

**In re. RAZA SHIPPING COMPANY LIMITED**

[SUPREME COURT—Kermode, J.—27 February 1981]

**In Bankruptcy***Company law—contents of Affidavit verifying—Acceptable method of proving debt.***R. W. Mitchell** for Petitioner**V. Parmanandam** for the Company

Petition for winding up founded on non-compliance with notice under Companies Ordinance S.168.

The evidence as to the existence of the alleged debt was accepted as proof by reason of a deponent indicating "..... he ..... acquired knowledge of the fact from a perusal of the Petitioner's papers and documents." The proof of debt prima facie may be by Affidavit other than of the plaintiff.

The report does not suggest that accumulation of knowledge thus would be unacceptable as hearsay or as oral evidence of the content of written documents was.

*Held:* Preliminary objection overruled. Affidavit accepted as a sufficient compliance with Rule 29.

It was noted that the Affidavit is only prima facie evidence of the statements in the Petition.

**Case referred to:***In re African Farms Ltd. (1906) 1 Ch. 640***Decision****KERMODE, J.**

Mr Parmanandam as a preliminary point has raised the issue that the affidavit verifying the petition has been sworn by Mr Mitchell and not by the Petitioner as required by Rule 29 of the Companies (Winding Up) Rules 1929. Mr Parmanandam has referred to paragraph 5 of the petition as an example of a fact which could not be within Mr Mitchell's knowledge.

Mr Parmanandam quoted the case of *In re African Farms Ltd. (1906) 1 Ch. 640* and argues that in the instant case the affidavit is not acceptable.

Halsbury Laws of England 4th Edition paragraph 1022 states that an affidavit verifying petition "may in a proper case be made by the petitioner's solicitor or agent if he knows the facts". The *African Farms Ltd.* case is quoted as an authority for such statement

The petition in this section is founded on non-compliance with a notice under section 168 of the Companies Ordinance.

The petitioner is resident in New Zealand and it is clear that he can have had no first hand knowledge of the service of such notice and non-compliance with the provision and terms of such notice. Mr Mitchell's evidence on such facts is of more evidential value than that of the petitioner.

As regards the evidence as to the existence of the alleged debt Mr Mitchell's affidavit indicates he has acquired knowledge of the facts from a perusal of the petitioner's papers and documents.

**Warrington J. in the *African Farms Ltd.* case at p.642 stated as follows:**

"I have looked into the practice, and have ascertained that there have been many cases, some of which are unreported, in which an affidavit other than that of the petitioner has been accepted. I have also spoken respecting the matter to Buckley J., to whom the company business has been assigned. He has pointed out to me, and I in turn now desire to point out, that r. 29 does not state what is to be the result of non-compliance with its provisions. The rule does not say that the petition is in that case to fail. The rule is merely directory as to the kind of affidavit to be accepted as evidence. That leaves it open to the Court, in a proper case, to accept an affidavit which in an ordinary case coming before the Court would be accepted as sufficient evidence."

The most important facts stated in the petition are those relating to the statutory notice requiring the company to pay the alleged debt, service on the company and failure by the company to pay that debt within three weeks after service of such notice.

On these facts the evidence of Mr Mitchell is of more value than that of the petitioner.

I accept the affidavit as a sufficient compliance with rule 29.

I would also point out that strict compliance with rule 29 which requires the affidavit verifying petition to be sworn and filed within four days after the petition is filed presents practical difficulties even in these days of jet travel if an overseas petitioner is required to personally swear the affidavit. In 1929 when the rules were made it would have been even more difficult if not impossible.

Rule 29 also provides that the affidavit is *prima facie* evidence of the statements in the petition and it is open to the company to refute the statements. In the instant case the defendant has filed an affidavit in opposition to the petition and the facts will now have to be established by evidence.

I overrule the preliminary objection.

*Decision in favour of Petitioner.*