CHAPTER 12
TUCKER AND THE TAXMAN

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The Legal Proceedings

It is ironic that Roy Charles Tucker who, together with his colleague Ronald Plummer, was famous for so many years in the field of devising and marketing tax avoidance schemes should himself become bankrupt and that far and away his largest creditor should be the Inland Revenue.

The scenario disclosed by Tucker's affairs involved manipulation of offshore entities to conceal the beneficial ownership of his assets. This pattern is by no means new, as is demonstrated by cases such as *Re A Company*[1] which was also concerned with a complex structure of foreign companies and trusts employed as a device to conceal a debtor's assets. It is inevitable that a similar situation will arise in the future, but the likelihood is that next time the size and intricacy of the case will make Tucker's bankruptcy appear, by comparison, relatively small-scale and simple.

The Tucker bankruptcy has produced a body of reported material in this country, namely:

1. *Re Tucker a Bankrupt, ex parte Tucker*,[2] a decision of Scott J, given on 14th January, 1987;
2. *Re Tucker (R.C.), a Bankrupt ex parte Tucker* (K.R.),[3] a decision of the Court of Appeal, given on 16th November, 1987, reversing the judgment of Scott, J;
3. *Re Tucker a Bankrupt*,[4] a decision of Millett J, given on 17 November 1987.

The bankruptcy has also produced three unreported cases, two in the Isle of Man and one in Guernsey, which are of considerable interest to practitioners in the field of cross-border insolvency:

1. *Re Tucker a Bankrupt, ex parte Keith Tucker, Advocate J.A. Clyde-Smith, Cristobal Company S.A. and Anstalt Propria*, a decision of the Staff of Government Division of the High Court of Justice of the Isle of Man (B.A. Hytner QC and Deemster Corrin), given on 11 July 1988;
2. *Colin Bird, as Trustee in Bankruptcy of Tucker v. the Bankrupt, Annabel Tucker, Keith Tucker, Angela Tucker, Kashill Limited, Pimila S.A., Worsted Inc., Wenlock Investment S.A., Goliath Trading S.A., Golconda Enterprises Limited, Douglas Bank Limited and La Maye S.A.*, a decision of Deemster Corrin, sitting in the Chancery Division of the High Court of the Isle of Man, given on 5 October 1988;
3. *Colin Bird v. Norman Meader*, a decision of the Court of Appeal in Guernsey (D.C. Calcutt QC, J.M. Collins QC, and J.M. Chadwick QC), given in late 1988.

The Tucker bankruptcy proceedings were conducted under the Bankruptcy Act 1914 and not under the Insolvency Act 1986, but, for the present purposes, this is of no particular significance.

The Techniques Adopted for Unravelling Tucker's Affairs

The primary aim of this paper is to survey the techniques adopted in the Tucker bankruptcy by the trustee to ascertain the truth about the bankrupt's affairs and to recover assets for the benefit of his creditors. The complex nature of Tucker's activities was such that the trustee was compelled to commence proceedings in the English courts as well as in the Isle of Man and Guernsey if he was ever going to penetrate to the heart of the matter.

A spirited attempt was made to thwart the trustee's litigation both in the Isle of Man and Guernsey on the grounds that he was no more than the cat's paw of the Inland Revenue and that accordingly the courts of each of those islands had no jurisdiction to entertain any proceedings by him, their purpose being the enforcement on an extraterritorial basis of the claims of the Inland Revenue, contrary to the rule, stated in *Dicey and Morris, The Conflict of Laws,* for over half a century, to the following effect:

> English courts have no jurisdiction to entertain an action for the enforcement either directly or indirectly of a penal, revenue for other public law of a foreign state.[5]

The submissions based on the Rule were overwhelmingly rejected by the appellate courts both in the Isle of Man and in Guernsey. It is not here necessary to dwell on the reasoning underlying the decisions of those courts; in a recent article by Peter Fidler, entitled *The Lessons of the Tucker Bankruptcy*,[6] an admirable analysis of the principles as they emerge from those decisions and also from the speeches of their Lordships in the House of Lords in *Re State of Norway's Application Nos. 1 and 2*[7] is to be found. The article is particularly valuable since Mr Fidler is a partner in the firm of Stephenson Harwood which acted for Tucker's trustee in all the proceedings.

The Factual Background

A receiving order was made against Roy Clifford Tucker on 22 July 1985. It was founded on the petition of three associated companies and was based on a Queen's Bench judgment debt amounting to $412,176. Tucker was adjudicated bankrupt on 9 August 1985. Subsequent to the adjudication, the petitioning creditors assigned the benefit of the judgment debt to a Panamanian company, Cassaya Co. S.A., which then formally released all and any claim it may have had against Tucker or his estate.

Tucker's statement of affairs showed assets valued at £362,000. In addition to various relatively minor liabilities, he disclosed a potential liability to the Inland Revenue in the region of £18.5m. without taking account of any penalties. The petitioning creditors' debt having been assigned and then waived by the assignees, Tucker's disclosed assets were more than sufficient to cover his liabilities, bar the £18.5m. tax liability.

Whether the bankruptcy was a tax bankruptcy, in the sense that the Inland Revenue was the only creditor in the bankruptcy, was one of the issues in dispute in the proceedings in the Isle of Man and Guernsey. The position appears to have been that there were in fact no proving creditors whose debts had been admitted. The Inland Revenue had submitted a proof, but the assessments had been validly appealed against within the prescribed time before the commencement of the bankruptcy

and their proof had been stood over.[8]

The trustee in bankruptcy, Colin Bird was appointed on 25 September 1985. He embarked upon the tortuous process of unravelling Tucker's affairs. There were, it appeared, a number of inter-related companies, entities and trusts, some incorporated or set up in the Channel Islands, others in the Isle of Man and elsewhere, which controlled or appeared to control assets of which *de facto* enjoyment seemed to be had by Tucker himself. These included an Elizabethan manor house and an estate of over 500 acres near Maidstone in Kent, together with the regulation Rolls Royce. The trustee had reason to suspect that control of those companies, entities and trusts was exercised by persons who were nominees or trustees for Tucker and that he was in reality the beneficial owner of the underlying assets.

In or about 1973 Tucker, who was a chartered accountant in practice as Roy Tucker and Co., teamed up with Ronald Plummer and together they established the Rossminster Group of Companies which specialised in providing clients with pre-packaged artificial tax avoidance schemes and the banking and other financial services which such schemes ostensibly required. The circumstances in which Tucker's home at Maidstone, Plummer's home in Kensington and the offices of Rossminster in Hanover Square, London, were raided by officers of the Inland Revenue and large quantities of documents seized are vividly described in the celebrated case of *Inland Revenue Commissioners v. Rossminster Limited*,[9] particularly in the judgment of Lord Denning MR in the Court of Appeal.[10]

Round 1 - Scott J and the Court of Appeal

In the first set of proceedings before Scott J and the Court of Appeal, the trustee expressed the belief that Tucker's brother, Keith Tucker, was in a position to answer important questions arising in the bankruptcy due to his connection with a number of the Channel Island companies. In May 1986 the trustee accordingly obtained from the Registrar leave for the issue of a summons, under section 25 of the Act of 1914, requiring the brother to produce documents relating to the various companies, trusts and property which the trustee's researches into the bankrupt's affairs had identified, and requiring that the brother, Keith, also attend the court in London for examination.

Keith, although a citizen of the United Kingdom, had at all material times been resident in Belgium. He had not possessed a place of residence in England since 1972. In that year he emigrated to Belgium. He lived there with his wife until 1977, when he and his family moved to Venezuela. They returned to Belgium in 1980 and had lived in Belgium ever since on a farm which Keith had purchased in 1980. Keith's residence in Belgium made it necessary for leave to be obtained for service of the summons outside the jurisdiction of the court. Such leave was granted by the Registrar and his decision was upheld by Scott J However, that decision was reversed by the Court of Appeal on the grounds that, upon its true construction, section 25(1) of the Act of 1914 did not assert a jurisdiction over British subjects resident abroad and that, accordingly, rule 86 of the Bankruptcy Rules 1952 did not provide a procedural power to permit service out of the jurisdiction of summonses issued under section 25(1).[11]

Round 1 to the bankrupt's family.

Round 2 - Millett J

The second set of proceedings involved the Elizabethan manor house with some 5 acres of gardens, together with 500 acres of adjoining farmland near Maidstone where the bankrupt lived with his wife and children. The Maidstone estate had been acquired in 1977 by Cambury Limited, a company registered in the Isle of Man and a wholly owned subsidiary of Hartopp Limited, another Isle of Man company, the shares of which were held by the trustees of a settlement allegedly established by Keith Tucker, the brother, and which was sometimes known as the Keith Guernsey Settlement and, sometimes, as the Keith No. 1 Trust. The farmland forming part of the estate was initially farmed by the bankrupt, but at a later stage the farming business was transferred to Farmingacre Limited, a wholly owned subsidiary of Cambury.

It emerged that in November 1985, shortly after the bankruptcy, there had been a sale of the shares in Cambury to Langton Investment S.A., a company incorporated under the laws of Panama and, furthermore, that in July 1986 the Maidstone estate had been transferred by Cambury to Langton (its parent company) for a stated consideration of £975,000. In October 1986 the estate was charged by Langton to Olec, another Panamanian company.

Langton and Olec had common directors or authorised signatories, who also were partners in the Jersey firm of Advocates representing Mr Ronald Plummer. The trustee believed that the Panamanian companies were owned or controlled by Mr Plummer or associates of the bankrupt. It was alleged by the trustee that the connection between the two men remained extremely close.

Despite these various transactions, the bankrupt and his family continued to live on the Maidstone estate, ostensibly under a tenancy agreement granted to or to be granted by Langton to the bankrupt's wife of which, so the learned judge found, she appeared to "know little and understand nothing".[12]

In all these circumstances it is hardly surprising that the trustee, in July 1987, commenced proceedings seeking a declaration that the Maidstone estate formed part of the property of the bankrupt divisible amongst his creditors, free from any purported charges in favour of Olec. The trustee, however, further sought an order that until he had completed his examinations pursuant to section 25 and section 122 of the Act of 1914 of Langton, Olec and such other persons as he might wish to examine, that the proceedings should stand adjourned in so far as they claimed substantive relief in relation to the Maidstone estate.

The trustee was given leave by Millett J, under rule 86 of the Bankruptcy Rules, to serve the notice of motion outside the jurisdiction. Langton thereupon sought leave to have that *ex parte* order set aside on the grounds that the trustee did not have and, on his own evidence, was unable to say that he had a good cause of action or a reasonably arguable cause of action or a claim of adequate strength to justify any order for service of notice of motion outside the jurisdiction. Langton's application was dismissed; proceedings by way of notice of motion in the bankruptcy being analogous to proceedings under Order 11 of the R.S.C., and since

the substantive relief was the recovery of land in England, the trustee had to satisfy the court that it was a proper case for an order for service of the notice of motion outside the jurisdiction and for that purpose was required to prove a sufficiently strong case on the merits. The view taken by Millett J was that the strength of the case needed to satisfy the court depended on its particular circumstances and that, although the trustee was seeking a stay of the substantive hearing until the examination of Langton and Olec, he had nonetheless satisfied the court that in all the circumstances he had a good arguable case and a proper one for ordering service of the notice of motion outside the jurisdiction.

Round 2 to the trustee in bankruptcy.

In the course of his judgment Millett J closely examined the truth of the relationship between the bankrupt and his brother, Keith, in the light of the evidence then available. The contention that Keith had originally found the funds to set up the trust which came to own the Maidstone estate from his own resources received short shrift from the learned judge. Having described some of the convoluted transactions leading to the establishment of the trust in 1974 and the circular nature of them, the learned judge trenchantly observed:[13] "Now this, of course, is fairyland ..."

The matter did not, however, stop there because the judge was impressed by the weight of evidence to the effect that on a number of occasions it was the bankrupt's practice to use Keith as a front man to shelter offshore funds which remained at the bankrupt's disposal and under his control. A variety of examples of such practices were then described in detail, including a situation where the bankrupt was responsible for making all the administrative arrangements necessary to establish a Liechtenstein Anstalt called Donmarc of which Keith was ostensibly the founder and beneficial owner. It appeared from the correspondence adduced to the court that the funds introduced into Donmarc were provided by the bankrupt by means of matched commodity dealings deliberately structured in order to ensure a "loss" to the bankrupt and a corresponding "gain" to Keith, who paid the amount of the "gain" to Donmarc. The bankrupt even claimed the amount of the "loss" against his United Kingdom tax. Thus the effect, and presumably the object, of the arrangement was to enable the bankrupt to transfer part of his United Kingdom earnings offshore at the expense of the Inland Revenue. The bankrupt was the authorised signatory on Donmarc's bank account. Regular statements of Donmarc's financial position were sent to Keith, not at any address of his, but at the bankrupt's home in England.

In 1979, Keith became indebted to the bankrupt in the sum of £800 or approximately 50,000 Belgian Francs. A note from Keith, apparently to the bankrupt, setting out calculations of the sum involved concluded:

> I will therefore pay you 50,000 BF. to Donmarc during the coming week or so. Thanks very much for the loan. Lots of love to you all. Keith.

The loan was duly discharged as promised by a cheque for BF 50,000 drawn by Keith in favour of Donmarc. There was other compelling evidence that Keith was not the true beneficial owner of Donmarc and that no substantial sums had been introduced into the Keith No. 1 Trust,

whether by him or anyone else. The most significant document relied upon by the trustee consisted of a statement dated 31 January 1978 prepared for the benefit of the bankrupt, being one of a series of similar statements regularly prepared and sent to him, which was headed "R.C. Tucker. Personal overall position. 31.1.78", and which listed amongst the assets the following:

(i) £602,561 cash at bank, made up of moneys in the accounts of various companies in the Keith No.1. Trust, including Hartopp and Cambury, and also Donmarc;
(ii) property, including the Maidstone estate.

A considerable effort must have been made by the trustee and his advisers to accumulate the evidence adduced to the court in support of his claim to the Maidstone estate. The case provides an excellent example of the pertinacity required by a trustee or a liquidator in assembling the detailed facts without which there is no hope of success in circumstances where there has been an unscrupulous use of offshore vehicles to conceal the truth regarding the beneficial ownership of property.

Round 3 - The "Offshore" Proceedings - The Isle of Man

The proceedings in the Isle of Man and Guernsey respectively not only demonstrate the admirable determination of the trustee to use the procedures of the Act of 1914 to seek out information in those jurisdictions, but they are also extremely important in so far as they confirm a trend to be found in other jurisdictions, such as Australia and South Africa, to the effect that local courts will not necessarily stand in the way of a foreign trustee in bankruptcy seeking information in the local jurisdiction, albeit the tax authorities are or might be the sole or predominant creditors in the foreign insolvency proceedings. In the proceedings culminating in the judgment delivered by the appellate court in the Isle of Man on 11 July 1988, the trustee had, in November 1986 obtained from the Registrar in London an order under section 122 of the Act of 1914 requesting the court exercising bankruptcy jurisdiction in the Isle of Man to act in aid of and be auxiliary to the English court for the purpose of holding an examination of two individuals namely Alexander Thompson and David Drewitt. These were both Manx residents, Mr Thompson being the managing director of an Isle of Man bank and Mr Drewitt, a chartered accountant, both being liquidators of companies included in a list of those into whose affairs the trustee wished to inquire. They held documents relating to their respective companies and information about other companies and trusts specified in the list. There were perhaps eighty such entities.

In January 1987 the trustee, pursuant to the order of request in London, obtained from Deemster Luft an *ex parte* order that a summons be issued requiring Mr Thompson and Mr Drewitt to attend to be examined on oath before the court as to the bankrupt's affairs and to produce certain books, papers, writings and documents in their custody or power relating to the eighty or so companies referred to in the proceedings. In March 1987 the Deemster declined to set aside the summons and it was against that refusal that Mr Thompson and Mr

Drewitt, in May 1987, lodged an appeal. The following day, acting no doubt on the principle that if the belt had a potential to fail it is wise to don braces as well, the trustee obtained from the Registrar in England an order under section 25 of the Act of 1914 for the examination of Mr Drewitt and Mr Thompson in London.

In July, 1987 four of the parties named in the list included in the Isle of Man proceedings petitioned the court there for an injunction restraining Mr Thompson and Mr Drewitt from appearing in answer to the orders for examination. Those four parties, which included, of course, Keith, described themselves as "trustees of the funds" into whose affairs the trustee in bankruptcy was seeking to enquire through the agency of the proposed examination of Mr Thompson and Mr Drewitt. In August 1987 the Deemster granted the injunction sought pending the hearing of the appeal by Mr Thompson and Mr Drewitt. In view of the fact that the grounds of appeal adduced in the primary appeal contained references to such matters as confidentiality and public policy in the Isle of Man and the damage that the Deemster's judgment might do to the "tax haven" status of the Isle of Man, the Attorney-General was invited by the appellate court to appear as *amicus curiae*.

Although in the judgment delivered on 11 July 1988, the appellate court recognised that there might have been a misunderstanding regarding the nature of the argument proposed to be put forward by Mr Thompson and Mr Drewitt, it was nonetheless made plain by the Attorney-General that in his submission public policy in the Isle of Man did not in any way embrace the protection of dishonesty or the "laundering" of money through the island banking or other institutions. The appellate court expressly adopted that submission and went on to observe:

> The concept of confidentiality which was at the root of one of the arguments before both Deemster Luft and this court relates to specific relationships for example, banker and customer, lawyer and client; there is no blanket concept of confidentiality to cloak irregular financial dealings. Deemster Luft rejected these submissions and for our part we do not find them relevant to any of the issues in the appeal.

The appeal by Mr Thompson and Mr Drewitt failed for the reasons described at length in Mr Fidler's recent article;[14] likewise the attempt by the fourth parties, including Keith, to prevent the two witnesses from appearing in answer to the orders for examination was unsuccessful. The provisions of section 122 of the Bankruptcy Act 1914, an Imperial statute applicable in this particular respect in the Isle of Man, were considered to be mandatory, the Manx court having no discretion to decline to act in aid of the High Court in England simply on the ground that the Inland Revenue might be the sole or predominant creditor in the bankruptcy proceeding. The court was content to adopt for the Isle of Man the rule enunciated in *Dicey and Morris* referred to above and went on to express the view that the natural meaning of the words employed in the rule:

> ... leads to the conclusion that the outlawed litigation must be an action by or on behalf of a foreign sovereign having as its purpose the collection of a revenue debt, and normally the plaintiff would be the sovereign or his agent or nominee, and the defendant would be the debtor.

On the question of the relationship between United Kingdom and the Isle of Man, the court observed:

> ... there is, however, no Manx statute or rule of law permitting the UK revenue or anyone on its behalf to sue in the Manx courts for the recovery of a tax debt and such an action would fall foul of the rule.

The seeking of information regarding the bankrupt's affairs by his trustee could not be fairly described as a situation where the UK revenue or anyone on its behalf was suing for the recovery of a tax debt in the Manx courts.

Accordingly this round was won by the trustee in bankruptcy.

The next round, before Deemster Corrin sitting at first instance on 5 October 1988, went to the bankrupt, his family and friends. In February 1988 the trustee began proceedings against the bankrupt and fifteen other defendants to recover payment of all moneys in the custody or control of the defendants on the simple premise that all such moneys vested in the trustee in his capacity as trustee in bankruptcy of the estate of Tucker; the statement of claim included a claim for payment to the trustee of all such moneys. It emerged, in the course of the Deemster's judgment, that the original petitioning creditors who obtained the receiving order were Cobra Emerald Mines Limited, Cobra Marketing S.A., Gravelotte Emerald (Pty) Limited and Royex Goldmining Corporation Limited. Apart from the Inland Revenue, whose claim, it has already been seen, was in dispute, there were originally many other creditors, including the Department of Health and Social Security, British Telecom, American Express and Diners Club. In the course of the proceedings at least two other potential creditors emerged with claims arising out of tax schemes devised by Mr Tucker and Mr Plummer.

At the time of the hearing before the Deemster, all the potential creditors (except for one with a claim in connection with the tax avoidance scheme) had been paid off, leaving the Inland Revenue as the sole outstanding creditor. The crucial question accordingly for the decision of the Deemster was whether, having regard to the events which had happened since the commencement of the bankruptcy, namely the satisfaction of all creditors apart from the Inland Revenue and the single claimant in respect of the tax avoidance scheme, the trustee's entitlement to sue in the Isle of Man would infringe the relevant rule of private international law. The learned Deemster observed:

> If that be the case, it means that if a man living in England owes taxes and other debts and secretes the whole of his assets in the Isle of Man, so long as he pays off his other creditors, leaving the Inland Revenue high and dry, the trustee will fail in any action to recover assets in the Isle of Man.

The learned Deemster was satisfied that the whole object of the action by the trustee was in the prevailing circumstances to collect unpaid English taxes and that was likely to be the sole result of a decision in his favour. Although he unhesitatingly condemned the actions of the bankrupt in his manipulation of the relevant rule of private international law, his duty was to balance that conduct against the duty of the Manx court generally to uphold the island's territorial integrity as a foreign jurisdiction for the purpose of the trustee's proceedings. Since the real purpose of those proceedings in the Isle of Man was for the recovery of all assets located there which could be established as truly belonging to Mr Tucker the rule regarding non enforcement of foreign revenue debts would have been infringed if the proceedings had been allowed to

continue. The trustee's action was struck out against the bankrupt and all the other defendants.

This round accordingly was won by the bankrupt, his family and associates.

Round 4 - The "Offshore" Proceedings - Guernsey

In October 1986 the trustee obtained from the Bankruptcy Court in London an order in aid under section 122 of the Act of 1914 whereby the High Court requested the Royal Court in Guernsey to act in aid of and be auxiliary to the High Court for the purpose of holding and concluding a private examination of Lince Salisbury, Meader and Co. (a firm) of St Peter Port. Armed with the order in aid the trustee commenced an action in the Royal Court against one of the partners in the firm for an order that he attend before a Jurat for the purpose of being examined in connection with the affairs of the bankrupt. The application was heard by the Deputy Bailiff on 30 September 1987. The Deputy Bailiff held that it would be a wrong exercise of his discretion to make an order for private examination against a person who did not consent in circumstances in which, as he found, the United Kingdom revenue authorities were by far the largest, if not indeed the sole, creditor in the bankruptcy. Accordingly, he refused to make the order sought against the partner in the firm, Mr Meader.

The matter was subsequently taken to the appellate court in Guernsey. The judgment is also considered by Mr Fidler in his article in *Insolvency Intelligence* but certain passages are sufficiently interesting to be mentioned here at some length. The court accepted that there might be circumstances in which considerations of public policy required a recipient court, as a matter of jurisdiction, to refuse aid sought under section 122 of the Act of 1914. Nevertheless, it did not follow that those circumstances arose whenever the largest, or even the sole, claim in the foreign bankruptcy is a claim for taxes by the foreign revenue authorities. The relief sought from the Royal Court by the trustee was not, in form, an order enforcing the claim of the United Kingdom revenue for taxes alleged to be due from the bankrupt. The court went on to observe:

> It is an order which, if granted, may be expected to lead the trustee to a more complete understanding of the bankrupt's affairs including, in particular, the nature and whereabouts of property in which the bankrupt may have, or have had, some beneficial interest. In so far as the order does lead to the identification of such property, and steps can thereafter be taken to recover that property for the benefit of the bankrupt's estate, the United Kingdom revenue, together with the creditors in the bankruptcy (if any) may expect to benefit. But the obligations on the trustee to take whatever steps are open to him to identify and recover the property of the bankrupt are wholly independent of the existence of the revenue's claim in the bankruptcy. Those obligations are imposed by the Bankruptcy Act 1914 under which the trustee has been appointed.

It had been urged upon the court that, whatever might be the position where the foreign revenue was but one of a number of creditors in the foreign bankruptcy, different considerations applied where it was the sole creditor. Upon refinement this led to the proposition that aid could, or at least should, not be given by the Royal Court where the English bankruptcy was properly to be described or regarded as a "tax bankruptcy", i.e. a bankruptcy in which there was no reasonable prospect that any

creditor other than the revenue would receive any payment. The court declined to accept that argument. It cannot have been intended by the legislature that the court which is in receipt of a request for aid should be required to embark upon a prognosis of what will be the ultimate distribution of assets amongst the creditors in the foreign bankruptcy. The appellate court continued its judgment as follows:

> The position in bankruptcy is not static, as the facts of the present case show. Creditors prove their debts, and are paid off from outside sources: other creditors learn of facts which may lead to an entitlement to prove. The trustee learns of facts which cause him to admit proofs which he had earlier rejected. The extent of the assets recovered from time to time may be greater or less than the amount of the preferential revenue claims. There will be many cases in which it will be impossible to say, until the administration of the bankruptcy is virtually complete, that the bankruptcy is or is not a tax bankruptcy in the sense described.
>
> In particular, there will be many cases in which no sensible answer can be given to that question at the stage where the trustee is gathering information as to the bankrupt's affairs. It is not difficult to conceive of circumstances in which, at the time of the application for a private examination, the prospects of a dividend for non-revenue creditors may depend, substantially, on information which the trustee expects to obtain in the course of that examination. The court to which a request for aid is made will then be faced with the dilemma that the status of the bankruptcy as a "tax bankruptcy" may depend upon whether or not the request is granted. Considerations of this nature lead us to the conclusion that there is no safe basis upon which a distinction can be drawn, for the purposes of section 122 of the Bankruptcy Act 1914, between foreign bankruptcies in which the foreign revenue is, or appears to be the sole creditor or the only creditor entitled to participate in a distribution, and foreign bankruptcies in which the foreign revenue is but one of a number of creditors.

The trustee's appeal was allowed and the matter was remitted to the Royal Court with a direction to give effect to the request for aid by making an order for the examination of Mr Meader, and for the production of documents, in such form as might be most expedient.

Postscript

Despite the fact that the trustee had been repulsed in his attempts to recover the bankrupt's assets in the Isle of Man, it is believed that an overall settlement was reached involving a substantial payment to the Inland Revenue. So the Tucker saga is now at an end.

Subsequent to the Tucker litigation, the House of Lords, in *Re State of Norway's Application (Nos. 1 and 2)*[15] clarified the rule in *Government of India v. Taylor*.[16] That rule is limited to cases of direct or indirect *enforcement* in this country of the revenue laws of a foreign state. Where the foreign court is merely seeking the assistance of the court of this country in obtaining evidence which would be used for the enforcement of the foreign state's revenue laws in its own country, that will not be an extra-territorial exercise of sovereign authority so as to constitute indirect enforcement within the meaning of the rule in *Government of India v. Taylor*.

In relation to section 426 of the Insolvency Act 1986 which now contains the code governing co-operation between courts exercising jurisdiction in relation to insolvency, it seems quite likely that the distinction drawn in the *Tucker* proceedings between the ascertainment of information by the trustee on the one hand and the recovery of assets on the other may, in relation to tax-bankruptcies, remain a valid and

important distinction. If the trustee in bankruptcy or the liquidator of a company is in reality the cat's paw of the Inland Revenue, he may be precluded by the relevant rule of private international law from recovering assets in a foreign jurisdiction.

It may now also have become easier to understand the type of circumstances in which the mandatory provisions of section 426 regarding the granting of assistance to the requesting court might be overriden by a particular rule of private international law. The subject of cross-border insolvency is growing rapidly and, surely, it will not be too long before a case will present itself in which the problems surrounding section 426 will be authoritatively resolved.[17]

FOOTNOTES

1. [1985] BCLC 333.
2. [1987] 1 WLR 928.
3. [1988] 2 WLR 748.
4. [1988] 1 WLR 497.
5. 11th edition, (1987) Volume 1, Chapter 6, Rule 3, at page 100.
6. Published in [1989] 2 Insolvency Intelligence 41.
7. [1989] 2 WLR 109.
8. See Mr. Fidler's article, *supra*, n.6.
9. [1980] AC 952 (HL).
10. [1980] 2 WLR 15.
11. See comments in [1988] J.B.L. at 168 and 341.
12. [1988] 1 WLR 497, at 500.
13. [1988] 1 WLR 497, at 505.
14. *Supra*, n.6.
15. *Supra*, n.7.
16. [1955] AC 491.
17. The upsurge of interest in the subject was charted in the author's lecture in February 1989 at the Faculty of Laws, University College, London, published in [1989] Current Legal Problems 217.

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