

No 22 8/1941

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IN THE HIGH COURT OF AUSTRALIA.

I S A A C S

V.

WRIDGWAY BROS. (AUBURN)
PROPRIETARY LIMITED.

REASONS FOR JUDGMENT.

Judgment delivered at MELBOURNE.

on TUESDAY 14th OCTOBER 1941.

This is an appeal from an order made by the Judge in Bankruptcy sequestrating ^{the} appellant's estate. The appellant is a married woman and the Bankruptcy Act sec.5 provides that such an order can be made against married women. The Act of bankruptcy upon which the bankruptcy petition is founded is non compliance with the requirements of the bankruptcy notice under sec. 52 subsec. j of the Bankruptcy Act. The relevant facts are that an action in which the appellant was plaintiff and the respondent company defendant was heard in the County Court. In this action the plaintiff made two claims (1) that the defendant had wrongfully removed or converted her goods chattels and effects. The question of the ownership of these goods had already been referred to a Judge of the County Court who had determined that they were not the plaintiff's property and were still the property of Mr John Isaacs. That question having been determined against the plaintiff she could not make any case against the defendant in the action on the first ground mentioned viz. wrongful removal or conversion of her property. The second ground in the action that for trespass on her property also failed because the only evidence in the action was that the property in question did not belong to her and the defendant Company went on to the property as the agent of one of the owners. In these circumstances the learned County Judge rightly decided that the plaintiff had given no evidence to support either claim and nonsuited her and made an order for payment by her of the costs of the action. ^{But of} These costs when taxed amounted to £104-18-9. A bankruptcy notice requiring the appellant to pay this sum was ^{duly} served on her and upon her failing to comply with the requirements of the notice the petition was filed. When this petition came on for hearing before the Judge in Bankruptcy no cause was shown to His Honour why the sequestration order should not be made. Accordingly ~~and~~ the order was made against which this appeal was launched. She did not make any application to set aside the bankruptcy notice and no ground has been shown to exist on which such an application should have been based. Her action against the Directors of the petitioning Company could not possibly constitute a counter claim ^{set off}

or cross demand against the Company.

The appeal must be dismissed with costs. If the respondent Company cannot recover the costs from the ^{appellant} petitioner it may apply to the Official Receiver to allow them out of the estate of the bankrupt and if he refuses to do so may apply to the Judge in Bankruptcy