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of the Supreme Court, as is required by Statute in England where the accused is committed for trial upon a misdemeanour.

I think the application should be granted and the prisoners released on bail upon the conditions proposed by the Chief Justice.

SERTSIOS, J.: I concur in the judgment delivered by the learned Chief Justice, and I may add that, dealing with misdemeanours, it has already been held in *R.* v. *Badger* (1) that a person accused of misdemeanour has an absolute right to bail if he applies to the High Court of Justice under the Habeas Corpus Act, 1679. I fully agree with the Chief Justice in what he has said dealing with the present application, as well as with the opinions expressed by my brother Thomas.

In the circumstances I agree the applicants should be admitted to bail upon the terms stated by the Chief Justice.

Bail granted to all the applicants except No. 2.

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[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

ELENI *alias* ELLI COSTA HAJI STYLIANOU
Appellant,

v.

WHITEFIELDS LIMITED AND OTHERS.
Respondents.

Bankruptcy—Petition—Limited Company added by Court as petitioning creditor—Procedure by such company when added—Omission to sign or verify petition by person added by Court as petitioning creditor—Formal defect or irregularity—Insufficiency of affidavit verifying petition—Attendance of creditor at hearing of petition—Bankruptcy Law, 1930, *Sections* 5 (1) (*a*), 6 (1), 102 (1)—*Bankruptcy Rules* 46, 50 (1), 62, 126.

A petition was presented by five creditors alleging the appellant was indebted to them for £78. 8*s.* 4*cp.*, and supported by an affidavit by the Limassol agents of one of the creditors, Whitefields Ltd., London, stating that appellant was indebted to his principles for £44 upon two bills of exchange. The deponent further stated that to the best of his knowledge and belief that the appellant owed the other petitioners the various sums stated in the petition. Whitefields Ltd., petitioned in respect of a debt due on a bill of exchange drawn on the appellant, payable to the order of the Westminster Bank by whom it was indorsed for collection to the Banque Populaire de Limassol, Ltd. At the hearing the petition was amended by adding after "Whitefields Ltd." "and/or the People's Bank of Limassol, Ltd." This added petitioner neither signed the petition nor filed any affidavit verifying the statements in the petition.

(1) (1843) L.R. 4 Q.B. 468.

Held: (1) The Court has power to add a limited company as a petitioning creditor. There being no provision in the Bankruptcy Law or Rules regulating the procedure by a limited company as petitioning creditor the Court may give directions as to the procedure to be followed.

(2) A creditor added as petitioner by the Court at the hearing is not bound to make an affidavit verifying the petition.

(3) An affidavit verifying the petition and stating that the amounts claimed are due "to the best of my knowledge and belief" is not a sufficient compliance with Section 6 (1) of the Bankruptcy Law and such non-compliance is not a formal defect within Section 102 (1) but a defect in substance.

(4) Where the petitioning creditors are numerous and represented at the hearing by an advocate it is not necessary, unless required by the Court, that every such petitioning creditor should attend personally and a special order under Rule 62 dispensing with personal attendance is in such circumstances unnecessary.

(5) Debts aggregating £50 must be established by oral evidence at the hearing otherwise there is not power to make a receiving order.

Michaelides for appellant.

Tornaritis for petitioners (respondents).

The judgment of the Court was delivered by the Chief Justice.

JUDGMENT :—

STRONGE, C.J. : This is an appeal by Eleni Costa Haji Stylianou from a receiving order pronounced against her on the 23rd day of March, 1933, by the District Court of Limassol–Paphos sitting in bankruptcy.

At the date of the filing of the petition and also at the date—6th February, 1933—when it came on for hearing there were five petitioning creditors named in the title and in the body of the petition. Of these Whitefields Ltd.—a London firm—petitioned in respect of £35. 1*s*. 6*cp*. stated to be due to them on a bill of exchange dated the 4th October, 1932, maturing on the 4th January, 1933. This bill was produceed at the hearing of the petition as Exhibit G.Z. 2. Inspection shows it to be a bill drawn by Whitefields Ltd. upon the appellant Eleni Stylianou apparently in respect of goods supplied to her by that firm. It was made payable to the order of the Westminster Bank Ltd., by whom it was indorsed for collection to the Banque Populaire de Limassol,Ltd.

At the hearing of the petition on the 6th of February, 1933, the Court, on the application of Mr. Tornaritis who appeared for the petitioning creditors, amended the petition by adding the People's Bank of Limassol, Ltd., as petitioning creditors in the title of the petition and by inserting in item 1 of paragraph 2 thereof immediately following the words "Whitefields Ltd." the words "and/or the People's

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Bank of Limassol, Ltd." Evidence was given of demand made for payment of the bill of exchange from appellant by Mr. G. Zenon and of a statement by her that she was unable to pay.

It may not be amiss to point out here that it became evident from the bill itself when produced to the Court below that the amount claimed in respect of it was not one due to Whitefields Ltd. *and* to the People's Bank, Ltd. jointly. It was also clear that Whitefields Ltd. were not the holders; they had in all probability discounted the bill with the Westminster Bank who would thereby become a holder in due course, and that Bank in turn indorsed it for collection to the People's Bank. The Westminster Bank, Ltd. consequently would have been entitled to sue on the bill and, as I shall show later on, so would the People's Bank, Ltd. The joining of the People's Bank conjunctively with Whitefields Ltd. as well as disjunctively was, therefore, in my opinion, inappropriate and strictly speaking it should have been substituted for Whitefields Ltd. It cannot, however, be said that any injustice was occasioned to the debtor since the production of the bill at the hearing showed clearly what the position was.

In re Maund (1) establishes that a creditor may be joined by the Court as a petitioner provided three months have not elapsed since the committal of the act of bankruptcy—a limitation which it may be noted does not apply where the person is sought to be added as a trustee or *cestui que* trust for the sake of conformity with bankruptcy practice (*Ex parte Owen* (2); *Ex parte Dearle* (3)). In the case before us acts of bankruptcy were proved in November and December, 1932, and three months from these acts had, consequently, not expired at the date when the Court directed the joinder of the People's Bank, Ltd. as petitioning creditors. That a limited company is incapable of being a petitioning creditor was not argued before us, but although no provision is contained in the local Bankruptcy Law expressly or impliedly enabling a limited company to present a petition, I am nevertheless of opinion that it is competent for it to do so for, although only a metaphysical entity with no physical existence, it is none the less a legal *persona* just as much as an individual is, and as such it is capable both of contracting debts and of being a creditor. If, then, it is capable of being a creditor and of maintaining proceedings for the recovery of debts due to it, the following passage from *Williams on Bankruptcy* (13th edition, p. 43) appears to be conclusive of its right to be a petitioning creditor—

(1) (1895) 1 Q.B. 194.
(2) 13 Q.B.D. 113.
(3) 14 Q.B.D. 184.

"As to what persons may be petitioning creditors, generally any person entitled to take proceedings at law or in equity for the recovery of a debt may be a petitioning creditor subject to the same rules as to joinder of parties as would prevail in proceedings at law or in equity."

Moreover in this connection the maxim *argumentum ab inconvenienti multum valet* must not be overlooked and, as Cairns, L.J., pointed out at p. 254 of *Re Calthrop* (1), serious inconvenience would result from holding that a joint stock company could not be a petitioning creditor.

As it is only—according to *Williams on Bankruptcy*—a person entitled to take proceedings at law or in equity for the recovery of a debt who can be a petitioning creditor, the next question for decision is: Could the People's Bank of Limassol, Ltd., as indorsees for collection have sued the appellant on the bill of exchange? The following passage from *Chalmers on Bills of Exchange*, 9th ed., p. 149, and the cases referred to are in my opinion sufficient to show that it could—"C, the holder of a bill, indorses it in blank to D to collect for him. Either C or D may sue the acceptor: *Clark* v. *Pigot* (1699), 12 Mod., 193; *Stones* v. *Butt* (1834), 2 Cr. and M., 416."

See also to the same effect the same work at p. 147 and the cases there referred to in this connection. If, then, it was competent for the Court—as in my opinion it was—to direct the joinder of the People's Bank as petitioning creditors, the next matter for consideration is: What was the proper procedure to be followed?

Section 149 of the English Act of 1914 provides a mode in which a corporation may act for the purposes of the Act. No provision of any kind on the subject is, so far as I am aware, to be found in the local Bankruptcy Law. True, the local Rule 126 is identical with the English Rule 277, but it was decided in *In re Collier* (2) that this English Rule applies only to unincorporated companies authorized to sue and be sued in the name of a public officer or agent.

Neither in the Cyprus Act, therefore, nor in the Rules is there anything regulating the procedure to be adopted by a limited company as a petitioning creditor. In the absence of any direction by the Court on the point it appears to me that if a limited company chose to adopt the procedure stated in *Williams on Bankruptcy* (13th ed., p. 439) little, if any, objection could be raised. In the present case, however, the Court, in the absence of all provision as to procedure either in the Act or the Rules, took upon itself, and in my opinion it was within its discretion in doing so, to direct and regulate the procedure in a matter before it by giving

(1) (1868) 3 Ch. App.
(2) (1891) 8 Morr. 80; 4 E. & E. Dig. 111.

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directions as to the course to be taken by the Bank. Those directions were that the People's Bank should comply with the requirements of Rule 126 which prescribes that in the case of an unincorporated company an affidavit shall be filed by an officer or agent stating that he is such officer or agent and that he is authorized to present the petition. In obedience to these directions of the Court Mr. John Joannides on the 14th February, 1933, swore and filed an affidavit stating that he was the managing director of the People's Bank of Limassol, Ltd., and that he had full authority to bring on behalf of that Bank and in its name all actions, applications and petitions before the Courts including bankruptcy petitions.

At the resumed hearing of the petition on the 18th of February, 1933, Mr. Houry for the respondent took the point that in the absence of production of a resolution of the directors appointing Mr. Joannides managing director and empowering him to take legal proceedings, there was no proof that he was duly authorized to represent the People's Bank. The obvious answer to this contention, which forms ground (*b*) of the grounds of appeal, is that the Court had ruled that proof of his authority by affidavit should suffice, that he had duly complied with this ruling, and that no countering affidavit denying the existence of any such authority had been filed on behalf of the respondent. Assuming, however, merely for argument's sake, that no such ruling as to proof by affidavit of Mr. Joannides's authority had been made by the Court, it would, even then, in my opinion,be incorrect to say that to prove such authority necessitated the production of a resolution of the directors conferring such authority. Section 45 of the Companies Law, 1922, does, it is true, provide that minutes of directors' meetings shall be kept and if signed by the chairman shall be evidence of the proceedings at such meetings, but in *Miles* v. *Bough* (1) where a statute provided that minutes of meetings of trustees should be kept in a book which should be admitted as evidence in all courts, it was held that this was not an exclusive mode of proof, and that proof might be given orally of an order made at a meeting of the trustees. Similar proof of proceedings at a directors' meeting was allowed in *Fireproof Doors, Ltd.* (2).

A further ground of appeal was that the People's Bank, Ltd., having been added as a petitioning creditor should have signed the petition as required by Rule 46 of the Bankruptcy Rules. Now if Rule 46 is examined, it will be seen that it says that the petition must be signed by the person " presenting " it : it says nothing as to the need for signature

(1) (1842) 3 Q.B. 845; 61 R.R. 423.
(2) (1916) 2 Ch. 142.

by a creditor who at the hearing of the petition is allowed by the Court to be joined. In the absence of any authority bearing on the point I do not now propose to decide it in view of the fact that, even if Rule 46 does in fact require signature in such circumstances, an omission of such signature is in my judgment a formal defect or irregularity within Section 102 (1) and as no substantial injustice appears to have been caused by it, the omission did not invalidate the proceedings.

It was also urged on behalf of the appellant that, although the People's Bank was added as a petitioning creditor, it had not filed an affidavit verifying the petition and had consequently failed to comply with Section 6 (1) of the Act. Here again no authority on the point was cited to us. A perusal, however, of Sections 4, 5 and 6 of the Act inclines me to hold that they only contemplate the case of a creditor *presenting* a petition and do not deal with the case of a petitioning creditor joined when the petition is at hearing. Section 6 (1), for example, says the petition shall be verified by affidavit and served in the prescribed manner. The Section, therefore, clearly intends the verification by affidavit to precede service of the petition on the debtor—a procedure which is manifestly impossible in a case such as the present, where the petitioning creditor is added at the hearing inasmuch as the petition has been already served. The object in requiring a verifying affidavit is thus stated by Sir James Bacon, Chief Judge in Bankruptcy, in the case *In re Lindsay* (1) at p. 54 : " The reason for requiring the affidavit to be made is that it would not be right that the petition should be received by the Registrar without it, its only purpose is to justify the receiving of the petition and the sealing of a copy for serving." That being the purpose of the verifying affidavit it follows that no such affidavit by the People's Bank, Ltd., was necessary as the petition had been received by the Registrar and the copy sealed and served before the date on which the Bank was added as a petitioning creditor.

In *Ex parte Ritso* (2) the Court amended the petition which alleged the amount to be due on a judgment and stated the consideration to be money lent. The Court allowed the petition to be amended by stating the consideration for the judgment debt as " a promissory note dated, etc." Objection was taken that the amendment in the petition was not verified by affidavit. The Court held that the Judge had a discretion as to whether he would require a fresh affidavit and that he would not require one if only an immaterial alteration was made in the petition. In the

(1) (1874) L.R. 19 Eq.
(2) (1883) 22 Ch.D. 529.

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present case the amount had already been sworn to be due on foot of a specified bill of exchange dated the 4th October, 1932. The alteration that was being made was not to set up a distinct or different amount due on foot of a different instrument but only a change in the person claiming on foot of the bill, and the production of the bill made the position perfectly clear to the debtor and her advisers.

One further ground of appeal still remains to be noticed: it is said that the petitioning creditors did not attend at the hearing pursuant to Rule 62 of the Bankruptcy Rules and that as the Court made no order dispensing with their attendance, the receiving order should be set aside. Rule 62 of the Bankruptcy Rules provides that the personal attendance of the petitioning creditor or his witnesses may, if the Court thinks fit, be dispensed with. What, then, were the facts? On the date for hearing Mr. Tornaritis, their advocate, appeared on behalf of the petitioners in support of the petition, and there were also present and examined as witnesses Mr. G. Zenon, the Limassol agent of Whitefields Ltd., who were petitioning creditors, Mr. G. Zenon is himself the firm of Cramby and Zenon, who were also petitioning creditors, and Vassilios Petrides, agent under of power of attorney of Anastassia Kokkinara, another petitioning creditor, was also present and examined as a witness. Two alone of the creditors failed to appear, namely Platon Solomonides and Ioannis M. Parea. The debts, however, of the three creditors present at the hearing were proved to amount in the aggregate to over £50, the two absent creditors were represented by Mr. Tornaritis, and in my opinion this was sufficient. The cases, as I read them, do not go the length of deciding that where there are numerous petitioning creditors, every petitioning creditor joined on the petition must appear. If of course those who do appear in support of the petition fail to prove debts totalling £50, the Court has no power to make a receiving order. But that was not this case.

I have dealt with the various contentions advanced on behalf of the appellant and in my view she is not entitled to succeed on this appeal on any of the grounds which she has put forward.

During the hearing of the appeal, however, it transpired that only the claims forming items 1 and 2 of paragraph 2 of the petition had been verified by the affidavit of the creditor or some person on his behalf having knowledge of the facts pursuant to the requirements of Section 6 (1) of the Act. As to the claims of the remaining three creditors there was merely a statement in the affidavit of Mr. G. Zenon that to the best of the deponent's knowledge and belief the amounts claimed were due. The requirement that the

verification shall be by the creditor or some person *having knowledge of the facts is not only a requirement of the Rules but a requirement of the Law.* Rule 50 (1) of the Bankruptcy Rules says that every creditor's petition shall be verified by one or more affidavits of himself or of the person or persons *having knowledge of* the statements in the petition. Now to state that one knows or that it is within one's knowledge that the sums mentioned in items 3, 4 and 5 of paragraph 2 are due by the respondent to the respective petitioners named as making claim thereto is quite a different thing from saying such sums are due to the best of one's knowledge and belief. The former statement *does*, on the face of it, purport to be that of a person conversant with the facts to which he deposes, whereas a statement to the best of one's knowledge and belief is merely tantamount to saying " so far as I am aware " or " I know of nothing to the contrary." In the present case we were given to understand by counsel for the petitioners that it was in fact a statement made on information received by Mr. G. Zenon from the petitioners and, consequently merely a statement on information and belief, and even at that it was irregular in omitting to state the sources of information. There was, therefore, a failure to comply with the requirement not merely of a Rule of practice but of the Law itself and it is, I think, reasonably clear from *Ex parte Coates* (1) that a failure to comply with an essential requirement of the Law is not a mere matter of form but one of substance. It cannot, in my opinion, be said of this omission as Lord Sternadale M.R., in *In re a Debtor* (2), said of an omission to mention in a petition a wholly valueless security that it was " an omission of something of no value, something not affecting the matter in any way," because the aggregate amount of debts stated by the verifying affidavit to be due within the deponent's personal knowledge totalled less than £50, and consequently the petition was neither one which under Section 5 (1) (*a*) of the Bankruptcy Law was entitled to be presented nor one which the Court could take into consideration.

In my judgment, therefore, this failure or omission being one of substance, the appeal must be allowed and the receiving order set aside, but as the appeal succeeds on a ground not taken by the appellant, each side must abide their own costs of this appeal and of the proceedings in the Court below.

(1) (1877) 5 Ch.D. 979.
(2) (1922) 2 K.B. 112.