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defendants Nos. 4 to 12 out of the fund, as just shown. Of course, if the fund just described is not sufficient to pay the costs of defendants Nos. 1 and 2 and of defendants Nos. 4 to 12, then plaintiffs and defendant No. 3 must pay the deficiency. Let the decree so direct.

Attorneys for plaintiffs :—Messrs. *Little, Smith & Co.*

Attorneys for defendants :—Messrs. *Bicknell & Co.* and Mr. *M. H. Khan.*

INSOLVENCY JURISDICTION.

Before Mr. Justice Farran.

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October 3.

IN THE MATTER OF C. M. J. DONAGHUE, AN INSOLVENT.

Insolvency—Insolvent Act, Stat. 11 and 12 Vict., C. 21, Secs. 7 and 27—After acquired property of insolvent—Salary—Pension—Personal earnings of insolvent.

After acquired property of an insolvent, whether it consists of salary, personal earnings or property of a different kind, is property which vests in the Official Assignee, but subject to the provision of section 27 of the Indian Insolvent Act⁽¹⁾ as to salary and pension and subject to the unwritten law as to personal earnings sufficient for the maintenance, according to his position in life, of the insolvent and his family. Accordingly the Official Assignee is not entitled to claim such salary or income except by means of an order obtained under section 27 of the Act, nor such personal earnings at all unless and until in either case the insolvent has accumulated a margin beyond what has been required for his adequate support.

An attachment upon the salary of a railway servant ceases to be operative after he has filed his petition in insolvency, and should be withdrawn on notice being given of the making of the vesting order.

THE insolvent, who was an engine-driver in the employment of the G. I. P. Railway Company, filed his petition in the Insolvent

(1) Statute 11 and 12 Vict., c. 21, secs. 7 and 27 (Indian Insolvent Act) :—

“And be it enacted, that upon the filing of such petition as is aforesaid, it shall be lawful for the said Court and the said Court is hereby authorized and required to order that all the real and personal estate and effects of such petitioner, whether within the territories within the limits of the charter of the East India Company, or without, except the wearing apparel, bedding and other such necessaries of such petitioner and his family, not exceeding in the whole the value of Company's Rupees three hundred for each petitioner with his family, and all debts due to him, and all the future estate, right, title, interest and trust of the said petitioner in or to any real or personal estate or effects within or without the said territories, which such petitioner may purchase,

Court in Bombay on the 28th September, 1893. Prior to that date a decree had been obtained against him in the Court of the Subordinate Judge at Bhusával, and in execution of that decree half his salary had been attached under section 266 of the Civil Procedure Code (Act XIV of 1882) and the money so attached was paid into the Court of Bhusával.

The fact that insolvent had filed his petition in Bombay, and that the usual vesting order had been made, was duly reported to

or which may revert, descend, be devised or bequeathed, or come to him, and all debts growing due to him before the Court shall have made its order in the nature of a certificate as hereinafter mentioned, do vest in the Official Assignee for the time being of the said Court, and that all books, papers, deeds, and writings in any way relating to such petitioner's estate and effects in his possession, or under his custody or control, shall be deposited with such assignee, and such order shall be entered of record in the said Court, and such notice thereof shall be published as the said Court shall direct: and such order, when so made, shall by virtue of this Act relate back to and take effect from the filing of the said petition, and shall instantly, and without any conveyance or assignment, vest all the real or personal estate, effects and debts as aforesaid in the said Official Assignee, who shall have full powers for the recovery thereof, and shall hold and stand possessed of the same for the purposes and in manner hereinafter mentioned: Provided always that in case, after the making of any such vesting order, the petition of any such petitioner shall be dismissed by the said Court, such vesting order made in pursuance of such petition shall from and after such dismissal be null and void to all intents and purposes: Provided also, that in case any such vesting order as aforesaid shall become null and void by the dismissal of such petition, all acts theretofore done by any assignee or other person acting under his authority according to the provisions of this Act shall be good and valid, and no action or suit shall be commenced against any such assignee, nor against any person duly acting under his authority, except to recover any property of such petitioner detained after an order made by the said Court for the delivery thereof, and demand made thereupon; and until the appointment of an Official Assignee as hereinafter is directed, the common assignee of the Court shall stand and be in the place of the Official Assignee, and this present clause shall apply and have effect accordingly.

“27 And be it enacted, that if any such insolvent as aforesaid shall, at any time, before he shall obtain his discharge in the nature of a certificate as hereinafter mentioned, hold any public office, appointment or benefice, civil military or ecclesiastical, not saleable, or shall be in any situation or employment whatsoever in respect of which he shall receive any salary or emolument, or shall be in receipt of any pension, then it shall be lawful for the said Court to order the said insolvent to pay such proportion of his receipts therefrom to his assignee as the said Court shall think right; and all saleable offices, appointments or benefices shall vest by virtue of the vesting order as aforesaid, in the Official Assignee, in trust for the creditors of such insolvent as aforesaid.”

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the Court at Bhusával, but the attachment was nevertheless continued, and half the insolvent's salary continued to be paid into that Court, which remitted the moneys so paid in to the Official Assignee at Bombay.

On the 13th June, 1894, the insolvent's petition came on for hearing before Farran, J.; and as the opposing creditors did not appear, the insolvent obtained his discharge. He thereupon applied to the Court that the moneys which had been remitted from Bhusával to the Official Assignee, as above mentioned, should be paid over to him.

The Court thereupon directed that notice should be given to the attaching creditor and to the opposing creditors calling upon them to show cause "why the moneys now in the hands of the Official Assignee to the credit of this estate, being deduction from the insolvent's salary earned by him after the date of his petition, should not be paid over to the said insolvent."

On the 5th September, 1894, the matter came again before the Court, but the parties did not appear. The Official Assignee, however, asked the Court to give its decision upon the application.

On the 3rd October the Court delivered the following judgment:—

FARRAN, J.:—The insolvent in this case upon receiving his discharge applied that certain moneys which were in the hands of the Official Assignee, the proceeds of his salary which had been attached, should be paid over to him. I directed notice of this application to be given to the attaching creditor, which was done. When the matter came before me on the 5th September, the parties did not appear, but the Official Assignee asked for my decision upon the application.

Previous to the insolvency the attaching creditor obtained a decree in the Court of the Subordinate Judge at Bhusával, and in pursuance of it attached, under section 266 of the Civil Procedure Code, half the salary of the insolvent, an engine-driver in the employment of the G. I. P. Railway Company. The insolvent filed his petition in this Court on the 28th of September, 1893,

when the usual vesting order, under section 7 of the Indian Insolvent Act, was made. Notwithstanding this petition and vesting order (which were duly notified to the Subordinate Judge), the half-salary of the insolvent still continued to be recovered by attachment, and the Bhusával Court caused the moneys so recovered to be remitted to the Official Assignee, and they are the subject of the present application.

The first question which arises for consideration is, whether the salary of a railway employé earned after his petition vests in the Official Assignee. It is a question of much difficulty, and I should have wished that it could have been fully argued before me. The words of section 7 are very general, and it is difficult to see why they should not include the salary of the insolvent earned by and coming to him after his insolvency. In *Ex parte Huggins*⁽¹⁾, the salary and income of a bankrupt were treated as property vesting in his trustees under sections 4, 15, and 17 of the Bankruptcy Act, 1869. The Court, in fact, decided that the income in that case, which was a pension, did so vest, and I cannot see that the definition of property in that English Act is more wide than are the comprehensive provisions of section 7 of the Indian Act. In *Ex parte Benwell*⁽²⁾, Brett, M.R., on the other hand, treated the salary of an insolvent as not vesting in his trustees under sections 15 and 17, but only as property liable to be dealt with by the Court under section 90, which corresponds to section 27 of our Act. It was not there necessary to decide the point, and the other Judges in appeal did not refer to it. In *Wadling v. Oliphant*⁽³⁾, Archibald, J., says: "The general principle is that the property of the debtor passes to his assignees, and in order to divest it the case must be brought within some recognized exception. The exception relied upon here is that the money is due for the personal labour of the bankrupt. Now, the cases do show that there is a rule, the extent and limit of which is not exactly defined, by which the bankrupt, after the date of his bankruptcy, may in certain cases keep the

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(1) 21 Ch. D., 85.

(2) 14 Q. B. D., 301.

(3) 1 Q. B. D., 145, at p. 151.

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produce of his personal labour." These remarks were not directed to the case of salary earned by the bankrupt. In *Re Rogers*, Vaughan Williams, J., referring to the same subject, says: "It is said—and rightly said—that the personal earnings of a bankrupt do not pass to his trustee, at all events in cases where there is no margin shown after sufficient has been applied for the maintenance of the bankrupt."

There is not much difference in the practical result at which the Courts in England have arrived as to salary and personal earnings, but the mode in which it is arrived at is in most of the cases not defined. To my mind the most legal and logical way of treating the subject is that adopted in *Ex parte Huggins* (*supra*), viz., to treat after acquired property of an insolvent, whether it consists of salary, of personal earnings, or property of a different kind, as property all alike vesting in the Official Assignee, but subject to the provisions of section 27 as to salary and pensions, and subject to the unwritten law as to personal earnings sufficient for the maintenance, according to his position in life, of the insolvent and his family, the result being that the Official Assignee is not entitled to claim such salary or income from the insolvent except by means of an order obtained under section 27, nor such personal earnings at all unless and until in either case the insolvent has accumulated a margin beyond what has been required for his adequate support.

If this be the true way of regarding this rather obscure subject, it follows that after petition filed, and vesting order made, an attachment laid or continued upon the salary of a railway servant ceases to be operative and should be withdrawn, on the attaching creditor or the Court which issued the attachment, having official notice of the making of the vesting order and the title of the Official Assignee; and under this view of the law, I should be justified in directing the Official Assignee to restore the salary of the insolvent earned since the date of the vesting order to him. If this be not the correct mode of regarding the subject, and if the wide words of section 7 are cut down, or qualified by the provisions of section 27, and I feel diffident in acting upon

(1) L. R. (1894), 1 Q. B., 425. at pp. 429-30.

my view of the law as it has been come to without hearing arguments, then I have to consider whether the Court at Bhusával was justified in continuing the attachment after schedule filed by the insolvent admitting the claim of the attaching creditor, or whether it ought not to have stayed all further proceedings under section 49 of the Indian Insolvent Act.

Now no doubt the staying of proceedings under section 49 is discretionary, and the Court, on proof to its satisfaction that the execution process which it is issuing is in respect of a debt or demand admitted in the schedule, is not bound to stay its hand; yet the provision that the party is to pay the costs incurred in the matter by the insolvent, if (after the party has notice that his debt or demand has been admitted in the insolvent's schedule) he continues his execution, indicates clearly that the insolvent is entitled *ex debito justitiæ* to such a stay, unless the party satisfies the Court that execution should not for some particular reason be suspended. The same remarks apply to the continuing of a suit for money after notice. It is only in exceptional cases that the suit or execution should be allowed to proceed. Such would be suits for libel or slander, or other suits which are brought for the purposes of vindicating the character of the party, or are of a punitive nature.

It is of course impossible, and it would be improper for me to attempt to define the various classes of suits which may properly be continued after the insolvency of the debtor or the particular circumstances under which even suits for money may be prosecuted (the claim being admitted in the schedule); but it may safely, I think, be laid down that, under ordinary circumstances, an insolvent is entitled when sued for a sum of money which he has admitted in his schedule, to have the suit or execution proceedings upon it stayed upon proof of its being so admitted. This is now the general practice in the High Court, and is, in my opinion, the more correct practice, but some Judges think it advisable to pass a formal judgment before actually staying the proceedings.

In addition to the reasons I have stated, there is this further reason for not continuing an attachment upon salary

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after vesting order, *viz.*, that the Insolvent Court is vested under section 27 of its Act with the discretionary power of dealing with the salary of the insolvent, a power which it can no longer exercise if the half of such salary continues under attachment by the civil Courts after petition. Such a clashing of jurisdictions cannot have been intended by the Legislature, and the discretion to deal with the insolvent's salary is manifestly intended to be entrusted to the Insolvent Court. Though I am now sitting as Commissioner in Insolvency, and have as such no power to interfere with the discretion of the Subordinate Judge, yet I think that, as the matter has been brought before me, I ought to express my opinion upon the subject, though I must decide that I have no jurisdiction on this latter ground to treat the attachment in question as otherwise than properly made. I understand, however, that since the matter was brought before me, the attachment in question has on appeal been set aside by the District Court, no doubt on grounds similar to those I have assigned. It will be better, therefore, that I make no order, except to allow the Official Assignee to remit the money to the Court of the Subordinate Judge, to be by him returned to the insolvent. As to the salary (if any) of the insolvent attached *before* the petition was filed, the question is different. The right to it lies between the attaching creditor and the Official Assignee. The case of *Gamble v. Bholágir*⁽¹⁾ seems conclusive as to the superior title of the attaching creditor to such salary if the attachment has been levied before vesting order, and is in execution of a decree, and not a mere attachment before judgment; if not attached after decree, the Official Assignee is entitled for the benefit of the creditors in general.

(1) 2 Bom. H. C. Rep., 146.