

THE HIGH COURT

BANKRUPTCY

THE MINISTER FOR COMMUNICATIONS, ENERGY AND NATURAL RESOURCES AND MICHAEL O'CONNELL

NO:4549

PETITIONERS

AND

MICHAEL WYMES

RESPONDENT

JUDGMENT of Ms. Justice Pilkington delivered on Friday the 5th day of April, 2019.

1. This is an application by the respondent ('Mr. Wymes') to show cause pursuant to his adjudication of bankruptcy by Order of Meenan J. on 23 March 2018.

2. On 31 May 2018 Mr. Wymes filed his notice to show cause against the validity of that adjudication. I propose to set out that notice in full. It is as follows: -

"NOTICE IS HEREBY GIVEN that the said Michael Wymes intends to show cause to the High Court against the validity of the adjudication of bankruptcy made on the 20th day of March 2018 against him, on the grounds, inter alia, that the following requirement(s) of s. 11 (1) of the Bankruptcy Act, 1988, have not been complied with: (1) There was no act of bankruptcy committed by him within the three months previous to the presentation of the petition, to found the petition which issued on 11 June 2010, and the adjudication on foot thereof dated 20 March 2018.

(2) The petition was not a valid petition in that: -

(a) It did not recite the specific order of bankruptcy on which the petition was founded, as required by O. 76, r. 19(1)(b);

(b) The act of bankruptcy alleged in it was not, by reference to s. 7 (1) of the Act, an act of bankruptcy identified in statute or recognised at law;

(c) There was no affidavit filed on the presentation of the petition which factually proved an act of bankruptcy, such a filing being a requirement of O. 76, r. 21.

An affidavit setting out in detail the grounds of the application to show cause has been filed and is served herewith."

3. The reference to Mr. Wymes' adjudication of bankruptcy being 20 March 2018 is the reference to the judgment of Meenan J. of that date, but the Order so was in fact made on 23 March 2018. Mr. Richard Wood was also adjudicated bankrupt on that day but this application is only brought by Mr. Wymes. Mr. Wymes appears to periodically have the assistance of a solicitor but appeared as an applicant in person throughout this application.

4. In respect of this application to show cause, Mr. Wymes swore an affidavit on 1 June 2018, Ms. Grainne Uí Thuama on behalf of the petitioners on 20 July 2018 and thereafter a supplemental affidavit of Mr. Wymes sworn on 23 August 2018.

5. This matter has a significant and difficult history. This however is a discrete application pursuant to s. 16 of the Bankruptcy Act 1988, as amended ("the 1988 Act"). The case law and indeed the section itself makes it clear that any application to show cause must be carefully construed pursuant to its terms.

6. Section 16 of the 1988 Act states as follows: -

"16. — (1) The bankrupt may, within three days or such extended time not exceeding fourteen days as the Court thinks fit from the service of the copy of the order of adjudication on him, show cause to the Court against the validity of the adjudication."

In the affidavit sworn by Mr. Wymes on 1 June 2018 grounding his application he avers that the Order of Meenan J. was served on him on 29 May 2018; his application to show cause shows it was filed on 31 May 2018 so the requirements of s. 16(1) are satisfied.

Section 16 (2) and (3) state: -

"(2) On an application to show cause under subsection (1) the Court shall, if within such time the bankrupt shows to its satisfaction that any of the requirements of section 11 (1) have not been complied with, annul the adjudication and may, in any other case, dismiss the application or adjourn it on such conditions as the Court thinks fit, having regard to the interests of the bankrupt, his creditors and any persons who might advance further credit to him.

(3) Nothing in this section shall be construed to prevent the immediate seizure of the goods of the bankrupt on his adjudication."

7. In construing s. 16(2) it is also necessary to consider s. 11(1) of the 1988 Act. It states: -

"11. — (1) A creditor shall be entitled to present a petition for adjudication against a debtor if —

(a) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to more than €20,000,

(b) the debt is a liquidated sum,

(c) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and

(d) the debtor (whether a citizen or not) is domiciled in the State or, within three years before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the State or has carried on business in the State personally or by means of an agent or manager, or is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager."

8. Section 11(1) of the 1988 Act is the criteria which must also be satisfied upon the presentation of a petition for the adjudication of a debtor as a bankrupt. The consideration of s. 11(1) in the context of Mr. Wymes' application to show cause will be considered below.

9. In considering s. 11(1) it is clear that the criteria set out at (a) and (b) are satisfied. This debt arises pursuant to an Order of the High Court in favour of the petitioners dated 25 February 1997 for a sum vastly in excess of the €20,000 threshold. Section 11(1)(d) does not arise in the present application as there is no issue as to domicile.

10. In considering the grounds advanced by Mr. Wymes to show cause it is clear that the only portion of s. 11(1) with which he takes issue is s. 11(1) (c) which is the requirement that the act of bankruptcy on which a petition is founded has occurred within three months before the presentation of the petition. All of the other grounds which Mr. Wymes advances within his application to show cause are not matters within the ambit of s. 11(1) of the 1988 Act.

11. The affidavit grounding the application of Mr. Wymes to show cause is extensive and runs to some 396 paragraphs over 77 pages. It is noteworthy that whilst the grounds within the notice to show cause are reflected on its face as quoted in full at paragraph 2 above; yet within his affidavit a significant number of other additional grounds/ criteria are advanced in support of his application to show cause against the adjudication of bankruptcy.

12. At paragraph 9 of his grounding affidavit Mr. Wymes avers;

"It is respectfully submitted that the subject adjudication order ought not to have been made by virtue of the reasons and defences as follows: -

(a) The petition was irregular and invalid as (the matters recited on the face of the notice to show case are set out here as recited at paragraph 2 above)

Mr. Wymes continues to advance the following grounds: -

(b) The claimed indebtedness was statute barred.

(c) The petition was tainted by ulterior, collateral and improper purpose/economic duress and wrongdoing towards a collusive grossest of undervalues for the lands of Mr. Wood.

(d) The existence of an accommodation between Mr. Wood and the petitioners.

(e) Oppression consequent to the bankruptcy process being prolonged to March 2018 although readily available as a remedy since 31 July 2013 i.e. an extant period of some fifteen years.

(f) A form of execution had issued which remained to be proceeded upon.

(g) The proceedings were of public interest and importance.

13. It is fair to say and I will deal with this in more detail below, that the affidavit and indeed the written and oral submissions of Mr. Wymes trespassed significantly beyond the ambit of s. 16 of the 1988 Act. Indeed, on occasion Mr. Wymes sought to deal with matters raised throughout this lengthy litigation. It is also noteworthy that not only have many of these matters been raised previously but they have already been dealt with comprehensively by the Courts.

14. As set out above, Meenan J. delivered his judgment upon the adjudication of Mr. Wymes' bankruptcy on 20 March 2018. He correctly and in my view wisely pointed out that notwithstanding all of the significant litigation attendant upon this matter that, insofar as the bankruptcy process is concerned, it is important 'not to lose sight of the basic statutory requirements necessary to adjudicate a person bankrupt and the requisite proofs that are clearly set out'.

The bankruptcy process

15. The bankruptcy summons issued on the 15th day of February 2010. It was served on 1 March 2010 (as confirmed in an affidavit sworn by Mr. Wymes on 15 March 2010 in respect of his application to have the bankruptcy summons dismissed).

16. The bankruptcy summons arises from an Order for costs of the High Court dated 25 February 1997 in favour of the petitioners (in proceedings *Bula Limited (in Receivership) & ors v Tara Mines Limited & ors*) in the amount of €3,297,493.33 together with interest in the sum of €1,584,242.26 making a total sum as to principal and interest of €4,881,735.59.

17. Section 7(1)(g) of the 1988 Act states that an individual commits an act of bankruptcy: -

"If the creditor presenting a petition has served upon the debtor in the prescribed manner a bankruptcy summons, and he does not pay within fourteen days after service of the summons pay the sum referred to in the summons or secure or compound for it to the satisfaction of the creditor."

18. The petitioners rely upon an act of bankruptcy as having taken place fourteen days after service of the bankruptcy summons on 1 March 2010.

19. Whatever else may be in controversy in this matter, it is clear that no amount whatsoever has been paid in discharge of that sum. It remains outstanding in its entirety.

20. Mr. Wood and Mr. Wymes both issued an application seeking to dismiss the bankruptcy summons. Their application was rejected by McGovern J. who delivered an *ex-tempore* judgment on 29 April 2010. The Order is dated 6 May 2010.

21. On 11 June 2010, the petition of bankruptcy by a creditor is filed being the application seeking to adjudicate Mr. Wymes and Mr. Woods bankrupt. On the 9th day of July 2010, affidavits were filed by Mr. Wood and Mr. Wymes respectively seeking either the dismissal of the petition or alternatively a stay or an adjournment. By an *ex-tempore* ruling of Dunne J., the petition was adjourned, given that the Order of McGovern J. of May 2010 upholding the validity of the bankruptcy summons was under appeal.

22. Dunne J. then delivered that judgment of the Supreme Court on 9 March 2017 upholding the judgment of McGovern J.

23. On 26 July 2017, the Supreme Court (Dunne J.) issued a further judgment dealing with one matter that remained outstanding from her previous judgment on 9 March 2017.

24. It is noteworthy that many of the arguments advanced by Mr. Wymes in this case have already been carefully considered and adjudicated upon in the judgments cited above.

25. Thereafter, the petition for the adjudication of bankruptcy which issued on 10 June 2010 proceeded, a number of additional affidavits were filed and it was finally adjudicated by the Court (Meenan J.) on 20 March 2018 [2018] IEHC 213.

26. This is *not* an appeal from the order of Meenan J. by Mr. Wymes, rather it is an application to show cause of that adjudication pursuant to s. 16 of the 1988 Act.

Section 16 of the 1988 Act

27. Dunne J. considered its construction in the case of *Harrahill v. Kennedy* [2013] IEHC 539 ('*Harrahill*') which has frequently been cited before the Court. The learned Judge stated:-

"The application under s.16 enables a bankrupt to "show cause against the validity of the adjudication". Showing cause is, in my view, something other than raising an issue that has to be litigated elsewhere. In *Bankruptcy Law and Practice* (2nd Ed.), Sanfey and Holohan expressed the view at para. 2.102 that "the court has to be satisfied that it is just and equitable to annul the adjudication". That seems to me to be a helpful approach to adopt in cases where the application to show cause against the validity of the adjudication arises in circumstances other than a failure to comply with the criteria set out in section 11(1)."

28. Within this case Mr. Wymes invokes compliance with s.11 (1). I infer and accept that he is also seeking reliefs upon any just and equitable or other criteria that might be considered sufficient to annul the adjudication.

29. In considering *Harrahill*, Costello J. in *Danske Bank A/S T/A Danske Bank v. O'Shea* [2016] IEHC 732 ('*O'Shea*') stated as follows, dealing with the quotation from Dunne J. as set out above: -

"Thus if the bankrupt establishes that there was a failure to satisfy the requirements of s.11(1) of the Act of 1988, then the court *shall* annul the adjudication. If not, then the court must consider whether it would be just and equitable so to do having regard to the interests of the bankrupt, his creditors and any persons who might advance further credit to him." (my emphasis)

30. In considering the nature of an application to show cause, Costello J. in *O'Shea* also stated as follows: -

"An application to show cause is not an appeal against matters previously ruled upon on the occasion of the adjudication. It follows that the debtor cannot rely upon the same argument that was already advanced and rejected at the hearing resulting in his application as a bankrupt."

31. As set out above Mr. Wymes has had the validity of the bankruptcy summons conclusively determined by Dunne J. in the Supreme Court. As Meenan J. pointed out within his judgment in the adjudication of Mr. Wymes as a bankrupt in such circumstances there can now be no issue as to validity of the bankruptcy summons. In my view, on the facts of this case, and in particular pursuant to the judgments of the Supreme Court and of Meenan J., the comments of Costello J. in *O'Shea*, as to the necessity in an application to show cause not to permit a debtor to rely upon matters previously raised, are particularly apposite.

32. In the matter of *Sean Dunne (a bankrupt)* at [2013] IEHC 583 and [2015] IESC 42, both the High and Supreme Court considered an application to show cause against the validity of a bankruptcy adjudication. The grounds of that application are very different in that in large part it required consideration of issues surrounding the Irish bankruptcy in circumstances where Mr. Dunne had voluntarily filed for Chapter 7 Bankruptcy in the District of Connecticut USA.

33. Both the High Court (McGovern J.) and the Supreme Court (Laffoy J.) confirmed that the burden of proof rests on the bankrupt to show to the satisfaction of the court that the requirements of s. 11(1) have not been complied with.

34. Within *Dunne* an issue had been raised within the application to show cause concerning the service of the bankruptcy petition. McGovern J. stated; -

"...it seems to me that a challenge to the adjudication on the basis of service in this case would be permissible only if there was some new evidence that had not been available before the judge who made the adjudication. In this case, the learned High Court Judge who made the adjudication did so, having been satisfied that the service was in order. While submissions on the issue were made for the first time at the hearing before me, there is no new evidence on the issue of service.... To do so would effectively amount to an appeal."

35. In the Supreme Court Laffoy J. endorsed the conclusion of McGovern J. (para. 81) that in the absence of fresh evidence it was impermissible for the bankrupt to seek to reopen the question of validity of service because that would effectively amount to an appeal. She also endorsed his view that there could only be a challenge to the adjudication if there was some new evidence that had not been available before the judge who made the adjudication.

36. The court continued: -

"The purpose of the application to show cause was to enable the Appellant to argue that his adjudication should be

annulled on the ground of failure to comply with the requirements of s. 11(1) of the Act of 1988. On that application the Appellant also argued two further points as grounds for annulling the adjudication order: the point that the Court did not have jurisdiction to make the adjudication order; and the point that the service was defective. His arguments were heard in the High Court by McGovern J. over three days in November 2013. He has had an opportunity to appeal against the decision of the High Court to this Court on all the grounds on which he relies and his appeal was heard in this Court ran into a third day in March 2015. In those circumstances, he has not suffered any prejudice."

37. The decision in *Society of Lloyds v Loughran* [2004] IEHC 1 (unreported, High Court, Finlay Geoghegan J., 2nd February, 2004) referred to in the cases cited above is a judgment of Finlay Geoghegan J. delivered on 2 February 2004. The issue before the court was whether a bankruptcy petition which had not been sealed and signed in accordance with RSC O. 76, r. 20(2) ought for that reason to be set aside by the court. In that case the petitioner accepted there had not been strict compliance with RSC O. 76, r. 20(2) but asked for the discretion of the court pursuant to RSC O. 124, r. 1.

38. The court quoted from the well-known decision of the former President of the High Court (Hamilton P.) in *O'Maoileoin and the Official Assignee* [1989] IR 647, and to the leading case of *In Re Collier* 8 Morr (Cave J). and stated: -

"It is to be noted that in the above extract, Cave J. made distinction between the bankruptcy notice (in this jurisdiction formerly the debtor summons and now the bankruptcy summons) and the petition. In *O'Maoileoin v. The Official Assignee* at issue was a debtor summons. The act of bankruptcy is the failure to pay on the debtor summons or bankruptcy summons. The potential consequences, penal in nature, flow from the act of bankruptcy. The petition is the commencement of the procedure whereby the order of adjudication, may be obtained by reason of the act of bankruptcy."

The court continued: -

"Whilst, I note the distinction between the approach to a bankruptcy summons and petition made by Cave J. above, in general I accept that there ought to be compliance with the Rules of Court even on a petition but conclude that there is nothing on the authorities which appears to absolutely preclude the Court from exercising its discretion in a proper case under O. 124 of the Superior Court Rules where there is a failure to comply with the Rules on a petition."

On the facts of that case the court exercised its discretion and permitted the petition to proceed.

Application to show cause by Mr Wymes

39. In dealing with the specific points raised by Mr. Wymes in his application. section 16 (2) of the 1988 Act initially requires compliance with section 11(1). In that regard Mr. Wymes contends there was no act of bankruptcy committed by him within the three months previous to the presentation of the petition, to found the petition which issued on 11 June 2010, and the adjudication on foot thereof dated 20 March 2018. This is the criteria within s. 11(1) (c) which requires for an adjudication of bankruptcy that: -

"(c) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition."

40. This ground has already been comprehensively dealt with and rejected by Meenan J. in his judgment (paragraph 14 and the consideration within that paragraph of the decision of Dunne J. in *McConnon v Zurich Bank* [2012] 4 IR). No new issue of ground has been raised by Mr. Wymes in advancing this criteria. As this is not an appeal from the Order of Meenan J. in my view this ground fails on the basis that no new evidence has been advanced but is simply a reiteration of the matters raised and dealt with by Meenan J.

41. If I am incorrect in my view then Mr. Wymes' argument also fails as being factually incorrect. As recited by Meenan J. and on the basis of the facts outlined and documentation submitted to this Court the bankruptcy summons issued on 15 February 2010 and was served on Mr. Wymes on 1 March 2010. Fourteen days thereafter Mr. Wymes having failed to discharge the sum within that time had committed an act of bankruptcy (s. 7 (1)(g)). Thereafter the petition must be served within three months from that act of bankruptcy. The Petition was issued on 10 June 2010 which is within the three months required by section 11(c) of the 1988 Act.

42. As set out at para. 2 Mr. Wymes in his application to show cause has identified additional grounds for the annulment of the adjudication of his bankruptcy. To reiterate;

"(2) The petition was not a valid petition in that: -

(a) It did not recite the specific order of bankruptcy on which the petition was founded, as required by O. 76, r. 19(1)(b);

(b) The act of bankruptcy alleged in it was not, by reference to s. 7 (1) of the Act, an act of bankruptcy identified in statute or recognised at law;

(c) There was no affidavit filed on the presentation of the petition which factually proved an act of bankruptcy, such a filing being a requirement of O. 76, r. 21."

43. The validity of the petition has been comprehensively dealt with by Meenan J. in his adjudication of Mr. Wymes as a bankrupt. No new grounds have been advanced. With regard to grounds (a) and (c) above RSC Order 76 R 19(1) (b) requires that a petition shall "recite the specific act of bankruptcy on which the petition is founded."

44. The petition on its face clearly recites the act of bankruptcy and it is detailed at paras. 1 and 3 of that document. I have already considered s. 7(1)(g) of the 1988 Act.

45. RSC Order 76 rule 21 requires that on the presentation of a petition by a creditor, that petitioning creditor shall file in the proper office an affidavit proving his debt and the act of bankruptcy.

46. Within the documentation accompanying the petition there are two affidavits one sworn on behalf of the first named defendant and a second on behalf of the second named defendant. In my view the contents of the petition and its constituent elements as required by RSC Order 76 have been complied with. In addition the case law cited above makes it clear that Mr. Wymes is not entitled to simply re-iterate matters argued in his adjudication (*O'Shea*) or seek to adduce new matters that should properly have been dealt with within that adjudication (*Dunne*). In my view there is no matter within the petition which requires any order pursuant to RSC 124.

I also echo the comments of Laffoy J. in *Dunne* to the effect that, even if I am entirely mistaken with regard to the matters set out at paragraph 2 of Mr. Wymes' application to show cause no possible prejudice is suffered by him in light of the judgments arising within this bankruptcy process.

47. As set out above Mr. Wymes has advanced a number of grounds within his grounding affidavit (as opposed to his application to show cause) where he has raised numerous matters extraneous to the present application. Aside from the first ground which reiterates the matters within his application itself the other matters are unrelated to any grounds in his application to show cause.

48. At the hearing of this application this Court was taken to these specific references at some length so I might be satisfied that the Court has in fact adjudicated upon them. I do not consider it necessary or indeed appropriate to consider the matters in detail as that would in effect give consideration to matters outside of this application.

49. The additional five grounds set out by Mr. Wymes contend;

(a) The claimed indebtedness was statute barred.

This point is dealt with and rejected by Meenan J. at para. 18 of his judgment who in turn notes the Supreme Court judgment of Dunne J. on this point at [2017] IESC 58.

(b) The petition was tainted by ulterior, collateral and improper purpose/economic duress and wrongdoing towards a collusive grossest of undervalues for the lands of Mr. Wood.

(c) The existence of an accommodation between Mr. Wood and the petitioners. The matters at (b) and (c) above were dealt with comprehensively by Dunne J. in [2017] IESC 16 at pages 18-20 under the heading 'Abuse of process / collateral purpose' and rejected. At page 13 of the same judgment the Supreme Court commented in considering the High Court decision of McGovern J. as follows;

"There is a long established precedent to the effect that a person may be precluded from litigating an issue that could have been raised in earlier proceedings even if that issue had not been previously decided (see *Henderson v. Henderson* [1843] 3 Hare 100 at p 114)."

That quotation applies with particular effect of the facts of this case

Meenan J. also dealt with this point [2018] IEHC 21 at para. 24 where he recites the ground advances in precisely the same language as it is advanced before this Court.

(d) Oppression consequent to the bankruptcy process being prolonged to March 2018 although readily available as a remedy since 31 July 2013, i.e. an extant period of some fifteen years.

It must be pointed out in clear terms that the reason the bankruptcy process has been prolonged does not lie with any action by the petitioners. There can be no suggestion of any oppression suffered by Mr. Wymes. Again this is a ground that has been dealt with by the Supreme Court [2017] IESC 16 at pages 20-22. In any event the comments in *Henderson v Henderson* quoted above also apply to this criteria. This ground has also been and is rejected.

(e) A form of execution had issued which remained to be proceeded upon.

This point was initially raised before in the High Court [2009] IEHC 412 – para. 20 -21, by McGovern J. Both the Supreme Court and Meenan J. noted the point but did not allow it to be re-agitated [2017] IESC 16, pp. 20 – 21 and [2018] IEHC 21 at para. 17. In any event the Courts found it was not a defence to his adjudication as a bankrupt. It is not a ground that can be re-litigated within this application to show cause.

(f) The proceedings were of public interest and importance.

This is addressed by Meenan J. [2018] IEHC 21 at para. 19 of his judgment and rejected as one of the defences advanced to the adjudication of Mr. Wymes as a bankrupt. Again it is not a ground that can now be re-litigated within this application to show cause.

In short the grounds set out above have been considered previously and no judgment of any Court (and I have carefully considered the judgments of the Supreme Court) has found that any of these grounds advanced should operate, to quote from s. 135 of the 1988 Act, to 'review, rescind or vary an order made by it in the course of a bankruptcy matter....' In addition all of the matters should (and indeed have) been raised previously within the bankruptcy process and cannot be advanced within this application to show cause.

Conclusion

50. Mr. Wymes application to show cause is rejected. I am satisfied that he has failed to satisfy the criteria within s. 16 of the 1988 Act

(a) No issue arises as to service within s. 16(1) so Mr. Wymes' application is properly before this court. Section 16(3) does not arise on the facts of this case.

(b) The sole issue is therefore whether the criteria within s. 16(2) has been satisfied. That, based upon the case law set out above is a two-stage process; (i) has there been compliance with s. 11 of the 1988 Act – if not the section (and case law) is very clear that non-compliance with this section will result in the adjudication being set aside and (ii) whether any other grounds advances render it on what have been described as just and equitable grounds or perhaps more broadly where a degree of discretion by the Court might be exercised.

(c) An application to show cause is not an appeal from an adjudication of bankruptcy. It must comply with the specific criteria of s.16 and also not merely re-iterate or seek to advance arguments or grounds already considered within the adjudication process itself. Nor can it seek to introduce new grounds that should have been raised within the adjudication process

(d) In this case the bankruptcy summons has been adjudicated upon by the Supreme Court so there is no issue as

to its validity.

(e) In respect of the petition the case law shows that there must be adherence with the statutory regime. Whilst there are the strict and mandatory requirements applicable to a bankruptcy summons, with regard to a petition whilst there must also be strict compliance some discretion may be afforded.

(f) What is known as the rule in *Henderson v Henderson* (1843) 3 Hare 100 has singular applicability on the facts of this application in respect of all of the grounds advanced by Mr. Wymes.

(g) On the facts of this case I find that there has been strict compliance with s. 11 of the 1988 Act. This ground was considered comprehensively in the adjudication of bankruptcy before Meenan J. and thereafter no new ground was advanced by Mr. Wymes arguing non-compliance with this section.

(h) With respect to the other grounds advanced outside of s. 11 of the 1988 Act none constituted any new ground or argument before this Court, moreover all have previously been comprehensively considered and adjudicated before these Courts.

(i) The Supreme Court in *Dunne* in an application to show cause rejected any suggestion that any failure to give appropriate notice in service of a petition could, on the facts of that case and the reasons advanced by the Court, be reason to set aside that adjudication. The Court pointed to the significant court process and stated that no prejudice could be occasioned to the debtor in that case. On the facts of this case from the issuing of this bankruptcy summons there has been an exhaustive scrutiny of each step within this bankruptcy process. No prejudice of any kind has been suffered by Mr. Wymes within this process.

(j) It must also be noted that the petitioners seek to recover in respect of an outstanding Order for costs on 24 February 1997. Section 16(2) requires me to consider not only the interests of the bankrupt but also his creditors. The petitioners are a significant creditor. It is fair to say that Mr. Wymes has, prior to and after the costs order in 1997, sought to avail of every procedural step available to him to ensure that this matter has been fully scrutinised at all stages within the matter generally and now within this bankruptcy process. That process has led to his adjudication as a bankrupt by Order of Meenan J. on 23 March 2018.

(k) With regard to s. 16(2) of the 1988 Act there has been full compliance with s. 11. For the reasons set out above I find no grounds to exercise my discretion (pursuant to the inherent jurisdiction of the court or otherwise), or to invoke the just and equitable criteria in favour of Mr. Wymes in setting aside this adjudication. For the further avoidance of doubt I find that there is no basis to annul this adjudication of bankruptcy and the application to show cause pursuant to that adjudication is refused.