

28<sup>th</sup> April, 1988. Before Commissioner R. Vibert. O.B.E.

79.

**IN THE MATTER of the Application of the Trustee of the property of Roy Clifford Tucker, a bankrupt, for an order in aid under S.122 of the Bankruptcy Act, 1914**

Application of Julian Anthony Clyde-Smith ("the Defendant") to show cause why the dates set for hearing, namely, May 18th - 20th 1988, should not be vacated and the hearing stayed till further order.

Advocate W. J. Bailhache for the Defendant  
Advocate R. J. Michel for Colin Graham Bird, the Trustee in Bankruptcy  
Mr. Cyril Whelan, Crown Advocate, for the Attorney General

Mr. Whelan having stated that the Attorney General has no interest in the question raised by the Summons, it was agreed that he might withdraw.

**BACKGROUND**

The Trustee on the 12th March, 1987 obtained an Order in the High Court for an Order under S.122 of the Bankruptcy Act 1914, which provides that British Courts wherever situated should assist each other in matters of bankruptcy. The Order sought the aid of the Royal Court in examining the Defendant and in receiving production from him of a large number of documents described in the Application.

On the 27th March, 1987 the Trustee applied to the Royal Court for the implementation of the Order.

On the 10th April, 1987 the case was placed on the pending list and the Attorney General was convened at the request of the Defendant to represent the public interest.

On the 22nd July, 1987 the Answer of the Defendant was filed.

On the 13th March, 1987 the Plea of the Attorney General was filed.

On the 24th August, 1987, the Reply of the Trustee was filed.

In November 1987 it was agreed that the matter in dispute be determined by the Royal Court on the 2nd, 3rd and 4th March, 1988.

On 16th February, 1988 the Defendant by Summons sought and obtained a postponement to the 18th - 20th May, 1988 on the ground that there was the possibility of a settlement, a possibility which has not come to pass.

**GROUNDS OF PRESENT APPLICATION**

The opposition of the Defendant to the Trustee's Application is based on the contention that the application of the Trustee relates to what is in substance a tax bankruptcy "and any Order of this Court in favour of the Trustee would result in a direct or indirect enforcement of a foreign revenue statute" (5.1 and 5.7 of Answer)

The Trustee denies that the bankruptcy is a tax bankruptcy and, as part of his argument in this connection, contends that there is at this time one other creditor whose claim is being considered. (Reply, 2.2). Since the filing of the Reply, the Trustee has referred the claim of that other creditor ("Mr. Harris") to the High Court for direction as to whether it should be admitted.

The basis of the Defendant's claim for a further postponement of the hearing is that the validity of the Trustee's contention, that this is not a "tax bankruptcy" depends crucially on the validity of the Harris claim. And therefore that it would assist the Court, in determining all matters in dispute, if the trial were delayed until the High Court had issued its directions. I was told that the High Court judgment was expected in November 1988, or about that time. There is also the possibility of an appeal to the Court of Appeal and the House of Lords, as I was told that it was not possible for the Defendant to accept the decision of the High Court, because he was not a party and the question of an appeal would be for Mr. Tucker.

As Mr. Bailhache rightly contended, it would be far more convenient for the Royal Court to have the Harris issue decided one way or the other, before dealing with what will be, in any event, complicated and important issues.

Nevertheless, I do not feel that I can grant the application.

This is partly because of the additional delay involved. The Trustee's application to the Royal Court is now over a year old, and there has already been one postponement at the request of the Defendant. Even so, it might well have seemed right to require the High Court solution to Harris before proceeding further, if it had been absolutely clear that the Royal Court would find the validity, or otherwise, of the Harris claim an essential ingredient of the problem.

I have come to the conclusion that, as contended by Advocate Michel, I would have to go a long way towards deciding the case as a whole before I could find that the Harris issue is essential before the Royal Court comes to a decision.

I would, in general, have to decide that the Trustee's answer to the Defendant's contention that the Royal Court should not grant the Trustee's application, because this would amount to assisting a foreign state to enforce a taxation statute, depends wholly on the validity of the Harris claim.

For me so to hold would involve me finding against the Trustee in respect of his other submissions on this point; amongst these are:-

- (a) that the original petitioning creditors were creditors for an ordinary civil debt, unrelated to tax matters, and so that the bankruptcy cannot properly be described as a tax bankruptcy, that is one which a foreign Court should not assist (3.1 of Reply).
- (b) that to seek information which could lead to a tax claim is not the same as seeking to enforce a revenue statute (3.1 of Reply);
- (c) that S.122 of the Bankruptcy Act, 1914, requires British Courts to assist each other in bankruptcy proceedings.

I do not, of course, imply that I would find in favour of the Trustee in any or all of these matters. The point is that for me to find that the Court will have to determine the validity of the Harris claim would mean me deciding against the Trustee in all these other respects, and I would be virtually hearing the whole case, not merely deciding an application as to dates.

The Court may, of course, itself come to the conclusion that the validity of the Harris claim must first be decided, in which case it is empowered in its inherent jurisdiction, and by Royal Court Rule 7/5, "in the interest of justice, to postpone or adjourn a trial or hearing of an action for such time and on such terms, if any, as it thinks fit".

I was interested to note, from the affidavit of Mr. P. J. M. Fidler, an English Solicitor, acting for the Trustee, that the contention that this same bankruptcy is a tax bankruptcy had been considered by the Manx Court of Appeal, which decided, on the 19th April, 1988, that it could not be so regarded. As, however, the reasons for the judgment have not yet been issued, I have not taken this into account in coming to a decision.

The Application is not granted.

Authorities Cited

RULE 7 OF THE ROYAL COURT RULES, 1982

ORDER 35 RULE 3 OF THE SUPREME COURT PRACTICE,  
1988.

PARAGRAPHS 5215 to 5218 INCLUSIVE THE SUPREME COURT PRACTICE, 1988

HINCKLEY ETC. BLDG. SOCIETY v. FREEMAN (1940) 4 All ER 212

RE YATES' SETTLEMENT TRUSTS (1954) 1 All ER 619

RE TUCKER (A BANKRUPT), EXPARTE TUCKER (C.A.) 1 All ER 603

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