

INSOLVENCY JURISDICTION.

Before Mr. Justice Sen.

IN THE MATTER OF WALTER EDWARD SHEAD.*

1932

Nov. 17.

*Insolvency—Money in Government Provident Fund—“Compulsory Deposit”—
Official Assignee's claim—Provident Funds Act (XIX of 1925), ss. 2 (a), 3.*

Money to the credit of an undischarged insolvent in the Government Provident Fund is a compulsory deposit within the meaning of s. 2 (a) of the Provident Funds Act, and the Official Assignee has no claim on such deposit under s. 3 of the Act. The Official Assignee cannot compel the insolvent to assist him in any way to withdraw the money from Government for the benefit of his creditors on the eve of the retirement of the insolvent from Government service.

Moore for the insolvent.

Official Assignee in person.

SEN, J.—This matter comes up before me as a result of the report made by the Official Assignee. The insolvent did not prosecute his insolvency, and the case was struck off the pending list for failure on his part to apply for discharge. The Official Assignee having obtained information that moneys are payable to the insolvent from the General Provident Fund called upon the insolvent to hand over to him these moneys for the benefit of his creditors. The procedure he adopted was to request the insolvent to give him his consent in writing so as to enable him to withdraw the moneys due to the insolvent in the General Provident Fund. This procedure the Official Assignee adopted, he states, to avoid any objection that might be raised as to the attachability of these moneys under s. 60 of the Civil Procedure Code. The insolvent did not agree to the request of the Official Assignee, and in fact did not appear before him at all, and gave him no assistance in the matter. The Official Assignee then placed the matter before the Court, and asked that

* Insolvency Case No. 185 of 1931.

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the insolvent be dealt with for contempt of Court inasmuch as he was obstructing the Official Assignee in realising the assets for the benefit of his creditors. On the matter coming up before the Judge it was agreed by the advocate for the insolvent and the Official Assignee that this question as to the insolvent's default, and I take it also the question as to whether the Official Assignee had a right to make such a request to the insolvent, or to demand the moneys for the benefit of the creditors, should be decided by the Insolvency Judge.

I have heard the argument of the learned Advocate appearing for the insolvent, and he contends that by virtue of s. 3 (1) of the Provident Funds Act (Act XIX of 1925) the money in the Provident Fund is to be treated as a compulsory deposit within the meaning of that section, and that, if that is so, the Official Assignee is not entitled to the same, nor can he have any claim on such a compulsory deposit. Various authorities have also been cited, but I find that none of them have any direct bearing on the question before me. The Official Assignee admits that the moneys in the General Provident Fund are compulsory deposits, but he argues that they ceased to be compulsory deposits because they have vested in the insolvent and are no longer repayable to him on demand. As regards this argument I fail to see any force in it. If one turns to the definition of "compulsory deposit" in s. 2 (a) of the Provident Funds Act, he will find that it means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund, is not, until the happening of some specified contingency, repayable on demand. It is therefore clear that a deposit repayable on demand is not what this section intends as the definition of

a compulsory deposit. There are the significant words "until the happening of some specified contingency," and in this case the happening of the specified contingency is the cessation of the insolvent being in the service of the Government Telegraph Department. I would therefore hold that on the facts appearing in this case the moneys in the Government Provident Fund are compulsory deposits.

The next question urged before me is that, if it is a compulsory deposit, the insolvent being undischarged and the money being payable to him by virtue of his having ceased to be in the employment of the Telegraph Department, it has vested in the Official Assignee, and the Official Assignee is therefore entitled to call upon him to place the money at his disposal for the benefit of the creditors. I am unable to accede to this argument. It is quite clear by the terms of s. 3 (1) of the Provident Funds Act that in respect of a compulsory deposit the Official Assignee shall have no claim of any kind. There are express words to the effect that he shall not be entitled to it. In the face of the clear words of the section I must hold that the Official Assignee is not entitled to demand even from an undischarged insolvent moneys which come under the definition of a compulsory deposit.

It might be that if these moneys came into the hands of the insolvent and the Official Assignee then took steps before his disposal of these moneys to realise the same, the insolvent might be ordered to pay up these sums for the general benefit of his creditors. But this is not the case here, and, in the circumstances, I direct the Official Assignee to relinquish his claim to the moneys as set out in his report, and I see no reason to order the arrest of the insolvent for alleged contempt of Court.

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