THE EFFECT OF BANKRUPTCY ON NON-ASSIGNABLE ANNUITIES

By D. HOUSEMAN, A.I.A. (Solicitor)

EVERY schoolboy learning dynamics and statics is likely at some point in his studies to meet the familiar conundrum, 'What happens when an irresistible force meets an immovable body?'. It may be that students of the Law of Life Assurance are puzzled by the kindred question whether a non-assignable annuity can be made assignable by the operation of law. The answer to that question has perhaps become more obscure because the Finance Act, 1956, contains special provisions as to the title to guaranteed instalments of a non-assignable annuity which may in the event become payable after the death of the annuitant.

The recent case of *In re Tennant's Application*, [1956] 1 W.L.R. 874, is tantalizing because, while it throws some light on the problem, it seems to create doubts on the position of an assignable annuity.

In Tennant's case the marriage of D. F. Tennant (the husband) had in 1937 been dissolved on the petition of Hermione Baddeley (the wife), and the husband had covenanted to pay the wife £50 per month during her life. In 1952 the wife had been adjudged bankrupt and, by agreement between her and the trustee in bankruptcy, the covenanted sums had been paid to the trustee until in 1955 the wife revoked her authority for further payments to the trustee. The trustee claimed, however, that the benefit of the deed of covenant was vested in him: and the husband sought the directions of the Court.

The material sections of the Bankruptcy Act, 1914, are as follows:

S. 18. Where a receiving order is made against a debtor, then...the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

S. 38. The property of the bankrupt divisible amongst his creditors...shall comprise...all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy....

S. 51(2). Where a bankrupt is in 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 or income...or of any part thereof to the trustee, to be applied by him in such manner as the court may direct.

The Master of the Rolls thought that, if the matter were *res integra*, there would be much to be said for the view that 'salary or income' in s. 51(2) referred only to salary or income which, by reason of being non-assignable, could not and did not vest in the trustee, and was not receivable by him under the other provisions of the Act, and was therefore incapable of realization by him for the benefit of creditors. Earlier decisions of the Court of Appeal, however, precluded the present Court from so holding: and in particular *In re Huggins*, 21 Ch. D. 85, where Sir George Jessel, M.R., dealing with corresponding sections of the Bankruptcy Act, 1869, had said that the earlier section is controlled by the later. The bankrupt is not therefore necessarily to be left to starve, however improvident he may have been, but a discretion

is given to the Court to fix how much of his income is to be made available for the payment of his creditors.

In Tennant's case the Court did not find it necessary to determine whether or not the covenanted sums had vested in the trustee, and merely dismissed the appeal from the judgment of Upjohn, J., who had made a declaration that the covenanted sums continued to be payable to the wife unless and until an order were made under s. 51(2).

It appears therefore that, notwithstanding adjudication in bankruptcy, a non-assignable annuity held by the annuitant continues to be payable to him unless and until an order is made under s. 51(2): but the answer to the question whether or not an assignable annuity vests in the trustee under s. 18 is left open to doubt.

THE EFFECT OF TAXATION ON DAMAGES AND COMPENSATION FOR LOSS OF INCOME

By D. HOUSEMAN, A.I.A. (Solicitor)

It is surprising that in the various Law Reports there is no case earlier than 1933 on the question whether, and if so how far, the effect of taxation should be taken into account in the assessment of damages for personal injury or of compensation for wrongful dismissal. The decisions of the Courts since 1933 are not, moreover, easy to reconcile. In 1955, however, the general question was answered in the affirmative when in *British Transport Commission* v. *Gourley* the House of Lords by a majority decided that, in an action for damages in respect of personal injuries and loss of actual and prospective earnings, a deduction must be made for the taxation liability which would have arisen if no accident had happened.

No award of money can compensate a man for grievous personal injury but the broad general principle is that the tribunal should award such a sum of money as would put the plaintiff in the same position as he would have occupied if he had not sustained the injury.

The respondent in *British Transport Commission* v. *Gourley* was an eminent civil engineer who had suffered severe injuries in a railway accident. The trial judge had awarded him £10,000 as special damages for expenses, pain and suffering and £37,720 as general damages for loss of earnings actual and prospective; but, at the request of the Commission, the trial judge had made an alternative assessment of £6695 as general damages, which in his view should have been the figure if regard should be had to the incidence of taxation.

Both parties had accepted the figures and were in agreement that the respondent would incur no taxation liability in respect of the awarded sum, so that the only question before the House was whether or not taxation liability should be taken into account.

Earl Jowitt thought that the case might be a dangerous guide for a case of wrongful dismissal if the compensation were subject to tax in the hands of the injured party. The principle in Gourley's case appears, nevertheless, to be of general application.

In Gourley's case the House was concerned only with the principle. It was not asked to determine the tax figures. Earl Jowitt pointed out, however,