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Present: Garvin J. and Jayewardene A.J.

BAKER v. VAIRAMUTTU CHETTY.

183—D. C. (Inty.) Colombo, 3,364.

Insolvency—Personal earnings—Rights of assignee—Ordinance No. 7 of 1853, s. 70.

An insolvent's salary vests in the assignee, except to the extent necessary for the maintenance of himself, his wife, and his family. It would be open to a Court to direct the insolvent to pay into Court or to the assignee so much of the salary as is not required for the purpose of such maintenance.

APPEAL by an insolvent from an order of the District Judge of Colombo directing him to pay into Court for the benefit of his creditors a sum of Rs. 175 out of his monthly salary of Rs. 375, which he earned as an assistant in a business firm. It was contended for the insolvent that his salary does not vest in the assignee, and that he could not be called upon to bring any portion of it to Court.

Canjimanathan, for insolvent, appellant.

James Joseph, for creditor, respondent.

January 23, 1925. JAYEWARDENE A.J.—

This is an appeal by an insolvent against an order directing him to pay into Court for the benefit of his creditors a sum of Rs. 175 out of his monthly salary of Rs. 375, which he earns as an assistant in a Fort firm. It is contended for the appellant that an insolvent's salary does not vest in the assignee, and that he cannot be called upon to bring any portion of it into Court. He relies on section 70 of the Insolvent Ordinance, 1853, the material part of which is as follows:—"When any person shall have been adjudged an insolvent all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate, and all debts due or to be due to him, wheresoever the same may be found or known, and the property, right, and interest in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment"

No doubt section 70 does not expressly refer to the "salary" or "wages" of an insolvent, but the words are wide enough to cover the "salary" or "income" earned by an insolvent. But it has

been held under the corresponding section 141 of the English Bankruptcy Act of 1849, on which our Ordinance is based, that money earned by a bankrupt by his personal exertions does not vest in the assignee, if such money is required for the support and maintenance of himself, his wife, and his family (*Chippendale v. Tomlinson*,¹ *Hesse v. Stevenson*,² *Williams v. Chambers*³).

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In re Roberts,⁴ Lindley L.J. discussed the right of an assignee to the earnings of a bankrupt, and said—

“ The Bankruptcy Act of 1883, like its predecessors, excepts a bankrupt's tools and contemplates the acquisition of future property by a bankrupt, and he must live to use his tools and acquire such property. The present Act, like previous Bankruptcy Acts, must be construed so as to enable him to do so; and the language of section 44, clear and express as it is, must not, therefore, be taken so literally as to deprive the bankrupt of those fruits of his personal exertions which are necessary to enable him to live. But, on the other hand, the necessity is the limit of the exception. This is in entire accordance with modern decisions. See *Mercer v. Vans Colina*,⁵ *In re Graydon*⁶; *Wadling v. Oliphant*,⁷ *Emden v. Carte*,⁸ *In re Rogers*;⁹”

and in *Affleck v. Hammond*,¹⁰ Kennedy L.J., dealing with the same point, said—

“ By section 44 of the Bankruptcy Act, 1883, the trustee in bankruptcy has a general right to intervene. But on that general right of intervention there has been grafted an exception in favour of the personal earnings of the bankrupt, so far as those earnings are necessary for his support, and this exception has been recognized for at least a hundred years. It is true that the generality of section 44 is emphasized by the fact that particular things are particularly excluded from its operation; but it is nevertheless clear that the Act does contemplate the possibility of the acquirement by an undischarged bankrupt of future property. In *Wace on Bankruptcy*, p. 208, the exception is thus stated: ‘ To the generality of the trustee's right to intervene and claim property acquired by the bankrupt before his discharge, as divisible amongst his creditors, his personal earnings, to the extent necessary to support himself and his wife and family, form an exception .’ The Act, like its predecessors,

¹ (1785) 4 Douglas 318.² (1803) 3 B. & P. 565 (577).³ (1846) 10 Q. B. 337.⁴ (1900) 1 Q. B. 122 (128).⁵ 67 L. J. (Q. B.) 424.⁶ (1896) 1 Q. B. 417.⁷ 1 Q. B. D. 145.⁸ 17 Ch. D. 768.⁹ (1894) 1 Q. B. 426.¹⁰ (1912) 3 K. B. 162 (172).

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excepts his tools and contemplates the acquisition by him of future property, and he must live to use such tools and acquire such property; it must therefore be construed, like previous Acts, so as to enable him to do so; and, clear and express as the language is, it is not to be taken so literally as to deprive him of the fruits of his personal exertions, which are necessary to enable him to live.

“ If any authority for that statement were required, *In re Roberts* (*supra*) is sufficient. It is no new law, but the exception was there recognized, as it has been recognized for a century. ”

The reasons given for engrafting this exception that the Act excludes an insolvent's tools and contemplates the acquisition by him of future property is inapplicable under our local law, for tools are not excepted from the property vesting in an assignee. Tools were not so excepted by the English Act of 1849, but by an amending Act, *17 and 18 Vict., chap. 110, section 25*, a bankrupt was allowed to “ retain for the use of himself and his family under the name of ‘ excepted articles, ’ such articles of household furniture and tools and implements of trade and other necessaries as he shall specify and select, not exceeding in the whole the value of £20. ” This amendment has not been enacted locally. This I do not think can make any difference, for the exception had been in existence long before the Acts of 1849 and 1854 were passed, and it was accepted as applicable in the construction of *Statutes 1 and 2, Vict., chap. 110, section 37*, which contained words identical with those in section 141 of the English Act of 1849 and in section 70 of our Insolvents Ordinance (see *Williams v. Chambers* (*supra*), and as the learned Judge remarked in *Affleck v. Hammond* (*supra*), it has been in existence for over a century.

The rule laid down in these cases, therefore, applies in the construction of section 141 of the repealed English Bankruptcy Act of 1849, and must be applied in the construction of the corresponding section of the local Act (section 70). Personal earnings of an insolvent—that is his “ salary ” or “ income ” except to the extent necessary for the support of himself, his wife, and family—would therefore vest in the assignee. In the English Bankruptcy Act of 1883 express provision has been made for a case of this kind, and section 53, sub-section (2), enacts that “ When a bankrupt is in the receipt of a salary or income, . . . the Court, on the application of the trustee, shall from time to time make such order as it thinks just, for the payment of the salary, income, . . . or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct. ”

In view of what I hold is the law, it would be open to a Court to direct the insolvent to pay into Court or to the assignee so much of his salary or income as is not required for the maintenance of

himself, his wife, and family. The order of the learned District Judge is, therefore, right on principle. But the question remains, whether, considering the fact that the appellant is an European and a married man, a sum of Rs. 200 per month is sufficient to maintain himself and his wife. I am inclined to think that this is hardly sufficient for the support of two persons of the position in life of the insolvent and his wife.

I would therefore direct him to pay into Court the sum of Rs. 125 a month, leaving Rs. 250 for the maintenance of himself and his wife. I make no order as to costs.

GARVIN J.—I agree.

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Varied.
