

1006

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

B NO 320/97

IN THE MATTER of the Insolvency Act 1967

AND

IN THE MATTER of the bankruptcy of M A FOUNTAIN

Judgment Debtor

EX PARTE HESKETH HENRY

Judgment Creditor

Hearing: 14 May 1997

Counsel: Ms Knight for the creditor
The debtor in person

Judgment: 14 May 1997

(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT

Solicitors for the creditor
Hesketh Henry
DX CP24017

The Debtor in person
26 Ocean View Road
Milford
Auckland

Official Assignee
(M Higham/T Rofe)
DX CP24110

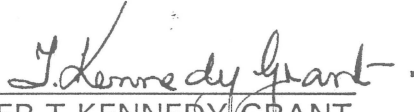
This is a creditor's petition for an order of adjudication.

The debtor admits that judgment has been entered against him but claims that he did not know at the time that this was so. He claims that the first he knew of judgment having been entered against him was when the summons and petition were served on him a fortnight ago. There is on the file an affidavit by a process server deposing to the fact that he personally served the debtor with a bankruptcy notice at the address which the debtor has admitted was his address on the date in question. The debtor says that he was at work on that day but has been unable to tell me when he was at work on that day.

The debtor contends that the amount of the debt, was incurred in respect of his defence by Hesketh Henry on two Traffic Act charges, was excessive, he having been subsequently charged \$900 by another solicitor for a similar Traffic Act offence. There was a meeting after the fee was rendered, attended by the debtor and his father, at which the fee was reduced. No steps were taken to review the fee under the Law Practitioners Act. It is also significant that the debtor in his statement to me indicated that this fee was charged in respect of one offence whereas I am advised by counsel for the creditor that it was in respect of two offences (although the second may have been withdrawn after the first had been dealt with). The debtor has previously paid towards the discharge of this debt some \$250.00. He has also on two occasions requested and been provided with automatic payment forms to enable him to pay the balance of it. He has other debts.

I am satisfied that there are no grounds on which the judgment on which this petition is based could possibly be set aside. I am satisfied that the

bankruptcy notice was served on the debtor and that an act of bankruptcy has been committed. I am satisfied that there are no other grounds on which under the Act I could properly exercise the Court's discretion in favour of the debtor. I therefore make an order adjudicating him bankrupt. I award costs to the creditor in the sum of \$1,000 plus disbursements to be fixed.



MASTER T KENNEDY GRANT
