

## APPELLATE CIVIL.

*Before Mr. Justice Brandt and Mr. Justice Parker.*

KARUTHÁN, PLAINTIFF,

and

SUBRAMANYA AND ANOTHER, DEFENDANTS.\*

1885.  
July 6.  
1886.  
January 9.

*Civil Procedure Code, s. 268—Decree—Execution—Attachment—Deposit by servant of railway company—Rights of attaching creditor.*

Where money deposited with a railway company by one of its servants as a guarantee for the due performance of his duties was attached by a judgment-creditor of such servant under s. 268 of the Code of Civil Procedure :

*Held*, that the creditor was not entitled to have his decree satisfied out of the deposit, but was entitled to a stop order under cl. (c) of s. 268, and also to payment of the interest, if any, due by the company on such deposit to the servant.

THIS was a case referred under s. 617 of the Code of Civil Procedure by R. Vasudeva Ráu, Subordinate Judge of Negapatam.

The case was stated as follows :—

“ Plaintiff obtained a Small Cause judgment against both the defendants jointly and severally, and having applied for execution, moved the Court for attaching about Rs. 300, being the guarantee amount deposited by the defendant No. 1 with the South Indian Railway Company for the faithful performance of his duties. The attachment was made under s. 268 of the Code and the usual notice was duly served upon the Agent on the 27th August 1885 ; but the Agent addressed to me a letter on the 4th September 1885, inviting my attention to subsidiary orders accompanying Government of India circular No. 13, Railway, dated Simla, 7th August 1884, and informing me that the Honorable the Advocate-General of Bengal had therein represented to Government that compulsory deposits made by railway employés in India cannot be attached by judgment-creditors. I have not been able to find a copy of the order, but on a reference to the additional rule 3 A appended to page 130 B to be found in page 3 of the twelfth list of corrections to be made to the Civil Account Code received in this office on the 5th instant, I find that the said Advocate-General has expressed

\* Referred Case 16 of 1885.

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his opinion accordingly. He says: 'If, as stated in this case, the deposits under notice are payable to discharged railway employes subject only to Government claims, and they can insist on having payment thereof made to them, I am of opinion such deposits can be attached by judgment-creditors. My previous opinion has been very properly limited (as the case on which I advised would show) to the case of a railway servant in actual service.'

"Upon the foregoing facts, although I see the propriety of the rule proposed to be followed by the Advocate-General, I doubt, whether I am bound to follow the said rule. On one hand, it would be very inconvenient for the railway company if the rule were otherwise. It is very seldom that a railway employe allows the guarantee amount to be attached, as he is sure that any reduction of the guarantee amount would entail the forfeiture of his appointment, and when he finds it impossible to avoid it, the attachment is effected. The moment it is effected, the railway company hands up the amount to the Court and dismisses the man for want of sufficient guarantee being deposited. At present, on an average, amounts are drawn from the railway company in the case of two employes in a month. I need hardly point out how inconvenient and difficult it would be for the railway authorities to turn out old and experienced men and go on enlisting new people who can furnish sufficient amount of guarantee; and this simply because the employes concerned have turned poor and not dishonest or inefficient. When they enter the service they entrust the amount with the authorities with a special object, and until that object is fulfilled and the guarantee amount becomes returnable, it is my impression that the authorities have virtually a prior lien over the particular amount deposited with them in preference to other simple money decree-holders.

"On the other hand, it may be urged with equal plausibleness, that the rule, if allowed to have effect, would, to a great extent, help a dishonest debtor who, having recklessly contracted debts and spent money for improper purposes, may, as the last resource, enter the railway service, having collected and deposited all that he has in the shape of a guarantee amount, while his honest creditors could have no other means of recovering their debts but quietly to look on their debtor leading a decent life with a portion of his property quite safe in a public office which would otherwise be liable to be appropriated for some of his proper debts.

“Section 266 of the Code of Civil Procedure contains a list of the property which is held not liable to attachment; but while it includes a moiety of the salary of a servant of the railway company, it does not include the guarantee amount now in question. But, considering the principle involved, it appears to me that the object of the Legislature is to see that the man is not allowed to starve, which would be the consequence if the whole of his salary is attached and taken away by his creditors, or his guarantee amount is attached and he is left without any employment whatever. Hence my impression is that such compulsory deposits by railway servants in actual service should not be attached by judgment-creditors in execution of their decrees consistently with the intention of the Legislature and with the despatch of public business in railway offices. There are four similar petitions now pending before me which await the decision of the question, and I feel diffident to decide the question one way or the other. Hence the reference.

“The question, therefore, that I would respectfully submit for the decision of the Honorable Judges is, whether, with reference to the opinion of the Honorable the Advocate-General of Bengal referred to by the Acting Agent of the South Indian Railway Company, compulsory deposits of railway employés in actual service are liable to be attached and realized for satisfaction of decrees under the Code of Civil Procedure.”

Mr. *Wedderburn* for the attaching creditor.

The judgment-debtor did not appear.

The Court (Brandt and Parker, JJ.) delivered the following

**JUDGMENT:**—The question for decision, as we understand it, is whether money or other valuable securities deposited as security for the due performance of their duty by servants in the employ of a railway company can, while the depositor remains in the service of such company, be attached and sold in execution of decrees obtained against such servants. The learned counsel who argued the case for the execution creditor before us does not contend that more can be done than to place an attachment on such deposits so as to prevent the railway company from paying over the deposit either to the depositor or to any one else without the order of the Court; it is admitted in fact that the railway company has a lien on the deposit, which is pledged to it for a specific purpose so

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long as the relation of master and servant continues between the company and the servant.

We are of opinion that this is so, and that it is not therefore open to a Court executing a decree against a person so employed to order sale of the deposit or to direct that it be paid over to the judgment-creditor. But we see nothing to prevent an attachment being placed thereon at the instance of the judgment-creditor; indeed this appears to be a case to which the provisions of ss. 266 and 268 of the Code clearly apply.

The deposit is movable property belonging to the judgment-debtor subject to the lien of the company; on termination of the contract of service the judgment-debtor is entitled to its return, provided that the company has no right under the terms of the contract under which it is deposited to retain the whole or a portion of it, and s. 268 provides for attachment of such property not in the possession of the judgment-debtor by a written order prohibiting the person in possession of the same from giving it over to the judgment-debtor. We answer the question then as follows: the Court may place an attachment on such deposits, subject to the lien of the company, but cannot proceed to order the sale thereof until the deposit is at the disposal of the judgment-debtor free from the lien of the company, and if the deposit carries interest, and the interest is not, under the terms of the contract between the employer and the employé, at the disposal of the employer, order may be made for payment to the judgment-creditor of the interest as it from time to time falls due.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.*

MAHOMED KOYA (PLAINTIFF), APPELLANT,  
and

KASMI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Small Cause Court Act XI of 1865—Jurisdiction—Suit to declare movable property not liable to attachment—Civil Procedure Code, s. 283.*

Certain movable property having been attached in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred

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\* Appeal against Order 122 of 1885.