

QUEEN
EMPRESS
v.
APPATHORAI.

or laying down of certain substances, or the construction of certain buildings. It will be seen that the third class of acts spoken of in the same clause, viz., the causing any offensive matter to run from any house, &c., is only made penal when the offensive matter is allowed to run "into the street" and not in any other case.

In the decision before us, as there is no evidence that the heap of rubbish was deposited in a public thoroughfare, I would set aside the conviction and direct that the fine be refunded.

APPELLATE CIVIL.

*Before Mr. Justice Kernan (Officiating Chief Justice) and
Mr. Justice Parker.*

VÍRARÁGAVA, PLAINTIFF,

and

RÁMUDU, DEFENDANT.*

1885.
November 17.

Army Act, 1881, s. 151 (3)—Civil Procedure Code, s. 266, expl. (b)—Debtor subject to military law—Attachment of moiety of salary under Rs. 20 per mensem.

Section 151 of the Army Act, 1881, not being affected by the provisions of s. 266 of the Code of Civil Procedure, the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law, not exceeding Rs. 20, is legal.

THIS was a case stated under s. 617 of the Code of Civil Procedure by B. Rámasámi Náyudu, District Múnsif of Bellary.

The facts necessary for the purpose of this report appear from the judgment of the Court (Kernan, Officiating C.J. and Parker, J).

Counsel were not instructed.

JUDGMENT.—In this case, after decree against the debtor, who is a person subject to military law, but not a soldier of the regular forces, the judgment-creditor put in an execution petition, asking for a special order under the Army Discipline Act, 1879, s. 144, and Army Circular thereunder, No. 66, for the attachment of half the salary of the judgment-debtor, and obtained a special order granting the relief prayed for.

The Executive Commissariat officer objected to the attachment

* Referred Case 8 of 1885

on the ground that the judgment-debtor's salary, being less than Rs. 20 per mensem, was exempt from attachment under clause (h) of s. 266 of the Code of Civil Procedure.

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The last proviso of that section, however, enacts that nothing in the section shall be deemed to affect the Army Act, 1881, or any similar law for the time being in force; s. 151 of the Army Act, 1881, which corresponds to s. 144 of the Army Discipline Act, 1879, on which the Army Circular of March 1882 quoted by the District Munsif was issued, enacts that a Court may direct specially that the whole or any part of the sum decreed shall be paid by instalments out of any pay payable to the debtor, and the amount named in the direction not exceeding half of such pay shall, while the debtor is in India, be stopped and paid in conformity with the direction.

The effect of that section is, that in no case shall the pay of a person subject to military law, but not a soldier of the regular forces, be liable to stoppage to a greater amount than one-half, but the stoppage is not confined to pay of Rs. 20 or upwards. ~~Clause (h)~~ of the proviso to s. 266 of the Civil Procedure Code provides that nothing in that section affects the Army Act, 1881, or any similar Act.

Our reply, therefore, is that the attachment of half the judgment-debtor's salary is valid and in accordance with law.

APPELLATE CIVIL.

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

KOTTAM ZAMÍNDÁR (PLAINTIFF), APPELLANT,
and
PITTAPÚR ZAMÍNDÁR (DEFENDANT), RESPONDENT.*

1885.
November
16, 27.

Act XXVII of 1860, s. 2—Bond given to secure debt due to estate of deceased Hindú—
Suit by heir—Waiver of right to protection implied.

R being a debtor to the estate of a deceased Hindú, executed a bond promising to pay the debt to V, the divided brother of the deceased, as his heir.

A suit having been filed against V by the widow of the deceased, who claimed his estate, R offered to pay the debt to V on production of a certificate under Act XXVII of 1860, but not otherwise.

Held, that, as R had executed a bond promising to pay the debt to V, he could not rely on the protection afforded by Act XXVII of 1860.