T. W. JAGGER AND CO. (PTY.), LTD. v. C. PETRELLIS.

HIGH COURT CIVIL CAUSE NO. 41 OF 1940.

Money paid into Court to abide the event—whether trustee in bankruptcy can claim money so paid in.

The defendant paid money into Court to furnish security for a judgment. Court ordered that money should not be paid out until a certain date. After judgment but before that date an Interim Receiving Order was made and the Trustee in Bankruptcy claimed the money paid into Court for the benefit of the estate. Held that the money must be paid out to the plaintiffs.

Law, C.J. On the 24th December, 1940, plaintiffs filed an action against the defendant to recover £232 1*s.* 7*d.* for goods sold and delivered. On the 27th December plaintiffs applied (*inter alia*) for an Order directing the defendant to furnish sufficient security to satisfy any decree which might be passed against him in the suit. An Order was made the same day, fixing the amount of the security at £260, and a copy thereof was served on the defendant on the 30th December. In terms of that Order the parties appeared before the Court on the 3rd January, 1941. The defendant admitted the correctness of the claim and consented to pay £260 into Court but asked for the amount to be kept in Court pending further proceedings by him or his other creditors. Though not noted on the record of the case, the other proceedings contemplated by the defendant was a petition in bankruptcy either by himself or by some creditor in the hope that all his creditors might share rateably in his assets. On behalf of the plaintiffs there was no consent nor opposition to defendant's request; the matter was left to the Court. Accordingly the following Order was made:

> "Defendant to pay £260 into Court on or before the 10th January, 1941, which, if so paid, will not be paid out of Court to plaintiffs before the 1st February, 1941."

Defendant not having defended the suit, plaintiffs signed judgment on the 9th January. The amount was paid into Court on the 11th January by the Standard Bank of South Africa (Mazabuka Branch) on behalf of the defendant. On the 10th January certain creditors filed a petition in bankruptcy against the defendant and an Interim Receiving Order was made on the 31st January when the Official Receiver became trustee in bankruptcy of the defendant's estate. (Civ. No. 1/1941.) On the 3rd February plaintiffs applied for payment out to them of the full amount of £260, the costs of the suit having been taxed at £28 8*s.* 6*d.* The application was heard on the 9th January when it was opposed by the Official Receiver who claimed the whole amount as trustee. He argued that his title to the £260 was created on the 31st January, the day before the amount otherwise would have become available to the plaintiffs, and that the Order of 3rd January must have been made as a matter of equity and

in the interests of the general body of the defendant's creditors. Actually, the Order was made so as to give an opportunity to other creditors to *claim a right*, if any, to share rateably with the plaintiffs in the £260. In no sense could that Order *create a right* for other creditors; any such right would be a question of established law. The Official Receiver described the Order of the 3rd January as an equitable Order. That is what it was intended to be, otherwise the £260 could have been withdrawn before now, without the other creditors having an opportunity (through the Official Receiver) of putting forward their claim. But an equitable Order cannot override the law, because equity follows the law. The Order in question did not and could not settle any right in favour of other creditors; it merely suspended for a period the payment of the money out of Court and permitted any other claim thereto to be put forward within that time. The sole question for consideration on this application, in my opinion, is whether the Order of the 3rd January created any right in favour of the plaintiffs. In considering this question it must be borne in mind that the £260 was ordered to be paid into Court by the defendant as security to satisfy any decree which might be passed against him. If there had been no decree the money in Court could no longer have operated as a security. In other words, the payment into Court was made to abide the event of plaintiffs obtaining a decree, and as such became a security to the plaintiffs for the sum for which he might obtain judgment at the trial. On behalf of the plaintiffs the case of *In re Ford, Ex parte The Trustee* (1900) 2 Q.B., p. 211, was cited, in which the defendant applied for leave to defend the action. He was granted this leave provided he paid £1,000 into Court within three days failing which plaintiffs were given liberty to sign final judgment. In that case the trustee in bankruptcy claimed the £1,000 on the ground that it still remained the property of the bankrupt at the time the trustee's title accrued. That is also the Official Receiver's argument in the present case. But it was decided that the right to money so paid into Court abides the event—the event being whether plaintiff gets judgment or not—and must be treated as security that the plaintiff shall not lose the benefit of the decision of the Court in his favour. All the other reasons in that case for making an Order in favour of the plaintiffs apply, in my view, with equal force in the present application. In these circumstances the application is allowed with costs and the £260 now in Court will be paid to the plaintiffs.