

[HIGH COURT OF AUSTRALIA.]

BLEEZE . . . . . APPELLANT;  
PETITIONER,  
  
AND  
  
FOPP . . . . . RESPONDENT.  
RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
SOUTH AUSTRALIA.

H. C. of A. *Insolvency—Judgment debt—Notice to pay—Tender of payment of debt—Refusal to*  
1911. *accept payment—Annulment of adjudication of insolvency.*

MELBOURNE,  
Oct. 10.  
  
Griffith C.J.,  
Barton and  
O'Connor JJ.

A notice under sec. 61 of the *Insolvency Act* 1861 (S.A.), requiring payment of a judgment debt within 14 days and stating that in default of payment insolvency proceedings would be taken, was served on the debtor. Negotiations were going on between the solicitors of the parties for a settlement. A tender of the amount of the debt was made to the creditor personally but he refused to accept the money. The creditor having obtained an adjudication of insolvency against the debtor, it was subsequently annulled by the Supreme Court of South Australia.

Special leave to appeal to the High Court from the decision of the Supreme Court was refused.

APPLICATION for special leave to appeal.

On 13th January 1911 James Edward Bleeze, of Blumberg, South Australia, recovered judgment in the Local Court of Gumeracha, South Australia, for £50 and costs against Anton Fopp, also of Blumberg. The costs were subsequently taxed at £25 2s. 6d. On 11th April a notice under sec. 61 of the *Insolvency Act* 1886 was served on the defendant requiring immediate payment of £75 2s. 6d., and stating that unless payment was made within fourteen days insolvency proceedings would be taken by the plaintiff against the defendant. Certain negotiations for a settlement were going on up to 21st April between the



solicitors for the parties, but without result. On 24th April, the last day for payment under the notice of 11th April, a tender was made on behalf of the defendant of £75 2s. 6d. to the plaintiff at his shop in Blumberg, but the plaintiff refused to accept it, stating that his solicitor had told him to leave the matter in his (the solicitor's) hands.

H. C. OF A.

1911.

BLEEZE

v.

FOPP.

On 11th May an adjudication of insolvency against the defendant was obtained on behalf of the plaintiff, the act of insolvency relied on being the non-compliance with the notice of 11th April. On 23rd May the defendant showed cause in the Court of Insolvency at Adelaide against the adjudication, but it was upheld by the Commissioner of Insolvency. On appeal to the Supreme Court of South Australia, the Full Court (*Way C.J.* and *Gordon J.*) reversed the order of the Court of Insolvency and annulled the adjudication.

An application was now made for special leave to appeal to the High Court from this decision.

*O'Halloran*, for the appellant.

[GRIFFITH C.J.—Does not an appeal lie without leave in this case? The judgment affects the status of the respondent within sec. 35 of the *Judiciary Act* 1903.]

There is a doubt whether a petitioner has a right to appeal from a judgment refusing to make a respondent insolvent. The plaintiff acted reasonably in refusing to accept payment because all the negotiations had been going on between the solicitors. The defendant was not prevented from complying with the order of 11th April, for he could have paid to the plaintiff's solicitor, or he could have paid the money into Court.

GRIFFITH C.J. Whether an appeal does or does not lie as of right, this is certainly not a case for special leave.

BARTON J. concurred.

O'CONNOR J. concurred.

*Special leave to appeal refused.*

Solicitor, for the appellant, *J. S. O'Halloran*.

B. L.

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