

## THE OFFICIAL RECEIVER v. STUART FINLAY-BISSETT.

HIGH COURT CIVIL CAUSE NO. 18 OF 1940.

*Under section 38 of the Bankruptcy Act, 1914, a bankrupt's personal earnings pass to his trustee in bankruptcy.*

All a bankrupt's personal earnings, except such amount as is sufficient for the reasonable maintenance of himself and his family, pass to his trustee in bankruptcy. The amount the bankrupt is allowed to retain depends on the circumstances of each case.

See also *In re Stuart Finlay-Bissett*, p. 259 *post*.

Robinson, J.: This case comes before me by way of an inter-pleader summons taken out by the Mufulira Copper Mines, Limited. At the hearing of that summons on the 22nd July, in accordance with O. 57 r. 7 of the White Book, it was ordered that the Official Receiver be the plaintiff and the bankrupt be the defendant, to the trial of the issue to whom certain monies belonged, which money has been paid into Court by the Mufulira Copper Mines.

The facts shortly are these: The defendant was adjudicated bankrupt on the 24th October, 1939, and he is still undischarged. He is a fitter employed by the Mufulira Copper Mines. His public examination took place on the 20th December, 1939. Thereafter the Official Receiver, as trustee, instituted proceedings to obtain a "stop" order under section 51 of the Bankruptcy Act, 1914, but as the defendant is paid so much an hour or so much a shift for his work, these proved abortive, it being decided against the Official Receiver that the defendant was not in receipt of a "salary" or "income".

On the 28th June, 1940, the Official Receiver intervened by writing to the Mufulira Copper Mines claiming that the excess over £35 of the wages due to the debtor in respect of June, 1940, should be paid to him (the Official Receiver). The debtor was asked by his employers if he would authorise this and he refused. Mufulira Copper Mines thereupon took out an inter-pleader summons and the monies in excess of £35, less taxed costs, were paid into Court.

The plaintiff, the Official Receiver, is claiming by virtue of section 38 of the Bankruptcy Act, 1914, whereby the property of the bankrupt divisible amongst his creditors includes any property which may be acquired by him before his discharge. By section 167, the interpretation section, "property" includes, *inter alia*, things in action so a debt from the employer to the employee is clearly covered.

*In re Graydon* (1896) 1 Q.B. 417 is conclusive authority for saying that a bankrupt's personal earnings pass to his trustee in bankruptcy and he will only be allowed to retain such sum as is sufficient for the reasonable maintenance of himself and his family.

So far the defendant, the bankrupt, does not dispute, but he takes two points in his submission that the intervention by the plaintiff was not a proper intervention to wit, firstly that he gave no notice to the defendant that he claimed the said amount, and, secondly, that no order on the pay of the defendant was obtained.

The Bankruptcy Act, 1914, is silent on the method by which a trustee should intervene. There is certainly no obligation under the Act for him to give notice to the bankrupt nor for him to obtain a Court order. The form of the proceedings now being taken by the plaintiff under section 38 is to divert for the benefit of the creditors each month so much of the personal earnings of the bankrupt as are in excess of the amount necessary for his maintenance. The trustee has to intervene each month when the employer becomes a debtor to the bankrupt. The facts clearly fall within the case of *Hill v. Settle* (1917) 1 Ch. 319. No order was obtained in that case nor was any notice sent to the bankrupt but the intervention was held to be proper.

I hold, therefore, that the plaintiff in this case is entitled to the personal earnings of the defendant in excess of the amount required for his maintenance. That sum has been fixed by the plaintiff at £35 per month, a sum suggested by the defendant himself in his public examination and now retracted by him.

I am invited by both parties to fix a sum which in my opinion is reasonable for the maintenance of the defendant and his family. Although strictly speaking this only applies to the month of June, 1940, I have no doubt the plaintiff will be guided by it for his future monthly interventions. To this end the defendant gave evidence himself. He has various family obligations in connection with the issue of a previous marriage and it is very difficult for me to say that the budget which he swore to, coming to £44 5s. 6d. is unreasonable. He gave an explanation of the discrepancy between that amount and the sum given by him, in his public examination.

I have to consider the circumstances of the defendant. He is working long hours week after week under conditions, these days, of tension and stress. For his own sake and, in the long run, for the sake of his creditors, it is important that he should be able so to continue to work in reasonable comfort and with reasonable relaxations.

One item, his estimate for actual food which he put at £20 per month for himself and his wife, I think is on the high side but, on the other hand, his wife is expecting to give birth to a child in October.

I fix a fair figure to be deducted for his maintenance at £42 per month, all earnings in excess of that must be paid to the plaintiff, the trustee in bankruptcy of his property.

As to costs, if it is true, and I have no reason to believe otherwise, that the defendant's monthly budget comes to over £40 per month and, as I have held, all monies in excess of £42 are to be paid to his trustee in bankruptcy, it means that the defendant will have no money for extras.

A specially successful month will benefit the creditors; it will not give the defendant the chance to put any money by. Under these circumstances I make no order as to costs, with the result that the plaintiff must take his from the estate and the defendant must pay his own.

It follows that out of the £27 *1s. 8d.* paid into Court by the Mufulira Copper Mines Limited, £20 *1s. 8d.* must be paid out to the plaintiff and £7 to the defendant.