

Present : Wijeyewardene and Jayetileke JJ.

PUBLIC SERVICE MUTUAL PROVIDENT ASSOCIATION,

Appellant, and ABRAM et al. Respondent.

90—D. C. Colombo, 5,588.

Insolvency—Mortgage debt of insolvent—Arrangement to pay debt by instalment from pension—Payment of instalment after adjudication—Right of Assignee to amount paid.

The insolvent, a Government servant, who had retired on pension, owed money to the Public Service Mutual Association on a mortgage bond.

The bond was put in suit by the Association and a decree was entered in its favour. Prior to adjudication the Insolvent had arranged that the Treasury should pay out of his pension a sum of Rs. 69.50 monthly to the Provident Association in reduction of the claim on the bond.

The assignee applied for an order on the Provident Association to bring to the credit of the insolvency case the sum of Rs. 451.33 received by the Association after the insolvent was adjudged as such.

Held, that the assignee was entitled to an order vesting the said sum of money in him in the insolvency proceedings.

A PPEAL from an order of the District Judge of Colombo.

E. B. Wikremanayake, for appellant.

G. P. J. Kurukulasuriya, for assignee, respondent.

Cur. adv. vult.

February 2, 1943. WIJEYWARDENE J.—

The insolvent, G. W. Perera, was a Government servant and retired from service on a pension. He mortgaged a property of his with the Public Service Mutual Provident Association for Rs. 7,500. That bond was put in suit in July, 1941, and a decree was entered in October, 1941. Prior to his adjudication, the insolvent arranged that the Treasury should pay out of his pension a sum of Rs. 69.50 monthly to the Provident Association in reduction of the claim on the bond. The assignee applied to Court for an order on the Provident Association to bring to the credit of the insolvency case the sum of Rs. 451.33 so received by the Association after the insolvent filed his declaration of insolvency and was adjudged an insolvent. The District Judge allowed the application and the Association has preferred the present appeal against that order.

It was urged on behalf of the appellant—

- (i.) that the appellant was entitled under section 99 of the Insolvency Ordinance to set off the sum of Rs. 451.33 against the debt due to him.
- (ii.) that a pension did not vest in the assignee as the right to a pension was not a right which could be enforced at law.

The first argument is clearly untenable as section 99 does not apply to credit given or debts contracted by an insolvent after his adjudication.

With regard to the second argument, it is necessary to consider the effect of certain rules of the Pension Minute and the provisions of the insolvency Ordinance. Section 70 of the Insolvency Ordinance enacts that, "when any person shall have been adjudged an insolvent, all his personal estate and effects, present and future . . . and all

property which he may purchase, or which may revert, descend . . . or come to him and all debts due or to be due to him . . . shall become . . . vested in the assignee . . . ” Our Ordinance as well as the English Bankruptcy Act of 1849, on which our Ordinance is based, do not contain a definition of “property”; but it was held in *Baker v. Vairamuttu Chetty*¹ that the words of the section were wide enough to include the “salary” or “income” of a mercantile assistant. How does a pension of a public servant, differ from such “salary” or “income”? Generally speaking, in the absence of any statutory enactment a pension awarded for past services could be attached in satisfaction of the debts of the pensioner just as much as any other income of his, at least to the extent that it is not needed for the maintenance of the insolvent and his family. It is true that Rule 1 of the Pension Minute provides that “public Servants have no absolute right to any pension . . . and the Governor retains the power to dismiss a public servant without compensation”. It may even be possible to argue that even after the Governor decides to award a pension it is payable only during the pleasure of the Crown. These considerations do not deprive a pension of its character of property capable of assignment. (*Vide* judgment of Parke B in *Wells v. Foster*²). But we have, however, Rule 41 which lays down that . . . “no pension, granted under these Rules shall be assignable or transferable” and Rule 43 which provides that “if any person to whom a pension has been granted under these Rules becomes a bankrupt the pension shall forthwith cease”, subject to the qualification that the Governor may make such allowance as he thinks fit for the maintenance of the public servant or his family, either during the remainder of the pensioner’s life or for a shorter period. I think therefore a prospective order cannot be made impounding the pension of a retired public servant though the pension has been granted for past services (see *re Ashby parte Wreford*³). But is it possible to say that the same consideration should apply to the sum of money paid to the appellant Association? No doubt, this sum of money can be identified as a part of the pension but it ceased to be impressed with the character of “pension” the moment it was paid to the appellant Association at the request of the public servant concerned. I think the position is the same as if the insolvent received the pension from the Treasury and then paid instalments of Rs. 69.50 a month to the appellant Association. This view of the law is supported by the dicta of the Judges in *Crowe v. Price*⁴, which were approved and adopted in *Jones & Co. v. Coventry*⁵. In *Crowe v. Price (supra)* a sum of £109 stood in the Bankruptcy Estate Account at the Bank of England to the credit of the judgment-debtor, a retired Deputy Commissary in the Army, on the annulment of his bankruptcy. The sum represented the balance of payments made to the trustee in bankruptcy out of the defendant’s retired pay by the Paymaster-General under an order in the Bankruptcy proceedings. The judgment-debtor was liable to be recalled

¹ 26 N. L. R. 360.

² 8 Meeson and Welsby 149.

⁵ (1909) 2 K. B. 1029.

³ (1892) 1 Q. B. 872.

⁴ 22 Q. B. D. 429.

to active service and section 141 of the Army Act 1881 made an assignment of, or any charge on, such pay void. The plaintiff as judgment-creditor applied for the appointment of a receiver in respect of that sum. In holding against that application Lord Esher, M.R. said,

“ It is money which came from the Crown as pension and which was on its way to the defendant to be received by him as pension ; but the Court of Bankruptcy intercepted it on its way to the Officer ; it was not paid to him nor to any agent of his nor with his consent to anybody.”

It has, of course, been established by a long series of decisions that an insolvent should not be deprived of so much of the income as is necessary for his maintenance. In *re Roberts*¹. But in this case the arrangement made by the insolvent himself for the payment of Rs. 69.50 monthly to the appellant Association shows that no part of that amount was necessary for his maintenance.

I would, therefore, uphold the order of the District Judge directing the appellant Association to bring Rs., 451.33 to the credit of the insolvency proceedings and vesting that amount in the assignee.

The appellant will pay the respondent the costs of this appeal.

JAYETILEKE J.—I agree.

Appeal dismissed.

