

CASEY

IN THE MATTER OF A BANKRUPT, PATRICK J. CASEY
AND IN THE MATTER OF A CLAIM BY

COMHLUCHT SIUICRE EIREANN TEO

Judgment of the President of the High Court delivered on the
21st day of July 1986

The Bankrupt the title hereof was adjudicated a Bankrupt on the 6th day of July 1981.

As appears from the affidavit of Mr. Sean Gannon, a Factory Manager employed by the Applicants, sworn on the 3rd day of March 1982 the Bankrupt was a beet grower, as described in the said affidavit, under contract with the applicants during the years 1974 to 1978.

During the months of April and May 1979 the Bankrupt purchased ground limestone from the Applicant in the value of £3,285.76 and in November 1979 he bought beet pulp from the Applicants in the value of £1,424.17. He made no payment in respect of these items, though at the time he was not under contract to the Applicant company but the Applicant Company expected that the Bankrupt intended to enter a contract with the company to grow beet for sale to the Company.

On the 14th day of April 1981, the Bankrupt entered a contract with the Company to grow beet for sale to the company subject to the terms and conditions set forth in the said agreement.

By Clause 11 of the said General Conditions, the Bankrupt agreed, inter alia, that all earlier credits afforded to him and his purchase of goods and services from the Company thereafter would be primarily payable

out of the sums which would otherwise be due to him from the Company under the contract by the Bankrupt of be^h to the company.

By that said Clause, the Bankrupt further agreed that he accepted as an integral part of his contract with the company that all credits and relevant interest charges owed by him to the company would be a prior charge against his account with the company and would be deducted from his account by the company as soon as it came into credit.

In his said affidavit, Mr. Gannon averred that:-

"After this adjudication, the company was informed of the Bankrupt's status. The Bankrupt continued to trade as a farmer following the petition for adjudication. During the period August 1981 to December 1981 the Bankrupt dealt directly with the Company, purchasing goods and services in bringing in his crop. During that period, the Bankrupt was credited with the value of the crop brought in by him and with payments made, ostensibly by him against his earlier and continuing indebtedness to the company. The action of the Bankrupt in making these purchases and payments and the silence of the Official Assignee in their regard led the Company to believe that the Bankrupt was acting under the full authority of the Official Assignee as his agent."

By order dated the 5th day of November 1982, I declared that the Company was entitled to set off against the Bankrupt's claim the amounts for goods supplied and services rendered by the Company to the Bankrupt up to and including the 12th day of November 1981 including the amounts claimed for April, May and November 1979 as

set out in the Company's statement of account, and directed the Examiner to take accounts of

- 1. All monies due by the Bankrupt to Comhlucht Siuicre Eireann Teoranta for the period the 1st day of April 1979 to the 12th day of November 1981;
- 2. All monies due by Comhlucht Siuicre Eireann Teoranta to the Bankrupt for the said period;
- 3. All monies due by the Bankrupt to Comhlucht Siuicre Eireann Teoranta since the 12th day of November 1981; and
- 4. All monies due by Comhlucht Siuicre Eireann Teoranta to the Bankrupt since the 12th day of November 1981.

Upon the taking of the said accounts by the Examiner, the Examiner certified as follows:-

- 1. From the 1st day of April 1979 to the 12th day of November 1981 the sum due by the Bankrupt to Comhlucht Siuicre Eireann Teoranta is £20,197.63.
- 2. The sum due by Comhlucht Siuicre Eireann Teoranta to the Bankrupt for the said period is £6,273.67.

The net amount due by the Bankrupt on foot of the said accounts 1 and 2 is accordingly £13,923.96 and the Company is entitled to claim in the Bankruptcy for the said amount.

On the taking of the other accounts, the Examiner certified that:-

- 3. The sum due by the Bankrupt to Comhlucht Siuicre Eireann from the 12th day of November 1981 to the 19th day of March 1982 is £4,796.39.

4. The sum due by Comhlucht Siuicre Eireann Teoranta to the Bankrupt for the same period is £16,029.68.

The net balance due by Comhlucht Siuicre Eireann Teoranta on foot of Accounts 3 and 4 for the period is £11,231.29.

The Company claims to be entitled to set off against the said sum of £11,231.29 the sum of £13,923.96 found to be due by the Bankrupt to the Company in respect of the period the 1st day of April 1979 to the 12th day of November 1981 by virtue of the terms of the contract entered into between the Bankrupt and the company on the 14th day of April 1981.

I am satisfied that the said contract was terminated by the bankruptcy of the Bankrupt and is certainly on receipt of the letter of the 12th day of November 1981.

The Company is obliged to prove the bankruptcy in the ordinary way in respect of the amount found to be due to them as of the 12th day of November 1981.

To allow them set off such amount against the amount due to the estate of the bankrupt in respect of the period subsequent to the 12th day of November 1981 would in effect amount to a preference. They are not entitled to such preference.

Consequently, I will direct them to pay to the Official Assignee the sum of £11,231.29 together with interest thereon from the 1st day of February 1982 at the statutory rate, namely, 11%.

Sean Hamilton