

In re A JUDGMENT DEBTOR.

[No. 2176 of 1938.]

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Dec. 20.

Bankruptcy—Bankruptcy notice—French judgment registered in England—Judgments (Extension) Act, 1868 (31 & 32 Vict. c. 54), ss. 3, 4, 6—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 1—Administration of Justice Act, 1920 (10 & 11 Geo. 5, c. 81), s. 9—Foreign Judgments (Reciprocal Enforcement) Act, 1933 (23 Geo. 5, c. 13), s. 2, sub-s. 1; ss. 4, 6.

Sect. 6 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, provides: "No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom":—

Held, that a bankruptcy notice, based upon a judgment of a competent Court in France, cannot be set aside.

THIS was an appeal by the creditor against an order of Mr. Deputy Registrar Mellor setting aside a bankruptcy notice. The bankruptcy notice was founded upon a judgment of a competent Court in France for a sum amounting to something over 19,000*l.*, which had been registered pursuant to the Foreign Judgments (Reciprocal Enforcement) Act, 1933. The French judgment was delivered in June, 1937, the registration took place in July, 1938, and the bankruptcy notice was issued on October 6, 1938.

Cyril Salmon for the appellant. The provisions of s. 1 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, apply to France. Sect. 2 deals with the registration of foreign judgments, and its provisions have been complied with in this case. The words of s. 1 are of the widest nature, and must include bankruptcy. Under s. 6 a creditor who has obtained a judgment against a debtor in a foreign Court can only proceed in this country by way of registration. If the learned Deputy Registrar is right, creditors are now in a worse position than before the passing of the Act of 1933.

[SIR WILFRID GREENE M.R. referred to s. 4, sub-s. 1 (a) (i.), (ii.), (iii.), (iv.), (v.).]

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If the matter is free from authority, those paragraphs are almost too clear for argument. There are two cases put against me, but I say they support me: *In re Watson* (1) is the first, but that case was under the Judgments (Extension) Act, 1868, and turned on the words "but in so far only as relates to execution under this Act" at the end of s. 4. No such words are used in the Act of 1933. That case was followed in *In re a Bankruptcy Notice*. (2) Those two cases have no application here in view of the wide divergence of language in the Acts of 1868 and 1933. *Thompson v. Gill* (3) dealt with the same words in s. 4 of the Act of 1868. There are no such limitations in the Act of 1933, and this appeal ought to be allowed.

Douglas Lowe for respondent. The Foreign Judgments (Reciprocal Enforcement) Act, 1933, is the climax of a series of Acts. The Administration of Justice Act, 1920, is based on the Act of 1868.

If the word "proceedings" in s. 6 of the Act of 1933 was intended to extend to "bankruptcy proceedings" the Legislature would have said so. *Galbraith v. Grimshaw & Baxter* (4) referred to a garnishee order. On an application to set aside a bankruptcy notice, no question of the validity of the debt can be considered: *Williams on Bankruptcy*, 15th ed., p. 35.

There is no reason for setting aside the order of the Deputy Registrar. [He also cited *Yukon Consolidated Gold Corporation Ltd. v. Clark*. (5)]

SIR WILFRID GREENE M.R. This is an appeal by the creditor against an order of Mr. Deputy Registrar Mellor setting aside a bankruptcy notice. The bankruptcy notice was founded upon a judgment of a competent Court in France for a sum amounting to the equivalent of something over 19,000*l.*, which had been registered pursuant to the Foreign Judgments (Reciprocal Enforcement) Act, 1933. That registration took place in July of 1938.

(1) [1893] 1 Q. B. 21.
(2) [1898] 1 Q. B. 383.
(3) [1903] 1 K. B. 760.

(4) [1910] 1 K. B. 339.
(5) [1938] 2 K. B. 241.

The French judgment having been delivered in June of 1937, on October 6, 1938, the bankruptcy notice now in question was issued, and the application to set it aside was based on two arguments, the second of which was that upon the merits the debtor had a good set-off or counterclaim. That was negatived and it has not been referred to before us.

The first of the arguments, which is the one with which we have to deal, raises a question of importance but, in my opinion, a question presenting no real difficulty, under the Foreign Judgments (Reciprocal Enforcement) Act, 1933. Putting it quite shortly, the argument is that under that Act the only relief which the holder of a foreign judgment registered under the Act can obtain is relief by way of execution, whether execution strictly so-called or execution in a looser sense such as equitable execution by way of receivership or garnishee proceedings—neither of which, of course, are in strictness execution at all. The Act of 1933 is the last of a series of Acts dealing with judgments which, for the purposes of the Courts of this country, are foreign judgments: whereas the earlier Acts dealt with judgments in Courts of other parts of the United Kingdom and the British Dominions, the present Act is the first Act which introduces the system of registration in respect of judgments of the Courts of countries which are not part of His Majesty's Dominions.

Before I come to look at the Act of 1933, I will say a word about the earlier legislation. The first Act to which attention is called is the Judgments (Extension) Act of 1868. That was an Act the object of which was to make judgments obtained in certain Courts in England, Scotland and Ireland effectual in other parts of the United Kingdom. It did so by means of a scheme of registration of judgments. Sect. 1 deals with the question of registration of English and Irish judgments in Dublin and Westminster, and s. 3 with the question of registration of decreets of the Court of Session at Westminster and Dublin. I need only refer to s. 3, because s. 1 is to the same effect *mutatis mutandis*. Sect. 3 provides that the certificate of judgment "shall from the date of such "registration be of the same force and effect as a judgment

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“obtained or entered up in the court in which it is so registered.” Then s. 4, with regard to all judgments registered under the Act, provided that the Courts in the three countries “shall have and exercise the same control and jurisdiction over any judgment or decreet, and over any certificate of such judgment or decreet, registered under this Act in such Courts respectively, as they now have and exercise over any judgment or decreet in their own courts, but in so far only as relates to execution under this Act.” It has been held in cases binding upon this Court that, notwithstanding the generality of the words in s. 3, “all proceedings shall and may be had and taken,” the concluding words of s. 4, namely “in so far only as relates to execution under this Act,” impose a limitation upon the effect of registration by limiting that effect to execution, although not to execution strictly so-called, because it has been held to extend also to the case of receivership by way of equitable execution; but it was held that those limiting words were sufficient to exclude from the operation of the Act and from the effect of registration a bankruptcy notice and also a judgment summons under the Debtors Act, 1869 (32 & 33 Vict. c. 62)—that was the earlier of the two decisions cited to us. The reason why that view was taken in those cases was that the limiting words at the end of s. 4 were sufficient to exclude the bankruptcy notice and the summons under the Debtors Act. I need not refer to those cases beyond giving the references to them. They are *In re Watson* (1) and *In re a Bankruptcy Notice*. (2) Before I leave that Act, there is another matter with regard to it which I must mention. Of course, apart from statute, the only way of enforcing the judgment of a foreign Court (and in the word “foreign” I include Courts other than the Courts of England, and therefore I include Scotch and Irish and Dominion Courts) was by action, and various defences could be set up to an action of that kind. The Act of 1868 did not take away from the holder of a foreign judgment his right to start proceedings in the Courts of this country to enforce the judgment, proceedings initiated by writ in the usual way;

(1) [1893] 1 Q. B. 21.

(2) [1898] 1 Q. B. 383.

and, if he had taken such proceedings in the case, let me say, of a Scotch decret and had obtained judgment in them, there was nothing to prevent him commencing his bankruptcy proceedings on the basis of the judgment so obtained. The only effect of the authorities to which I have referred is that mere registration does not give the right to start bankruptcy proceedings by way of bankruptcy notice or otherwise. In order to do that under that Act the creditor would have to sue upon the judgment and obtain a judgment thereon. The Act did contain a provision in s. 6 giving the Court a discretion in the matter of the costs of an action brought to enforce any judgment or decret which could be registered under the Act. As Stirling L.J. pointed out in one of the cases, the object was to discourage the old method of enforcing foreign judgments by suit in this country and encourage the holders of such judgments or decreets to avail themselves of the machinery of registration. Nevertheless, as I have said, for the purpose of bankruptcy proceedings it still remained possible under that Act for the bankruptcy machinery to be set in motion in the way I have mentioned.

The next Act is an Act of 1920, the Administration of Justice Act, which in s. 9 and the following sections contains provisions for the enforcement in the United Kingdom of judgments obtained in superior Courts in British Dominions. The only matter which it is necessary to mention with regard to s. 9 is that, although the actual arrangement of the relevant provisions setting out the effect of registration is somewhat different from that contained in the Act of 1868, the language is clearly borrowed from that Act; and (what for the present purpose is most important) it contains the same limitation upon the effect of registration, limiting it to execution, as was contained in s. 4 of the Judgments (Extension) Act, 1868. The Legislature in 1920 must be taken to have passed the Act of 1920 knowing how the Act of 1868 had been construed by the Courts, and, accordingly, when it adopts the same words, "in so far only as relates to execution," it must be taken to have adopted them in the light of those authorities. Similarly, under the Act of 1920 there is no

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prohibition against the enforcement of a judgment to which that Act applies by action in the old way, although there is a similar provision with regard to costs. Accordingly, just as under the Act of 1868, so under the Act of 1920 bankruptcy proceedings were still open to the holder of a judgment covered by that Act if he chose to start proceedings upon the judgment, recover judgment here and then issue his bankruptcy notice.

Now we come to the Act which is immediately in question in this case, the Foreign Judgments (Reciprocal Enforcement) Act of 1933. That is confined to judgments given in the superior Courts of any foreign country where His Majesty is satisfied that reciprocity exists and where by Order in Council he directs the Act to apply to a foreign country. Such an Order has been made in the case of the Republic of France, and the present judgment falls within the Act. The Act differs from the Acts of 1868 and 1920 in two particularly striking matters. After providing for registration on application, s. 2, sub-s. 2, of the Act sets out the effect of registration. Many of the words and phrases used are an echo of and no doubt borrowed from the language of the Acts of 1868 and 1920. But the differences are particularly striking. Sect. 2, sub-s. 2, provides as follows: "Subject to the provisions of "this Act with respect to the setting aside of registration:— "(a) a registered judgment shall, for the purposes of execution, "be of the same force and effect; and (b) proceedings may be "taken on a registered judgment; and (c) the sum for which "a judgment is registered shall carry interest; and (d) the "registering court shall have the same control over the "execution of a registered judgment; as if the judgment "had been a judgment originally given in the registering "court and entered on the date of registration." Then there is a provision that execution is not to issue on the judgment so long as any party is in a position to make an application to set the registration aside. Comparing that language with that of ss. 3 and 4, for instance, of the Judgments (Extension) Act, 1868, it is to be noticed, firstly, that this section expressly gives to the registered judgment, for the purposes of execution, the same force and effect as if

the judgment had originally been given in the registering Court. In the Act of 1868 no such express reference to execution is to be found. Then it is only para. (b) that uses the general word "proceedings," which was to be found in s. 3 of the Act of 1868. It will be remembered that the Act of 1868 provided that "all proceedings shall and may "be had and taken on such certificate." Para. (b) of sub-s. 2 of s. 2 of the Act of 1933 makes that provision, but makes it after (a), which deals expressly with one subject and one subject alone, to wit, execution. It was suggested that the word "proceedings" in (b) must be limited to proceedings by way of execution which are dealt with in (a), not executions in the restricted sense but in the broader sense which I have already mentioned. I am quite unable so to construe the language of those two paragraphs. They are dealing under separate lettering the one with execution alone and the other with proceedings generally. The other matter on this section to which attention must be called is that para. (d), which says that "the registering Court shall have the same control over "the execution of a registered judgment" (which is taken in substance from s. 4 of the Act of 1868), omits the very words in that section which were held in the cases to which I have referred to have a limiting effect—namely, "but in so far "only as relates to execution under this Act." The learned Deputy Registrar has construed the sub-section as though words to that effect were present. With all respect to him, in my opinion it is quite illegitimate to read anything of the kind into the language of this sub-section. The language taken by itself, in my opinion, quite clearly includes proceedings by way of bankruptcy proceedings initiated by a bankruptcy notice or otherwise. That is strongly confirmed by the second great point of difference between this Act and the earlier Acts to which I am now about to refer. That is this. Sect. 6 provides: "No proceedings for the recovery "of a sum payable under a foreign judgment, being a judgment "to which this part of this Act applies, other than proceedings "by way of registration of the judgment, shall be entertained "by any court in the United Kingdom." Whereas the earlier

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legislation still left it open to the judgment creditor, under a possible penalty, it is true, as to costs, to sue in the old way on his Scotch, Irish or Dominion judgment, under the present Act s. 6 prohibits any such method of dealing with a foreign judgment if it is a judgment registrable under the Act ; in other words, where the judgment is registered under the Act, the only thing that the holder of such a judgment is entitled to do is to register it, and after registering it, of course, he obtains the rights which the Act expressly says shall follow upon registration. But, if the argument for the respondent were correct, it would produce this startling result, that it would not be open for the holder of a foreign judgment registrable under the Act ever to enforce that judgment in bankruptcy, and for this reason, that he cannot sue on it—s. 6 prevents him doing so—and the only thing he could do would be to register it ; and then s. 2, sub-s. 2, according to the respondent's argument, prohibits him from taking or does not enable him to take bankruptcy proceedings on the basis of the registered judgment. The result, therefore, would be that this Act would have placed the holders of foreign judgments, for the purpose of enforcing those judgments in bankruptcy, in a much worse position than they were in before. I should have said, of course, that s. 6 only applies to judgments for the recovery of a sum of money. It seems to me that s. 6 shows that Parliament was intending by this Act to provide that the only method of enforcing foreign judgments should be by registration. That being so, the holder of a registered judgment can do whatever s. 2 tells him that he can do. When I look at s. 2 and find clear language used which, according to its ordinary meaning, would cover a bankruptcy notice, I must decline to read into that language by implication limiting words which would cut down its effect, and cut down its effect with a result which, I venture to think, cannot possibly have been intended by the Legislature—namely, of depriving the holder of a foreign judgment of valuable rights with regard to its enforcement which he had previously possessed.

That being so, and that being the construction which

I place upon the relevant language of the Act, it is only necessary to refer to s. 1 of the Bankruptcy Act of 1914, which provides for the service of bankruptcy notices. It would, perhaps, have been more logical if I had referred to this at the beginning of my judgment rather than at the end. It provides in s. 1 (g) that a debtor commits an act of bankruptcy "If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in England, or, by leave of the court, elsewhere, a bankruptcy notice under this Act" and so on. It has not been suggested, and indeed could not be suggested, that those words "final judgment or final order" taken by themselves extend to anything save a judgment or order of a Court within the jurisdiction; that is to say, in England it would be a final judgment of an English Court. That that is the meaning of those words is, I think, beyond doubt; but the effect of the Act of 1933 as I have construed it is to place the foreign judgment, when registered for the purposes of the bankruptcy notice, in the same position as if it was a final judgment of an English Court. Therefore the fact that those words in the Bankruptcy Act, taken by themselves, would exclude such a judgment does not have the result of preventing a foreign judgment, when registered, from becoming the basis of a bankruptcy notice.

In the result the appeal must be allowed with costs here and below.

FINLAY L.J. I agree.

LUXMOORE L.J. I also agree.

Appeal allowed.

Solicitors for appellant: *Blount, Petre & Co.*

Solicitors for respondent: *Weldon & Edwards.*

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