

INSOLVENCY JURISDICTION.

Before Panckridge J.

In re IGNATIUS ROHDIRICK.*

1939

June 20.

Insolvency—*Jurisdiction*—*Pension-papers, Deposit of—Presidency-towns Insolvency Act (III of 1909), ss. 7, 60 (2)—Pensions Act (XXIII of 1871), ss. 11, 12—Code of Civil Procedure (Act V of 1908), s. 60 (1) (g).*

The insolvent had, prior to his adjudication on his own petition, arranged with his creditor J. P. to pay a certain portion of his pension, receivable from Government, month by month, in liquidation of his debt and deposited with J. P. his pension pay-order and pension-papers. As without these papers the insolvent was unable to draw his pension, he applied for an order directing J. P. to make over the pension-papers to him.

Held that the insolvent's pension not being liable to attachment, the Insolvency Court has no jurisdiction either to order the insolvent to pay any portion of it to the Official Assignee for distribution among the creditors or to direct the return of the pension-papers.

In re Saunders. Ex parte Saunders (1) distinguished.

APPLICATION by the insolvent.

The facts are fully set out in the judgment.

J. N. Majumdar for the applicant. The arrangement with the creditor contravenes ss. 11 and 12 of the Pensions Act, 1871, and is, therefore, illegal. It is quite clear that the deposit of the pension-papers was by way of security.

Without the pension-papers the insolvent cannot draw the pension, which will enure to the benefit of all creditors and so help in the complete distribution of the debtor's property. Therefore the Court should make the order prayed for and has the power to do so under ss. 7 and 60(2) of the Presidency-towns Insolvency Act. Clearly the pension is "income" of the insolvent.

In England, a similar order was made under s. 53 of the Bankruptcy Act, 1883. *In re Saunders. Ex parte Saunders* (1):

*Insolvency Matter No. 88 of 1938.

(1) [1895] 2 Q. B. 424.

S. C. Roy for the creditor. The creditor has mere possessory lien over the pension-papers under the arrangement. Therefore, ss. 11 and 12 of the Pensions Act do not apply to such a case. Neither the pension-paper, nor the pension payable by Government, is property of the insolvent within the meaning of s. 2(e) of the Presidency-towns Insolvency Act and, therefore, there is no vesting in the Official Assignee. In these circumstances, the Court cannot order the insolvent to pay any portion of the pension to the Official Assignee and a direction to make over the pension-papers will not in any way help in the distribution of assets, as is indicated by s. 7 of the Presidency-towns Insolvency Act.

PANCKRIDGE J. This application raises an important question with regard to the position of creditors of Government pensioners, who have the misfortune to be adjudicated insolvent.

The facts are that the insolvent was adjudicated, on his own petition, on July 4, 1938. He was formerly an employee of the Posts and Telegraph Department of the Government of India, and, on his retirement, he was granted a monthly pension of Rs. 308 net after deduction of income-tax. Prior to his adjudication, he had admittedly borrowed money from the opposite party, Jagan Nath Panday, in whose favour he had executed a promissory note for Rs. 5,000. The insolvent states in his petition that he arranged with Jagan Nath Panday that he should pay a certain portion of his pension, month by month, in liquidation of the sum previously advanced, and should deposit with Jagan Nath his pension pay-order and pension-papers. Without these documents he is unable to draw his pension from Government.

It appears that, after the adjudication order, the insolvent obtained the pension-papers from Jagan Nath, who brought criminal proceedings against him. The criminal proceedings were abortive, as the Magistrate held that the matter was one which should

1939

In re
Ignatius
Rohdirick.

1939

In re
*Ignatius
Rohdärick.*

Panckridge J.

be dealt with by a civil Court, and the papers were returned to Jagan Nath, in whose custody they now are.

The insolvent now applies that this Court should direct Jagan Nath to make over the pension-papers to him.

The application is made on notice to the Official Assignee.

The insolvent contends that the arrangement, under which he made over the papers to Jagan Nath, is invalid and illegal, because it was in contravention of s. 12 of the Pensions Act, 1871.

Under s. 11 of that Act no pension granted by Government on account of past services, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment, or sequestration, by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Under s. 12, all assignments, agreements, orders, sales, and securities of every kind made by a person entitled to any pension, mentioned in s. 11, in respect of any money not payable at or before the making thereof, on account of any such pension, or for giving any future interest therein, are null and void.

The insolvent argues that the pension-papers in the hands of Jagan Nath are a security within the meaning of s. 12, that, by reason of that section, the deposit of them by way of security is null and void, and that he is entitled to the return of the papers.

On the other hand, Mr. S. C. Roy, who appears for Jagan Nath, draws a distinction between a security and a possessory lien, and argues that what he has obtained does not fall within the former category.

I do not propose to decide this question, though my inclination would certainly be to agree with the view put forward by the insolvent. The language of the Pensions Act is very wide, and, in my opinion,

the transaction, with which I am dealing, is clearly one of the class of transactions which s. 12 was enacted to prevent.

The difficulty in making the order for which the insolvent asks is that I consider that it is beyond my power to make it in the exercise of the insolvency jurisdiction of the Court.

Under s. 7 of the Presidency-towns Insolvency Act, the Court has power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of the property in any such case.

In my opinion, although the jurisdiction given by s. 7 is extensive, only those orders can be made under the section which are necessary for the purpose of the insolvency, that is to say, for facilitating the distribution of the assets among the creditors.

Mr. Majumdar for the insolvent accepts this construction of the section, but he maintains that, if I make the order asked for, it will put the Court into a position to make an order under another section of the Insolvency Act for the benefit of the creditors generally.

Now, it is conceded that a pension payable by Government is not "property" of the insolvent within the meaning of s. 17 of the Presidency-towns Insolvency Act, which vests in the Official Assignee on the making of the order of adjudication. This is in accordance with s. 2(e) of the Act, by which "property" includes any property over which or the profits of which any person has a disposing power, which he may exercise for his own benefit.

It is, however, said that in respect of a pension such as that payable to the insolvent an order can be made for the benefit of creditors under s. 60 (2) of the Act.

1939

In re
Ignatius
Rohdriek.

Panckridge J.

1939

In re
*Ignatius
Rohdirick.**Panckridge J.*

Section 60 (1) deals with the pay and pensions of military and naval officers and of officers employed in the civil service of the Crown. Sub-section (2) is as follows :—

Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

I think it is clear that the insolvent's pension can properly be described as "income" within the meaning of sub- s. (2), but, in my opinion, an insuperable difficulty is caused by the words "as may be liable to attachment in execution of a decree".

Reference has been made to s. 53 of the Bankruptcy Act, 1883, which is now superseded by s. 51 of the Bankruptcy Act, 1914, in *In re Saunders*. Ex parte *Saunders* (1). The Court of Appeal had no doubt that under s. 53 of the Bankruptcy Act, 1883, there was power to order payment of a pension, which was made inalienable by Indian legislation, to the trustee in bankruptcy of the pensioner, but there is nothing in the English statute corresponding to the words in s. 60 (2) of the Presidency-towns Insolvency Act, which I have described as causing an insuperable difficulty.

In my opinion, it is impossible to say that the insolvent's pension is liable to attachment in the execution of a decree; and if this is so, the Court will have no jurisdiction under s. 60 (2) to order the insolvent to pay any portion of it to the Official Assignee for distribution among the creditors.

Not only does s. 11 of the Pensions Act exempt Government pensions from seizure, attachment or sequestration by process of any Court in British India at the instance of a creditor or in satisfaction of a decree or order of any such Court, but by s. 60(1), prov. (g), of the Civil Procedure Code stipends and

(1) [1895] 2. Q. B. 424.

gratuities allowed to pensioners of Government are expressly rendered not liable to attachment or sale under the section.

It is true that once a pension has been paid it loses its special character and becomes part of the assets of the pensioner, but all future instalments are clearly exempted from liability to attachment under the proviso I have mentioned, and it is precisely with regard to such instalments that it is suggested I have power to make an order on the insolvent in favour of the Official Assignee under s. 60 (2) of the Insolvency Act.

Unless I have power to make such an order, the interests of the creditors will in no way be served by a direction on Jagan Nath to return the pension-papers. If this is so, the direction asked for cannot be made under s. 7 of the Insolvency Act.

I come to this conclusion with some reluctance, as I greatly doubt if Jagan Nath has any answer to a suit brought by the insolvent for the return of the pension-papers.

However, for the reasons I have given I must hold that there is no power in the Insolvency Court in the circumstances to direct the return of the pension-papers, and this application must be dismissed with costs.

Application dismissed.

Attorney for insolvent: *R. K. Basu.*

Attorneys for creditor: *K. K. Dutta & Co.*

S. M.

1939

In re
*Ignatius
Rohdirick.*

Panckridge J.