We must, therefore, allow the appeal with costs, set aside the decree of the District Judge, and remand the suit for disposal in accordance with law.

GURUMURTI v. SIVAYYA.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

AYYAVAYYAR (PETITIONER-DEFENDANT No. 2), APPELLANT,

v.

VIRASAMI MUDALI (COUNTER-PETITIONER-PLAINTIFF), RESPONDENT.*

1897. October 22, 27.

Civil Procedure Code—Act XIV of 1882, s. 266—Wages of private servant—Attachment.

The wages of a private servant cannot be attached in whole or in part before they become due and a debt exists.

APPEAL against the decree of E. J. Sewell, District Judge of North Arcot, in Appeal Suit No. 92 of 1896, confirming the order of W. Gopala Chari, District Munsif of Arni, in Miscellaneous Petition No. 25 of 1896 in the matter of Original Suit No. 284 of 1883.

The decree-holder applied for and obtained an order for the attachment in execution of his decree of ten rupees a month out of the wages of defendant No. 2, who was a peon in the service of the Jaghirdar of Arni. The defendant No. 2, by his petition, now objected to the attachment, but his objections were overruled and the attachment was maintained. The District Munsif delivered judgment as follows:—

"The judgment-debtor's objections are not good. It is said "that the salary cannot be attached until it falls due, but as "observed in *Tejram Jagrupaji* v. *Kusaji Gangji*(1), the salary is "attached as defendant's property. It may not be a thing *in esse* "but it is a thing *in potentia*. As to the contention that defendant "is not a public servant, it does not help defendant; for, it is "only in case of salary of a public servant that a moiety is

* Appeal against Appellate Order No. 63 of 1897.

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

AYYAVAYYAR v. VIRASAMI MUDALI.

"exempted from attachment. The defendant is not a domestic "servant, and clause (*j*) does not apply. The case cited by "defendant *Syud Tuffazal Hossein Khan* v. *Raghunath Prasad*(1) "does not apply."

The District Munsif accordingly made an order in favour of the decree-holder and this order was affirmed on appeal by the District Judge.

Defendant No. 2 preferred this appeal.

Ponnusami Ayyangar for appellant.

Ranga Ramanujachariar for respondent.

JUDGMENT.—In this case Rs. 10 a month of the salary or wages of a peon in the Arni Jaghir have been attached in advance in execution of a decree.

The District Judge has confirmed the order of the District Munsif and this is an appeal from that decision.

We are of opinion that the decision is wrong and that, under section 266, Civil Procedure Code, no salary can be attached until it becomes due and a debt exists. There is nothing in section 266 of the Civil Procedure Code to alter the pre-existing law in this respect.

It is suggested that, inasmuch as by the proviso to section 266, the salary of public officers and of servants of a Railway Company is in part only made not liable to attachment, and the wages of labourers and domestic servants are entirely made not liable to attachment, it must be assumed that the wages of others who are not included in the proviso are liable to attachment before they have become due and are debts. This, we think, is a fallacy. There is nothing whatever in the section to indicate that the salary of public officers or of railway servants can be attached before it is due. That can only be done by virtue of the special provision in section 268. The whole meaning of the proviso to section 266 is made clear by the explanation. Read with that, the proviso (beginning at (*g*) and going to (*m*)) means that though (*g*) stipends and gratuities, (*h*) salaries of public officers and railway servants, (*i*) pay and allowances of persons to whom the Native Articles of War apply, (*j*) wages of labourers and domestic servants, (*k*) contingent rights and interests, (*l*) rights to future maintenance, (*m*) any allowance, &c.,—all, in fact, at some time

(1) 7 B.L.R., 166.

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.