



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 245

**Finlay Geoghegan J.
Irvine J.
Hedigan J.**

2015/466

ACC LOAN MANAGEMENT LIMITED

PLAINTIFF/RESPONDENT

-AND-

MARK RICKARD

DEFENDANT/APPELLANT

-AND-

GERARD RICKARD

DEFENDANT

JUDGMENT delivered on the 31st day of July 2017 by Ms. Justice Finlay Geoghegan

1. This appeal raises important questions in relation to the jurisdiction of the High Court pursuant to s. 28(8) of the Supreme Court of Judicature (Ireland) Act 1877 and s. 8(2) of the Courts (Supplemental Provisions) Act 1961 to appoint a receiver by way of equitable execution over property of a judgment debtor. Orders 50, r.6 and 45, r. 9 of the Rules of the Superior Courts apply to the exercise of the jurisdiction.
2. The factual background is that the plaintiff obtained judgment against the defendants on 25th February, 2011 in the sum of €1,064,747.66. The defendants are brothers and farm certain lands in County Meath.
3. The judgment remained unsatisfied in October, 2011 and on 4th October, 2011 the High Court (Kelly J. as he then was) made an order pursuant to O. 45, r. 9 of the Rules of the Superior Courts that Ms Riordan, Solicitor, be appointed as receiver by way of equitable execution (without salary or security) in respect of "such payments as are due to be received by the First Named Defendant [Mark Rickard] from the Department of Agriculture, Fisheries and Food under the Single Payment Scheme as will satisfy the plaintiff's said judgment and costs ..."
4. That order was made *ex parte* with liberty to the first named defendant ("the appellant") to apply to vary or discharge. No such application appears to have been made.
5. Thereafter the Department of Agriculture was notified and by June, 2015 a sum of €525,877.40 was received by the receiver from the Department pursuant to the said order.
6. By letter of 25th March, 2015 the Department notified the plaintiff's solicitor that the Single Farm Payment Scheme had ceased on 31st December, 2014 and had been replaced by the "Basic Payment Scheme". The letter stated that as a result "the Department will not have a sound legal basis to transfer funds owed by a debtor to your client/s. In the circumstances, you should check with your client/s as you may wish to consider a court application for a revised Garnishee Order."
7. Thereafter a motion was brought by the plaintiff seeking an order of the High Court varying the order made on 4th October, 2011 so as to provide that the receiver "will be appointed over such payments as may be received in respect of the Basic Payment Scheme". The application was brought on notice to the appellant. It was grounded on an affidavit of Damien Walsh, a case manager of the plaintiff, to which he exhibited the 'Helpsheet/Terms & Conditions for the 2015 EU Basic Payment Scheme (BPS)/GREENING Payment and Other 2015 Area-Based Schemes' issued by the Department. He also deposed that there remained outstanding a sum of €820,686.44 due by the appellants to the plaintiff on the 2011 judgment.
8. The application was opposed on behalf of the first named defendant, the appellant. The appellant swore a short affidavit which contains, in part, legal argument and disputes the entitlement to the orders sought. He deposes *inter alia* that:

"The monies due to me previously under the Farm Payment Scheme and now under the Basic Payment Scheme are payments from the European Commission for the support of farm incomes and production throughout the European Union. As such they are in the nature of or akin to emoluments or earnings and ought not to be the subject of an Order appointing a Receiver by way of Equitable Execution."
9. By order of 13th July, 2015 the High Court (McGovern J.) made an order that the order of 4th October, 2011 "be varied to provide that the Receiver will be appointed over such payments as may be received in respect of the Basic Payment Scheme".
10. A short agreed note of the reasons given by the trial judge was furnished to this Court. It indicates that the trial judge took the view that the facts had not altered from the time of the original order, save that the appellant did not contest the original application. He considered that there was only a change to the nomenclature of the Scheme and the reasons pursuant to which Kelly J. made the order had not changed. He also referred to the divergence of opinion of judges and indicated that he accepted the line of reasoning of Peart J. in *O'Connell*. This Court has no note of the reasons for which Kelly J. made the original order (which is not under appeal).

Appeal

11. The order of the High Court under appeal is expressed to be a variation of the 2011 order. Counsel for the appellant submits that it was in substance a new order. The terms of the scheme exhibited on behalf of the plaintiff states that the Basic Payment Scheme

(BPS) "is being introduced in 2015 as part of the new measures in the reform of the Common Agricultural Policy. The Basic Payment Scheme has replaced the Single Payment Scheme (SPS). All entitlements held under SPS expired on 31 December 2014. A new set of entitlements will be allocated in 2015 to those eligible for an allocation under the BPS."

12. I am satisfied that the Court must consider the order of the High Court of the 13th July, 2015 as in substance a standalone order to appoint a receiver by way of equitable execution over such payments as may be received (or receivable by the appellant) in respect of the Basic Payment Scheme.

13. Counsel for the appellant relied in submission on two distinct lines of argument to contend that the High Court judge was in error in making the order.

14. First he submitted that the High Court judge was in error in relying upon the judgment of Peart J. in *O'Connell v. An Bord Pleanála* [2007] IEHC 79 and that he ought to have done as Hogan J. did in *Flanagan v. Crosby* [2014] 1 IR 576 and follow the High Court decisions in *National Irish Bank v. Graham* [1994] 1 IR 215 and *Honniball v. Cunningham* [2010] 2 IR 1, to the effect that receivers by way of equitable execution may only be appointed over equitable interests and not legal interests in property.

15. Second he submitted that a receiver may not be appointed over future salaries, earnings or wages, and that the BPS payment is a payment of this nature. He also submitted that even if the BPS payments were not in the nature of salaries, earnings or wages, a receiver may not be appointed over the BPS payments as they are future payments.

16. Counsel for the respondent disputed that *O'Connell* was wrongly decided and seeks to rely upon observations made by Hogan J. in *Flanagan v. Crosby* as to the absence of reasons, other than the High Court judgments by which he considered himself constrained, according to which the appointment of receivers should be limited to equitable interests rather than legal interests.

17. He also relied upon a series of English decisions, considered below, as authority for a jurisdiction to appoint a receiver over future payments.

18. He also identified the nature of the appellant's interest in the BPS payments as being a *chose in action*, namely, a right to make a claim under the BPS, and submitted that there was authority to support a jurisdiction to appoint a receiver over a *chose in action*.

19. It was not in dispute that the appellant's entitlement to receive the BPS payments is a legal *chose in action*.

Issues

20. The issues to be addressed in this appeal may be summarised as follows:

i. Is the jurisdiction to appoint a receiver by way of equitable execution confined to an appointment over equitable, as distinct from legal, interests in property?

ii. If not, may a receiver be appointed to receive future sums to which the appellant may become entitled pursuant to the BPS?

21. To consider these it is necessary to consider the origins of the jurisdiction to appoint a receiver by way of equitable execution and the case law.

Is the power confined to equitable interests in property?

22. Section 28(8) of the Supreme Court of Judicature (Ireland) Act 1877 (as applied by s. 8(2) of the Courts (Supplemental Provisions) Act 1961) continues to be the basis for the jurisdiction exercisable by the High Court to appoint a receiver by way of equitable execution. It provides:

"28(8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just."

23. Order 50, rule 6 of the Rules of the Superior Courts repeats in almost identical terms this power. However the jurisdiction derives from the Act of 1877. That jurisdiction relates to the appointment of all receivers and is not confined to the appointment of a receiver by way of equitable execution. Order 45, rule 9 applies specifically to an application for the appointment of a receiver by way of equitable execution. It provides:

"In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if it shall so think fit, direct any inquiries on these or other matters, before making the appointment. The order shall be made upon such terms as the Court may direct."

24. It is long established that the general power to appoint receivers under s. 28(8) of the Act of 1877 includes the appointment of a receiver by way of equitable execution.

25. The judgment of Keane J. in the High Court in *National Irish Bank Limited v. Graham* [1994] 1 IR 215 is the first modern Irish authority which decides that the appointment of a receiver by way of equitable execution is confined to cases in which a debtor "enjoys an equitable interest in property which cannot be reached by legal process". I draw attention to the fact that that is a judgment given by Keane J. as a High Court judge, and whilst obviously any judgment of Keane J. is deserving of great respect, it is not binding on this Court. Regrettably there appears to have been some confusion about the status of this judgment, deriving possibly from the fact that in the second edition of Keane, *"Equity and the Law of Trusts in the Republic of Ireland"* (2011) at para. 21.07, it is referred to as a decision of the Supreme Court. It was treated as such by the High Court judge in *Start Mortgages Limited v. Doheny* [2014] IEHC 656 who considered it to be binding on her.

26. In *Graham* the application, *inter alia*, was for the appointment of a receiver by way of equitable execution over a milking herd. The bank had obtained a judgment for £3,543,840.96 and had sued out an order of *fieri facias*. Keane J. at p. 222 stated:

"Nor is this a case in which it would be appropriate to appoint a receiver by way of equitable execution over the milking herd. It is clear that the jurisdiction to appoint such a receiver is confined to cases in which a debtor enjoys an equitable

interest in property which cannot be reached by legal process. The law was thus stated by Fry L.J. in *In re Shephard* (1889) 43 Ch. D. 131 at p. 138:—

"A receiver was appointed by the Court of Chancery in aid of a judgment at law when the plaintiff showed that he had sued out the proper writ of execution, and was met by certain difficulties arising from the nature of the property which prevented his obtaining possession at law, and in these circumstances only did the Court of Chancery interfere in aid of a legal judgment for a legal debt."

In *Holmes v. Millage* [1893] 1 Q.B. 551, Lindley L.J. said at p. 555 that:—

"The only cases of this kind in which Courts of equity ever interfered were cases in which the judgment debtor had an equitable interest in property which could have been reached at law, if he had had the legal interest in it, instead of an equitable interest only . . . It is an old mistake to suppose that, because there is no effectual remedy at law, there must be one in equity."

In the present case, the plaintiffs meet none of the requirements laid down by these decisions. The defendants are the legal owners, and not merely the owners in equity, of the milking herd. There is no impediment to the execution of the writ of *fiery facias* arising from the nature of the defendants' interest in the herd. There is in the result no ground for the appointment of a receiver by way of equitable execution."

27. The reason for which the authorities cited by Keane J. refer to the circumstances in which a receiver was appointed by the Court of Chancery is the determination in a number of decisions at the end of the nineteenth century that the statutory jurisdiction conferred on the courts by s. 28(8) of the Act of 1877 (and its English equivalent in s. 25(8) of the Supreme Court of Judicature Act 1873) did not confer on the Court power to appoint a receiver by way of equitable execution in a case where prior to the Judicature Acts no court could have granted such relief.

28. The issue was next addressed by Laffoy J. in the High Court in *Honniball v. Cunningham* [2010] 2 IR 1 where she considered what was stated by Keane J. in *National Irish Bank Limited v. Graham*. On the facts of *Honniball*, she did not agree that the principle as stated by Keane J. operated against the plaintiff in the manner suggested by the defendant. The facts are not relevant to the issue of principle I have to consider in this appeal. She then continued, and stated at p. 16:

"The principle, as I understand it, is that the court will not appoint a receiver by way of equitable execution over property of which the judgment debtor is the legal owner and which can be the subject of legal process. The facts in *National Irish Bank Ltd. v. Graham* illustrate that point very clearly: the defendants were the legal owners of the milking herd and there was nothing to stop the sheriff seizing the milking herd on foot of the *fi. fa.* The principle is that the equitable remedy is only available where the judgment debtor has only an equitable interest in property against which the judgment creditor seeks recourse."

29. The focus of the issues in dispute in *O'Connell v. An Bord Pleanála* [2007] IEHC 79 appears to have been different. The primary issue appears to have been whether or not a receiver by way of equitable execution may be appointed to receive future debts. In that decision Peart J. appointed a receiver by way of equitable execution over "so much of any sum payable to [the judgment debtor] on foot of any settlement of her claim for damages or on foot of any award of damages made by the Court in proceedings... as may be required to satisfy either in whole or in part the judgment for costs in the within proceedings." The judgment debtor's claim in question, in a separate pending action, was a claim for damages for personal injuries.

30. The judgment in *O'Connell* refers to *Graham* but not to the issue as to whether or not the Court may appoint a receiver by way of equitable execution where the property in question is a legal as distinct from an equitable interest of the judgment debtor. Peart J. referred to *Graham* in the following context where he stated:

"The power to appoint is not itself execution but rather an equitable relief in aid of execution, in circumstances where there is some obstacle or hindrance to legal execution. Where the normal methods of legal execution are sufficient, for example where there are goods of the judgment debtor which can be seized on foot of a writ of *fiery facias*, a receiver will not be appointed – see *National Irish Bank Ltd. v. Graham* [1994] 1 IR. 215."

31. As appears below, the above statement of principle by Peart J. in reliance on *Graham* is, and remains, correct. Peart J. did not refer expressly to the issue as to whether the appointment is confined to equitable interests in property or to the judgment of Laffoy J. in *Honniball* or that part of the judgment of Keane J. in *Graham* which so concludes.

32. However, Hogan J. did directly confront the issue as to whether the appointment was confined to equitable interests in property in *Flanagan v. Crosby* [2014] 1 IR 576. In that judgment he considered fully the judgments in *Graham*, *Honniball* and *O'Connell* and certain earlier judgments and ultimately, at p. 589 stated:

"[29] If, therefore, the matter were to be viewed afresh, examined from the standpoint of first principles, then tradition apart, there seems no reason, in principle, why an order for the appointment of a receiver by way of equitable execution could not be made in respect of legal as well as equitable interests. Yet, irrespective, however, of how the matter might be approached if the issue were to be considered as if it were *res integra*, I nevertheless feel that I would not be entitled to depart from the view expressed in contemporary times by both Keane J. in *National Irish Bank Ltd. v. Graham* [1994] 1 I.R. 215 and by Laffoy J. in *Honniball v. Cunningham* [2006] IEHC 326, [2010] 2 I.R. 1. To that extent, therefore, I consider myself bound by the majority views, as expressed by members of this court, and it is clear that, absent special circumstances, I must follow this line of authority: see, e.g., by analogy the comments of Clarke J. in *Kadri v. Governor of Cloverhill Prison* [2012] IESC 27, [2012] 2 I.L.R.M. 392 and my own decision in *A.G. v. Residential Institutions Redress Board* [2012] IEHC 492, (Unreported, High Court, Hogan J., 6th November, 2012).

[30] The decisions in *National Irish Bank Ltd. v. Graham* [1994] 1 I.R. 215 and *Honniball v. Cunningham* [2006] IEHC 326, [2010] 2 I.R. 1 clearly hold that the appointment of a receiver by way of equitable execution is confined to the enforcement of equitable rights only. Here, the entitlement of the judgment debtor to receive payment from Roscommon County Council is by way of emoluments for his position as a councillor. These rights are not equitable in nature, since Mr. Crosby has a statutory right (*i.e.*, a right existing at law) to such payments. For this reason alone, I would hold that the judgment creditor is not entitled to an order in aid of execution."

33. Having considered carefully both the English authorities to which we were referred, which are persuasive, and the High Court judgments in *Graham* and *Honniball* with the respect that they deserve, I have concluded that the courts when exercising the

statutory jurisdiction conferred by s. 28(8) of the Act of 1877, in accordance with the Rules of Court, in the Twenty First Century are not precluded from appointing a receiver by way of equitable execution where what is ought to be executed against is a legal interest in property of a judgment debtor. My reasons are principally the following.

34. First, I am doubtful that there was ever binding authority to the effect that a receiver by way of equitable execution could only be appointed in respect of equitable interests. In *Graham*, reliance is placed on the statement to that effect by Lindley L.J. in *Holmes v. Millage*. That judgment in the context of this issue was analysed carefully by Millett J. in *MacLaine Watson & Co. v. ITC* [1988] Ch. 1 where the very same passage from Lindley L.J. in *Holmes v. Millage* referred to in *Graham* was relied upon in argument by Counsel (Mr Alexander), and in respect of which Millett J. stated at p. 19:

"In *Holmes v. Millage* [1893] 1 Q.B. 551 the plaintiff sought the appointment of a receiver over the future salary of the judgment debtor. The application was refused, not on the ground that the judgment debtor was entitled to his salary at law, but because a man's future salary is not attachable at law or in equity. The ratio of the case is to be found at p. 555:

"the existence of a legal right is essential to the exercise of this jurisdiction. The judgment creditor here has a legal right to be paid his debt, but not out of the future earnings of his debtor; and the Court of Chancery had no jurisdiction to prevent him from earning his living or from receiving his earnings, unless he had himself assigned or charged them."

and at p. 557:

"In [*Manchester and Liverpool District Banking Co. v. Parkinson* (1888) 22 Q.B.D. 173] an order for a receiver was discharged, because there was no difficulty in enforcing payment of a judgment by the ordinary legal methods. In this case there is such a difficulty; but it does not arise from any impediment which the old Court of Chancery had jurisdiction to remove. The difficulty arises from the fact that future earnings are not by law attachable by any process of execution direct or indirect."

In my judgment, the passage on which Mr. Alexander relied forms no part of the ratio of the case, and as a historical exposition is too narrowly stated. As Davey L.J. pointed out in *Harris v. Beauchamp Brothers* [1894] 1 Q.B. 801, 808, the most common case for the appointment of a receiver by way of equitable execution before the Judicature Acts was that described by Jessel M.R. in *Anglo Italian Bank v. Davies* (1878) 9 Ch.D. 275, but it was not the only case."

35. I respectfully agree with the conclusion of Millett J. that the passage from Lindley L.J. in *Holmes v. Millage*, cited in *Graham* and relied upon in argument before him, did not form part of the ratio in *Holmes v. Millage*, and even as a "historical exposition" is too narrowly stated. Rather, the essence of the principle applied by the courts following the passing of the Act of 1877 (and its English equivalent) is as stated by Fry L.J. in *Re Shephard* and also cited by Keane J. in *Graham* and set out above. In the same judgment Cotton L.J. at p. 135 put it thus:

"But what he gets by the appointment of a receiver is not execution, but equitable relief, which is granted on the ground that there is no remedy by execution at law; it is a taking out of the way a hindrance which prevents execution at common law."

36. Whilst I acknowledge, as did Millett J., that it appears to have been assumed in a number of cases that it was only where the debtor had an equitable interest, as distinct from an a legal interest in property, that such property could not be reached by execution at law. It appears to have been assumed that there was no hindrance to execution at law against legal interests in property. Notwithstanding, the relevant interest being equitable rather than legal does not appear to me to have been part of the core principle for the appointment of a receiver which was pithily stated by Buckley L.J. in *Edwards & Co. v. Pickard* [1909] 2 K.B. 903 at p. 910:

"Equitable execution is relief given on the ground that there is no remedy by execution at law: it operates by removing a hindrance which prevents execution at law."

37. Secondly, even if I am not correct in the above analysis, nevertheless I am in agreement that having regard to the breadth of the jurisdiction given the Court by s. 28(8) of the Act of 1877 in relation to the appointment of a receiver, there is, as stated by Hogan J. in *Flanagan*, no reason in principle why an order for the appointment of a receiver by way of equitable execution should not now be made in respect of legal as well as equitable interests in property. The core principles remain that it is not execution as such, but rather appointment of a receiver in aid of execution where owing to the nature of the property or other hindrance execution against the property is not available at law by one of the existing methods of execution, such as the execution of the writ of *fieri facias* (as was available in *Graham*) or by an order of garnishee.

Basic Payment Scheme and Future Payments

38. It is common case that the appellant's entitlement to payments under the BPS is a legal entitlement in the sense of a legal *chose in action*. The entitlement arises in a broad sense pursuant to a statutory or regulatory provision, albeit of EU origin. Nothing turns on the precise source. Counsel for the appellant made two distinct further submissions as to why, even if a receiver could be appointed to a legal interest in property, a receiver ought not to have been appointed to receive the future payments to which the appellant may become entitled under the BPS. First, it was contended that a receiver may not be appointed to receive future debts, and second, that even if a receiver might be so appointed, he ought not to have been appointed to receive payments to be made to the appellant under the BPS as the latter are in the nature of salaries, wages or earnings in respect of which the courts will not as a matter of policy appoint a receiver.

39. Prior to considering those issues (in reverse order) it is necessary to identify the nature of the appellant's entitlement under the BPS.

40. The evidence before the Court in relation to the BPS is the Helpsheet /Terms & Conditions for the 2015 Scheme, published by the Department of Agriculture, Food and the Marine, and exhibited by Mr. Walsh, the deponent of ACC Bank plc. The appellant, in his replying affidavit, did not dispute that those documents set out the terms of the scheme but as already set out stated they are "payments from the European Commission for the support of farm incomes and production throughout the European Union. As such they are in the nature of, or akin to, emoluments or earnings and ought not to be the subject of an Order appointing a Receiver by way of Equitable Execution." Certain of those statements are matters of submission rather than fact.

41. The essence of the Scheme is set out at para. 1.5 of the Helpsheet:

"In summary, payment under the BPS is available to applicants who meet the active farmer requirements on payment entitlements they hold, which are activated by declaring an eligible hectare on which they are carrying out an agricultural activity."

42. There are two essential requirements: (i) to be an active farmer, and; (ii) to declare an eligible hectare.

43. The conditions according to which a person will be considered to be an active farmer are set out in para. 1.8 (i):

"Active farmer requirements

(i) Farming Activity

To participate in BPS and related schemes a person must be an 'active farmer' as defined in Regulation (EU) No 1307/2013 and related Regulations. Only persons who fulfil one of the following conditions will be considered an 'active farmer' and will be eligible to participate in BPS and related Schemes;

- i. A 'farmer' is defined as a person who carries out an agricultural activity such as 'the rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes'.
- ii. Persons who do not engage in one or more of these activities must at a minimum maintain their land in 'good agricultural and environmental condition'."

There are certain exclusions set out in a negative list which are not of relevance.

44. The requirements for an eligible hectare or eligible land are set out in para. 1.7 which stipulates that there will be one BPS entitlement activated for payment purposes for each eligible hectare of land declared. It then states:

"In order to draw down payment in respect of your BPS entitlements, you must have an "eligible hectare" to accompany each entitlement. In this context, an "eligible hectare" **is land that is used for an agricultural activity** and includes land used to grow cereals, oilseeds, short rotation coppice, *Miscanthus sinensis*, protein crops, sugar beet, maize, fodder beet, turnips, mangolds, kale, vegetables, potatoes, grass for silage or hay or grazing. Created habitat areas such as those created under option 4a of REPS 3 and REPS 4, areas under linnet and riparian zones are also eligible for BPS where the applicant is still a participant in REPS. If you are no longer in REPS but wish to retain former REPS 4a habitats you can do so by declaring them as Designated Habitats. In this way the areas continue to be eligible for BPS but the habitat becomes a landscape feature under cross compliance so it must be retained.

In determining the eligibility of land applied upon to draw down payment, a number of particular conditions have to be complied with..."

45. The conditions include that the land must be used and managed by the applicant, and if they are not the owner of the land, they must have a lease or rental agreement with the owner. There must also be evidence of "a sufficient agricultural activity being conducted throughout the parcel", otherwise the unused part(s) of the parcel may be found to be ineligible. There are a number of other conditions which must be met in relation to the land, concerning to its suitability for farming, access etc. for animals, fencing and the like.

46. From the above it appears to me that the appellant's entitlement to receive a payment under the BPS is a personal entitlement as an active farmer. However, the entitlement is by reference to the number of eligible hectares, as defined, of which he is the owner or occupier under a lease or tenancy which are being used and managed by him as an active farmer. Further, when one considers the criteria according to which one is considered to be an "active farmer" and what may constitute use of land for an agricultural activity it appears to me that the primary focus is on the land and within a very broad spectrum the agricultural use to which it is being put.

47. Whilst I accept the averment of the appellant that it is intended to support farm income throughout the European Union, nevertheless it does not appear to me on the facts of this appeal to be such that it should be treated as similar to future earnings such that if otherwise permissible, the appointment of a receiver by way of equitable execution should, as a matter of policy be refused. It does not appear to me that such payments should be equated with salaries or wages in respect of which, if a receiver is appointed, the farmer would be prevented from earning his living from work he has done, as was the position in *Holmes v Millage*. The BPS payment is an income supplement the amount of which is determined by the number of eligible hectares declared.

48. Further there is no averment from the appellant that this is his sole or only income or that if deprived he would not earn a living from his farming activities. Whilst I have determined that it is a new scheme, it is a replacement scheme to the Single Payment Scheme under which payments of €525,877.40 due to the appellant had been paid to the receiver between 2011 and 2015.

49. Accordingly it appears to me that the High Court judge was correct in not refusing to appoint a receiver in respect of such payments as are due to the appellant under the BPS upon the basis that such payments were in the nature of a salary or wages.

50. The final issue therefore is whether a receiver may be appointed to receive a future debt or sums which may become due to the appellant pursuant to his existing legal right in the sense of a legal *chose in action* to receive payments under the BPS. The general question as to whether a receiver by way of equitable execution may be appointed to receive a future debt has again been the subject of some detailed analysis by the English courts in a number of decisions to which this Court was referred. It was also the subject of consideration by Peart J. in his High Court judgment in *O'Connell* where he considered many of the same judgments.

51. The judgment of Lawrence Collins L.J. in the English Court of Appeal in *Masri v. Consolidated Contractors International (UK) Limited & Ors.* (No. 2) [2008] EWCA Civ. 303, [2009] Q.B. 450 with whom the other members of the Court, Lord Neuberger of Abbotsbury and Ward L.J., agreed is of particular assistance on this issue. As stated by Lord Neuberger, it is a "full and impressive analysis of the law" with which, along with the conclusions of Lawrence Collins L.J., he agreed. Following his analysis of the prior cases Lawrence Collins L.J. stated his conclusions at p. 496:

"172 Consequently, in my judgment the position on the older authorities is, as I have suggested, that in none of them is the ratio that a receiver cannot be appointed in respect of future debts or future income. There are strong statements in *Webb v Stenton* (1883) 11 QBD 518 that future income from a trust could be the subject of an order. I accept that the

remarks are obiter, but it would be surprising if these judges could express themselves so clearly in this sense in 1883 if there had been an established practice in Chancery prior to 1873 that a receiver by way of equitable execution could not be appointed in respect of future income. If there had been such a rule *Holmes v Millage* [1893] 1 QB 551 could have been decided very simply on that ground. There would have been no need for the extensive reasoning devoted to the special position of a man's salary. Lindley LJ identified the question of general importance as being whether a judgment creditor was entitled to a receiver of future earnings. He said that the common law writs of execution did not extend to future income; that charging orders did not apply to wages or other remuneration for personal services; and that the Court of Chancery did not have the power to restrain a man from earning his living or receiving his earnings. Apart from the passage in Lindley LJ's judgment referred to above, at para 154, there is nothing to support such a rule. I agree with Millett J's conclusion in *MacLaine Watson & Co Ltd v International Tin Council* [1988] Ch 1, 19 that the ratio of *Holmes v Millage* was that a man's salary was not attachable at law or in equity, and that the passage from Lindley LJ's judgment was not part of the ratio.

173 To the extent that these cases support a principle that equitable execution is only available in relation to assets which are liable to legal execution, they are undermined by the second group of authorities, including *Bourne v Colodense Ltd* [1985] ICR 291, which is binding on this court, and which establish that a receiver may be appointed in respect of a claim to an indemnity and that consequently the jurisdiction is not limited to choses in action which are available for legal execution.

174 In my judgment, therefore, there is no authority binding this court to hold that the jurisdiction is not available in relation to future income from a defined asset. In any event, even if the jurisdiction had not been exercised before 1873, I do not think that this court is bound by pre-1873 practice to abstain from incremental change."

52. He then considered the powers conferred on the English courts by the modern restatement of s. 25(7) of the Act of 1873 in s. 37(1) of the Supreme Act (now Senior Courts Act) 1981 as circumscribed by judicial authority, and ultimately concluded at para. 184:

"184 In my judgment there is no reason why in 2008 the court should not exercise a power to appoint a receiver by way of equitable execution over future receipts from a defined asset. There is no longer a rule, if there ever was one, that an order can only be made in relation to property which is presently amenable to legal execution. There is no firm foundation in authority for a rule that the remedy is not available in relation to future debts. There is no principle which prevents the development of existing authority to extend the remedy to the property which was the subject of the receivership order in this case."

53. That authority is persuasive for our courts. I respectfully agree both with the analysis and conclusion, and similarly am of the view that in 2015 or 2017 there is no reason why the Court should not exercise a power to appoint a receiver by way of equitable execution over future receipts from a defined asset.

54. In *Masri* the defined asset was an oil concession in Yemen to which the judgment debtor was entitled pursuant to specified contracts. In this instance the defined asset of the judgment debtor, the appellant, is an entitlement to receive payments under the BPS which it is agreed is a legal *chose in action*. The entitlement to receive BPS payments is of course not absolute. It is dependent upon the judgment debtor making an application and complying with the conditions and criteria set out in the scheme. However, the conditional nature of the right to the payment pursuant to the existing legal *chose in action* does not, in my view, affect the point of principle that a court is entitled to appoint a receiver to receive all amounts which become due pursuant to the existing asset or legal *chose in action* of the judgment debtor.

55. By reason of this conclusion, which determines this appeal, it is unnecessary to consider certain broader issues in relation to the appointment of a receiver by way of equitable execution to receive other types of future debts or payments. I wish to emphasise that this decision is confined to the appointment of a receiver by way of equitable execution to receive receipts from an existing asset or property right of the judgment debtor which is of a type over which a receiver may be appointed. In particular, I do not intend this judgment to be taken as approval of the decision reached in *O'Connell* that a receiver may be appointed to receive sums payable to a judgment debtor in settlement of or pursuant to an award of damages in a personal injuries claim for damages. Such an appointment appears to me to raise a number of difficult questions which do not appear to have been raised or argued before the trial judge in *O'Connell*. These would include the non-assignability of a bare cause of action, and public policy considerations concerning a claim for general damages for pain and suffering in the context of the rights guaranteed by Article 40.3 of the Constitution.

Conclusion

56. The High Court had jurisdiction to appoint the receiver over payments to which the appellant may become entitled pursuant to the Basic Payment Scheme and the order made was an appropriate exercise of discretion on the facts herein. Accordingly, I would dismiss the appeal.