U.BACH AND ANOTHER

v.

WALKER BROTHERS (AUSTRALIA) PROPRIETARY LIMITED

JUDGMENT (ORAL)

JUDGMENT OF THE COURT DELIVERED BY TAYLOR J.

CORAM: TAYLOR J.
MENZIES J.
OWEN J.

JEBACH AND ANOTHER

v.

WALKER BROTHERS (AUSTRALIA) PROPRIETARY LIMITED

This is an appeal from a sequestration order made by the Federal Court of Bankruptcy in respect of the estate of each of the appellants. The act of bankruptcy upon which the petition was founded was alleged, substantially, in the following terms: that the appellants had, within six months before the presentation of the petition, assigned their estates to a trustee pursuant to a deed of arrangement made under Part XII of the Bankruptcy Act 1924-1950 made for the benefit of their creditors generally, which deed was filed and registered on 17th April 1964.

The petition was opposed on the ground that the deed was in full force and effect and that, although the respondents had not assented to the deed in the manner provided by sec. 195(2) of the Act, it had lodged a proof of debt with the trustee and was, therefore, precluded from relying upon the execution of the deed as an act of bankruptcy.

The Bankruptcy Court disposed of these objections on two grounds. It was held, first of all, that the deed was not in accordance with Part XII of the Act and, secondly, that the deed was void, as it appeared that it had not received the assent of a majority in value of the creditors within the prescribed time.

The evidence on the latter point is, in many respects, quite unsatisfactory but it appears that it was conceded at the hearing, as it was on this appeal,

alleged in the petition - and not merely in the sum of £9,392 - that is, the amount shown in the schedule to the deed as the amount of their debt - the majority in value of the creditors had not assented to the deed.

There is, we think, the clearest evidence that the amount of the respondent's debt was £15,089 and that a debt to this extent was acknowledged by both of the appellants. But because it was in respect of a liability contracted under a contract of guarantee the appellants, or perhaps the trustee, thinking that the respondent might recover some part of its outstanding moneys from the principal debtor, inserted a net amount in the deed after taking this factor into account.

The court thought there was no justification for the writing down of the respondent's debt in this manner and we agree. On this view it is clear that the requisite assents to the deed were not obtained and, accordingly, that pursuant to sec. 193(1) of the Act it became void. In that event, it is not suggested that it could be relied upon to defeat the respondent's petition.

This is enough to dispose of the appeal and it is unnecessary for us to deal with the other matters which were raised. We add, however, that we do not agree that the deed itself was not in conformity with Part XII of the Act although in view of the conclusion which we have expressed this is of no consequence in the appeal.

The appeal will be dismissed with costs.

URBACH AND ANOTHER

V.

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REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE,

on TUESDAY, 4TH MAY 1965

A. C. Brooks, Government Printer, Melbourne
C.7639/60

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The Bankruptcy Court disposed of these objections on two grounds. It was held, first of all, that the deed was not in accordance with Part XII of the Act and, secondly, that the deed was void, as it appeared that it had not received the assent of a majority in value of the creditors within the prescribed time.

The evidence on the latter point is, in many respects, quite unsatisfactory but it appears that it was conceded at the hearing, as it was on this appeal, that if it was established that at the date of the execution of the deed that the appellants were indebted to the respondent in the sum of £15,089 - that is, the amount

alleged in the petition - and not merely in the sum of £9,392 - that is, the amount shown in the schedule to the deed as the amount of their debt - the majority in value of the creditors had not assented to the deed.

There is, we think, the clearest evidence that the amount of the respondent's debt was £15,089 and that a debt to this extent was acknowledged by both of the appellants. But because it was in respect of a liability contracted under a contract of guarantee the appellants, or perhaps the trustee, thinking that the respondent might recover some part of its outstanding moneys from the principal debtor, inserted a net amount in the deed after taking this factor into account.

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