

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

1931

Jan. 28,

THE OFFICIAL ASSIGNEE

v.

MAUNG NYUN MAUNG.*

Presidency-Towns Insolvency Act (III of 1909), s. 60 (2)—"Income," meaning of—*Income out of trust properly whether salary within s. 60 (2)*.

The term "income" in s. 60 (2) of the Presidency-Towns Insolvency Act must be construed as *ejusdem generis* with "salary" and the Court has jurisdiction under S. 60 (2) to allow the insolvent to enjoy a portion of the income in respect only of the insolvent's salary, or income in the nature of a salary. Income which an insolvent is entitled to receive out of a trust property under a deed of settlement is not salary or income in the nature of a salary within s. 60 (2).

Ex-parte Remwell, 14 Q.B.D. 301; *In re Shine*, (1892) 1 Q.B.D. 522—referred to.

Doctor for the Official Assignee : Insolvent's income from the trust estate was property divisible amongst his creditors and vested in the Official Assignee. This income is not salary or income within the meaning of s. 60 (2) of the Presidency Towns Insolvency Act. "Income" under s. 60 (2) must be in the nature of a salary.

Aiyangar for the respondent : The trust property did not vest in the Official Assignee. All that could vest in the Official Assignee was the share of the income of the property to which the insolvent was entitled. Though s. 75 (2) of the Act was not mentioned in the application, the object of it was to claim maintenance and to determine the amount of that maintenance, reference was made to this income.

PAGE, C.J.—Under the terms of a deed of settlement dated the 5th of May 1908 the respondent became entitled *inter alia* to receive a share of the

* Civil Miscellaneous Appeal No. 126 of 1930 from the order of the Original Side in Insolvency Case No. 13 of 1930.

income of certain immovable property, amounting to about Rs. 250 a month.

The respondent was adjudicated insolvent on the 23rd of January 1930, and under sections 2 (c) and 52 (2) (a) of the Presidency-Towns Insolvency Act (III of 1909), such income became property of the insolvent divisible among his creditors.

On the 14th of May 1930 the insolvent presented a petition to the Court in which he prayed that out of the said income Rs. 125 a month should be allowed to him as maintenance under the provisions of section 60 (2) of the Act. Section 60 is in the following terms :—

“ 60. (1) Where an insolvent is an officer of the Army or Navy or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the Official Assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(2) 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.”

The learned Judge upon this application passed an order under section 60 (2) directing the Official Assignee to allow the insolvent to enjoy half of the income that he received from the trustees, *viz.* Rs. 125 a month.

In our opinion the learned Judge had no jurisdiction to pass such an order under section 60 (2). Section 60 (2) refers to cases “ where an insolvent is in receipt of a salary or income ” other than that referred to in section 60 (1). In our opinion the term “ income ” in section 60 (2) must be construed as *ejusdem generis* with “ salary ”, and the Court has jurisdiction under section 60 (2) in respect only of

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the insolvent's salary, or income in the nature of a salary. [*Ex-parte Benwell* (1); *In re Shine* (2).] The income which the insolvent was entitled to receive out of the trust property clearly was not salary or income in the nature of a salary within section 60 (2).

For these reasons, in our opinion, the appeal must be allowed, and the order under appeal set aside. We desire to add that the order which we now pass is without prejudice to any application for an allowance that the insolvent may elect to prefer under section 75 (2) of the Insolvency Act. The costs of both parties will come out of the estate.

DAS, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Sen.

RAJA SIR S.R.M.M.A. FIRM

v.

THE BURMA OIL Co., LTD.*

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 Jan. 28.

Civil Procedure Code (Act V of 1908), O. 21, R. 53 (i) (b) and (6)—Attachment order made by Judge—Order and notice signed by Head Clerk on behalf of Judge owing to his illness—Judgment-debtors' knowledge of order of attachment—Validity of attachment—Adjustment by judgment-debtor contrary to attachment order, whether valid—Irregularity as to signature whether material.

A Court ordered the attachment of a decree under O. 21, Rule 53, of the Civil Procedure Code and directed that notices in Form 22 of Appendix E to the First Schedule of the Code should issue to the Court whose decree was sought to be attached under Rule 53 (1) (b), and to the judgment-debtor (respondents) under Rule 53 (6). The notices were issued under the seal of the Court and served, but owing to the serious illness of the Judge who was unable to attend Court, these notices were signed by the Head Clerk of the Court on behalf of the Judge. Respondents purported to adjust the decree with their

(1) 14 Q.B.D. 301.

(2) (1892) 1 Q.B.D. 522.

* Civil First Appeal No. 124 of 1930 from the order of the District Court of Magwe in Civil Execution No. 14 of 1928.