named in the action. In the same way it should notify the debtor that he may secure or compound the debt to their satisfaction. In the same way it should notify the debtor that he may apply to the court to set aside the notice if he has a counter-claim etc. against the three creditors which equals or exceeds the amount claimed by them. The bankruptcy notice therefore properly notified the appellant of the last alternative and the third objection to the sufficiency of the notice fails. But the other two objections prevail, not because the notice fails to include the words " or any of them ", but because it wrongly seeks to restrict the debtor to paying the debt to the creditors at one particular place and because

(1) (1908) 2 K.B. 474.

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it does not notify him that he may in the alternative secure or compound the debt to their satisfaction. In the first respect it is not in accordance with the terms of the order and in the second it is capable of misleading the debtor as to the manner in which he may secure or compound for the debt. The court cannot inquire whether the debtor has in fact been misled or not. In this case it is probable that he was not misled. It is sufficient that he could be misled. But strict compliance with the requisites of a bankruptcy notice is essential to its validity and in these two respects the bankruptcy notice does not comply with these requisites. The defects cannot be regarded as formal defects or irregularities. They are breaches of important provisions of s. 53: see *Re Collier*; *Ex parte Dan Rylands Ltd.* (1); *Re a Debtor*; *Ex parte The Debtor* v. *Bowmaker Ltd.* (2); *Re a Debtor*; *Ex parte The Debtor* v. *Hunter* (*Liquidator of Marvel Paper Products Ltd.*) (3).

There remains the question of costs. The objections to the bankruptcy notice that have been upheld were not taken in the Bankruptcy Court where the appellant appeared in person. They were not specifically taken in the notice of appeal to this Court although they are covered by the grounds. It was contended that because these objections were taken at such a late stage there should be no order as to costs. But on the whole we see no sufficient reason for depriving the appellant of his costs.

The appeal should be allowed with costs (including the reserved costs referred to in the order of 2nd December 1955). The sequestration order of 24th November 1955 should be set aside and the petition of 23rd September 1955 be dismissed with costs.

Appeal allowed with costs (including the reserved costs referred to in the order of 2nd December 1955). Sequestration order of 24th November 1955 set aside. In lieu thereof order that the creditor's petition of 23rd September be dismissed with costs.

Solicitors for the appellant, *Sly & Russell.*

Solicitor for the respondent, *H. E. Renfree*, Crown Solicitor for the Commonwealth.

J. B.

(1) (1891) 8 Morr. 80.
(2) (1951) 1 Ch. 313.
(3) (1952) 1 Ch. 192, at pp. 196, 197.