

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

REGAN

V.

THE QUEEN

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on THURSDAY, 26th NOVEMBER 1964

REGAN

v.

THE QUEEN

ORDER

Appeal allowed. Set aside so much of the order of the Court of Bankruptcy as orders that the appellant be imprisoned for the period of six months and in lieu thereof order that upon the appellant giving security by his own recognisance in the sum of £250 before the Court of Bankruptcy to be of good behaviour for a period of two years and during that period to comply with the provisions of the Bankruptcy Act, the appellant be released from custody.

REGAN

v.

THE QUEEN

JUDGMENT

BARWICK C.J.
TAYLOR J.
OWEN J.

REGAN

v.

THE QUEEN

We are of opinion that there was ample evidence before the Court of Bankruptcy to support the appellant's conviction under sec. 209(g) of the Bankruptcy Act for having omitted to keep such books of account as were usual and proper in the business he carried on, and as sufficiently disclosed his business transactions and financial position during the period between 30th November 1960 and 30th June 1962, a sequestration order having been made against the appellant on 14th December 1962. We are therefore of opinion that the conviction should stand.

However, having examined the evidence given before the Court of Bankruptcy, we are of opinion that in sentencing the appellant to six months imprisonment His Honour took an erroneous view of material facts and that the sentence imposed by him should be set aside. The evidence placed before His Honour did not at all times clearly distinguish between the activities of certain companies of which the appellant was a director and his personal business activities. It seems that during the period charged he did borrow money and that, apart from investing by far the greater part of it on his own account in a partnership venture of dealing in jute, he made such money available to one or other of the companies with which he was associated. Also during the period he paid interest on moneys borrowed by him, and also renewed loans obtained by him, before the commencement of the period. These activities were variously described as the carrying on of the business of a financier and of that of a finance broker - whatever precisely that description covers.

In a list of lenders and amounts borrowed which the appellant prepared after the conclusion of the period the

subject of the charge for the assistance of his accountant who was engaged in investigating the affairs of the said companies and his affairs and in making up the appellant's books, he included an entry with respect to a personal loan made to him by a Mr. Talty either at the very end of the period charged or just after its conclusion. The appellant in this list set a date for repayment of this loan and a rate of interest thereon which Mr. Talty, who was called before the Court by the appellant to speak of his good character, denied had been the subject of agreement by him at the time of the making of the personal loan.

His Honour seems either to have regarded this entry in the list given by the appellant to his accountant as being an untrue record, or to have regarded the absence of an entry of this personal loan by Talty from a deposit book which the appellant claimed to have kept but which was not produced, as indicating a significant deficiency in that book as a faithful and true record of the appellant's transactions. But it did not follow that because there was no express agreement with Talty as to a date of repayment of and as to a rate of interest upon the personal loan, the appellant's direction to his accountant was incorrect. This may have been intended as a record of what the appellant proposed that he should regard himself as bound to do in connection with the personal loan although the matter had not been discussed with his friend at the time. The deposit book in question, according to the evidence, was not kept to record such loans as that made by Mr. Talty but rather to record loans by persons who did not wish their transactions with the appellant to be recorded in the usual way.

Then His Honour seemed to think that the partnership venture in jute was a "very risky one", and that for this reason and because some of the loans to the appellant

in the period were to entitle the lenders to a share in the profits of the venture, the failure to keep the necessary books was so lamentable that the appellant's offence was a "very serious one".

With great respect to His Honour, we are of opinion that these were misapprehensions which had such an influence upon His Honour's assessment of the appropriate sentence that that sentence should not be allowed to stand.

Whilst there was a failure to keep proper books of account, we do not think that the history of Mr. Talty's loan indicated any falsification of such records as were made. Though it could be said that the business activities of the appellant in participating in the jute dealing were risky, perhaps very risky, the accounts of the partnership were not kept by him nor, it would seem, were they under his personal control. Assuming some of the lenders to the appellant were due to receive either a share of the profits from the partnership venture in jute or a rate of interest which took account of those profits, we do not think that any greater obligation to make a record of the loans fell on the appellant or that his failure to keep the necessary books of account for that reason became such a serious breach as merited the maximum sentence which His Honour was authorised to impose.

There is no suggestion of fraud on the part of the appellant, or that his failure to keep the usual and proper books had prevented the exposure of any suspected fraud; and it would seem that with such primary records as were available, perhaps aided by the records of the companies and of the partnership, all the appellant's transactions in the period charged could be traced.

The appellant is a person of good character and reputation and his health is and has for some considerable time been seriously impaired. Without in the least minimising or

detracting from the seriousness of the failure to keep proper and usual books of account, we are of opinion that in this case, whilst maintaining the conviction, it would be proper to release the appellant without passing sentence upon him, upon his giving security by his own recognisance in the sum of £250 before the Court of Bankruptcy that he will be of good behaviour for a period of two years and that during that period he will comply with the provisions of the Bankruptcy Act.