or another become existing debts (*i.e.*, when payable), they are even then not liable to attachment. It nowhere says that the salary of a public officer or a railway servant is liable to attachment in advance, nor in our opinion was anything of the kind intended. The Munsif's judgment is entirely based upon a misapprehension of the decision in the case he refers to *Tejram Jagrupaji* v. *Kusaji Gangji*(1). That case does not decide that the whole of a peon's wages may be attached in advance, when it is what he calls a thing *in potentia*. What the case decides is that the whole of a peon's wages may be attached as it becomes due and it decides no more. We have been unable to find any case in which salary or wages have been attached in advance of their becoming due, except under section 268, Civil Procedure Code, which does not apply to this case but only to the case of the salaries of a public officer or a railway servant. The petitioner is not a public officer or a railway servant but a private peon.

We are therefore of opinion that the appeal should be allowed and the attachment set aside with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

RAMANADAN CHETTI (PLAINTIFF), APPELLANT,

v.

NAGOODA MARACAYAR (DEFENDANT), RESPONDENT.*

1897. October 20, 21. November 2.

Merchant Shipping Act Amendment Act—25 & 26 Vict., c. 63, s. 3—Transfer of a ship—Equitable title—Destruction after agreement for sale.

The defendant agreed to purchase a ship from the plaintiff, but the sale was not completed in the manner prescribed by the Merchant Shipping Acts. The ship was delivered to the defendant in pursuance of the agreement and subsequently foundered in port owing to accidental causes. The plaintiff sued to recover the balance of the purchase money:

Held, that the plaintiff was not entitled to recover.

APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Negapatam, in Original Suit No. 24 of 1895.

The plaintiff sued to recover from the defendant the sum of Rs. 5,000, together with interest thereon, from the 2nd August

(1) 7 Bom. H.C.R. (A.C.J.), 110.

* Appeal No. 23 of 1897.

RAMANADAN CHETTI v. NAGOODA MARACAYAR.

1893 to 22nd August 1895. The sum claimed was part of the sum of Rs. 8,250 for which the defendant agreed to purchase a ship from the plaintiff under the agreement recited in the judgment of the High Court. The ship was handed over to the defendant's agent on the 2nd of August 1893 and was taken to Porto Novo where it sank, no legal transfer of the ship having been effected. The findings of the Subordinate Judge were to the effect that the sale had been left uncompleted owing to the default of the plaintiff, that the foundering of the ship was not due to any default of the defendant, that the plaintiff had not committed fraud by failing to disclose to the defendant any serious defect in the ship, that the property in the ship had not passed to the defendant when the accident occurred, and that the loss occasioned thereby should not fall on him. The further facts of the case appear sufficiently for the purposes of this report from the following judgment of the High Court.

The Subordinate Judge dismissed this suit and the plaintiff preferred this appeal.

Sankaran Nayar and *Sundara Ayyar* for appellant.

Mr. *S. H. Bilgrami* for respondent.

JUDGMENT.—The plaintiff sued the defendant for Rupees 6,233–4–0, consisting of Rs. 5,000, balance of the sale amount of a ship, and Rs. 1,233–4–0, interest thereon at 12 per cent. per annum from the 2nd August 1893, claimed as damages.

The plaintiff's case was that the defendant entered into a written agreement with him (through his agent) on the 21st July 1893 to purchase a ship belonging to the plaintiff for Rs. 8,250; that, when Rs. 3,250 of the purchase money had been paid in pursuance of the agreement, the defendant wrongfully obtained possession of the ship without the agreement being fully completed and carried it away and he claimed the balance and damages.

The facts are that on the 20th July 1893, a written agreement was signed by the defendant to the plaintiff's agent, whereby the price of the vessel was settled at Rs. 8,250 and it was agreed that the defendant having paid Rs. 701 of the purchase money should pay Rs. 2,549 more in fifteen days and the agreement continues in these words :—" which being done you shall complete and give in my " favour a deed of sale of the said ship for the above-mentioned " sum of Rs. 8,250, and a pass for the ship. No sooner that is " done than I shall execute to you also the discount bond for

"Rs. 5,000 on the security of the said ship, &c." On the 30th July, the defendant paid the Rs. 2,549 and gave the plaintiff's agent a draft sale-deed and power to register the ship in his name, and the plaintiff's agent gave him a signed document containing an acknowledgment of the receipt of that amount and then continuing "as you have delivered to me this day the sale-deed and the "power to transfer to your name having written out the same I "shall forward it (the sale-deed) to my principal at Devakottah, "obtain his signature thereto, and get in my name the power to "transfer the pass of the ship. I shall come to Porto Novo, hand "over the said sale-deed and execute in your name the pass of "the said ship. At that time I shall receive the chitta in respect "of the said ship from the 7th instant; you shall take the ship to "Porto Novo for executing repairs." The ship was accordingly handed over to the defendant to take to Porto Novo to be repaired and he took her there, and thence to the mouth of the Coleroon which belongs to that port and where vessels of the size of the ship in question are repaired. There the ship sprang a leak and went to pieces about 26th August 1893. The sale-deed had not been executed by the plaintiff, nor was the sale registered when the vessel was destroyed and no executed sale-deed was ever tendered to the defendant.

In these circumstances, the Subordinate Judge dismissed the plaintiff's suit.

The plaintiff appeals and claims specific performance by the defendant of the agreement. He also appealed on certain questions of fact which it is unnecessary to deal with further than to say that we see no reason to think that the Subordinate Judge was wrong in his findings of fact.

The defendant contends that specific performance cannot be granted, because, *firstly*, the plaintiff did not claim it but only claimed a money payment and damages, whereas the agreement was that on the sale-deed being executed and registered by the plaintiff the defendant was to give a vatta chit for Rs. 5,000 on the risk of the ship; *secondly*, it was by the agreement a condition precedent that the plaintiff should execute and deliver to the defendant the sale-deed of the ship and register the transfer to him which was never done; and, *thirdly*, there can be no equitable ownership in a ship apart from the legal ownership, and Courts of Equity will not grant specific performance of an agreement for the sale of a ship, and he quoted in support

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of this proposition the judgment of Wood, V.C., in the *Liverpool Borough Bank* v. *Turner*(1), where it is laid down that, since the passing of the Merchant Shipping Act, 17 and 18 Vict., c. 104, the only ownership in a vessel that can be created, either in law or in equity is when the requirements of that Act have been complied with, *i.e.*, a sale-deed has been executed and the transfer has been registered, and in which case specific performance was refused. This case was followed by the Merchant Shipping Act Amendment Act, 25 and 26 Vict., c. 63, which by section 3 says that certain equities may be enforced and it was argued by the appellant's Vakil that the law as to the manner in which valid sales might be made was thereby altered. The case of *Ward* v. *Beck*(2), however, which discussed this Merchant Shipping Act Amendment Act quotes the judgment of Wood, V.C., in the above case and approves it, and it must therefore be considered as a binding authority as to the manner in which alone a valid sale of a ship can be effected.

For this reason, then, the plaintiff's suit must fail, and we also think that for the other reasons urged by the defendant, the plaintiff cannot succeed in his action. We, therefore, dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897. December 10.

VIRASAMI CHETTI (PETITIONER-PURCHASER), PETITIONER,

v.

LILADHARA VYASS (COUNTER-PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, *ss.* 310A, 315—*Application by a purchaser for refund.*

A house was attached and sold as the property of one against whom a decree of the Small Cause Court, Madras, had been passed. The property was brought to sale, and the purchase money was paid into the Madras City Civil Court. The sale was set aside under Civil Procedure Code, section 310A. Part of the purchase money was attached in execution of subsequent decrees passed against the same defendant by the Small Cause Court and was remitted to that Court

(1) 29 L. J., Ch., 827. (2) 32 L. J., C.P., 113.

* Civil Revision Petition No. 93 of 1897.