

CHENNU  
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affecting the merits of the case and it can only have affected the defendants in the matter of costs which could be dealt with at the time the order was made.

We therefore dismiss this second appeal with costs.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Bhashyam Ayyangar.*

WATSON AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

LLOYD (DEFENDANT), RESPONDENT.\*

1901.  
September  
25.

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*Army Act (1881)—44 § 45 Vict., cap. 58, ss. 136, 151—Army (Annual) Act (1895)  
—58 Vict., cap. 7, s. 4—Civil Procedure Code—Act XIV of 1882, ss. 2, 266  
—“Public officer”—Attachment of moiety of pay of officer of Indian Staff Corps.*

The effect of section 136 of the Army Act, 1881, as amended by section 4 of the Army (Annual) Act, 1895, is to empower the Civil Courts to attach one moiety of the salary of an officer in the Indian Staff Corps, under section 266, proviso (i), of the Code of Civil Procedure.

*Calcutta Trades Association v. Ryland, (I.L.R., 24 Cal., 102), followed,*

APPLICATION in execution to attach a moiety of an officer's salary. An *ex parte* decree was obtained against the defendant on 26th June 1900, which was transferred to Madras in December of the same year. The prayer in the petition was as follows:—  
“By attachment of one moiety of the defendant's salary and allowances as Major in the 19th Regiment of Madras Infantry stationed at Madras, such attachment to be served on the Officer Commanding the Regiment.” The defendant did not appear.

The learned Judge, sitting on the original side, refused the application in the following order:—“I think this application should be refused. It seems to me that section 266 of the Civil Procedure Code does not authorise the attachment of the salary of

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\* Original Side Appeal No. 7 of 1901 against the decree of Mr. Justice Boddam dismissing the application by the appellants under section 266 of the Code of Civil Procedure, for attachment of a moiety of salary of respondent in execution of the decree in Original Suit No. 180 of 1900 on the file of the Bombay High Court.

an officer. The proviso to that section shows that it was not intended by the section to effect, add to or alter the law in force under the Army Act or similar law in force for the time being. At the time the section was passed there was a power by section 151 of the Army Act to attach half the salary of all officers and there could be no object in giving that power over again and, in my opinion, the proviso shows that there was no intention in any way to interfere with the law applicable to the pay of officers whether of the Staff Corps or of the regular forces. That was the state of the law in 1895. By the Army (Annual) Act of 1895, section 151 was repealed so that the salary of officers thenceforth ceased to be attachable, but to section 136 was added a paragraph which, it is contended, makes a law which was never intended to affect the Army Act for the time being in force, have that effect. I do not think it has any such effect unless the Civil Procedure Code, by section 266, does affect the Army Act in force. At present the salary of an officer cannot be attached and the proviso to the section says it shall not affect it. I am of opinion therefore that the contention relied on is wrong and that it never was the intention of the Legislature by adding the words 'or by any law passed by the Governor-General of India in Council' to make section 266 applicable to officers, though the interpretation clause, apart from the proviso to this section, does include in the word 'public officers,' officers serving the Government of India. Apart from the proviso this might well be so but in the face of it, I do not think it is so."

Plaintiffs preferred this appeal.

Hon. Mr. *Bardley Norton* for appellants.—The application is made under section 230 of the Code of Civil Procedure for the attachment of a portion of the salary of an officer, a Major in the Indian Staff Corps. The salary appears to be paid under an Act of the Government of India. Relief is sought under section 266, sub-section (z) of which does not apply to British officers in native regiments. The effect of the proviso to section 266, taken as a whole, is that any article or property not specifically exempted from attachment by it is liable, under the section, to attachment and sale. [He referred to section 266, sub-section (h), and section 268.] The salary amounts to about Rs. 700 a month, and if the officer falls within the definition of a "public officer," it is submitted that his salary is attachable. The term

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“public officer” includes “every Commissioned officer, while serving under Government,” and “Government” includes Government of India as well as the local Government—(see the last clause of section 2 of the Code of Civil Procedure. This officer is therefore a Commissioned officer, serving under Government, and paid from the Indian Exchequer. [He referred to *Calcutta Trades Association v. Ryland*(1).] The last proviso of section 266 of the Code of Civil Procedure refers to the Army Act of 1881, so that if there is anything in the latter Act which conflicts with the Code, it must be conceded that the Code would not govern the case. But sections 136 and 151 of the Army Act of 1881 (44 & 45 Vict., cap. 58), are not in conflict with the Code. The amending Act of 1895 (58 Vict., cap. 7) contains two amendments. It repeals section 151 of the Act of 1881, and by section 4, amends section 136 of the older Act by providing that the pay of an officer shall be paid without any deduction other than deductions authorized by that Act itself “or by any law passed by the Governor-General of India in Council.” That means already passed or to be passed, and section 136, thus amended, must include the Code of Civil Procedure, and as this latter Act is incorporated in the Army Act, there is no further need for section 151, which is accordingly repealed. [Sir ARNOLD WHITE, C.J.—It is significant that section 151 was repealed by the same Act that amended section 136, and incorporated the Code of Civil Procedure.] *Virarayava v. Ramudu*(2) was not a case of an officer and it was decided prior to the amendment, but the Judges in effect applied the principle now contended for.

The respondent was not represented.

JUDGMENT.—This is an appeal from an order of Boddam, J., dismissing an application for the attachment of a moiety of the pay of a Major in the Indian Staff Corps.

The Army Act of 1881, section 151 (3) provided :—“A Civil Court or Court of Small Causes, upon adjudging payment of any sum by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money

(1) I.L.R., 24 Calc., 102.

(2) J.L.R., 9 Mad., 170.

payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction."

Section 136, of the same Act provides—"The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorized by this or any other Act or by any royal warrant for the time being."

In 1895, section 151 of the Army Act of 1881 was repealed and the words "or by any law passed by the Governor-General of India in Council" were added to section 136.

Section 266 of the Code of Civil Procedure provides that the following particulars, *inter alia*, shall not be liable to attachment "the salary of a public officer or of any servant of a Railway Company or local authority to the extent of (1) the whole of the salary where the salary does not exceed twenty rupees monthly; (2) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and (3) one moiety of the salary in any other case." Section 2 of the Code defines "public officer" as including "every Commissioned officer in the military or naval forces of His Majesty while serving under Government" and defines "Government" as including the Government of India as well as the local Government.

There can be no question that the defendant in the present case is a "public officer" within the meaning of the Code of Civil Procedure.

The learned Judge dismissed the application for attachment because he was of opinion that it was not the intention of the Legislature by adding the words "or by any law passed by the Governor-General of India in Council" to section 136 of the Army Act to make section 266 of the Code of Civil Procedure applicable to a military officer.

In considering the construction to be placed upon these words it is important to bear in mind that they were added to section 136 by the statute (the Act of 1895) which repealed section 151 *in toto*. They would appear to be consequential on the repeal of section 151, and the Legislature in adding the words would seem to have had in view the fact that the provisions of the repealed proviso to section 151, were substantially the same as the provisions of the Indian Procedure Code, sections 266-268.

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We think the case of *Calcutta Trades Association v. Ryland*(1) was rightly decided and we are prepared to follow that case

We accordingly allow the appeal with costs and make an order attaching one moiety of the pay of the judgment-debtor.

Messrs. *Barclay, Orr & David*—Attorneys for appellants.

Messrs. *Short & Roll*—Attorneys for respondent.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Bhashyam Ayyangar.*

PUNINTHAVELU MUDALIAR (PLAINTIFF), APPELLANT,

v.

BHASHYAM AYYANGAR AND ANOTHER (DEFENDANT AND HIS  
LEGAL REPRESENTATIVE), RESPONDENTS.\*

1901.  
September  
23, 24.  
October  
1, 9.

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*Letters Patent, art. 15—"Judgment"—Appeal—Insolvent Debtors' Act—11 § 12  
Vict., cap. 21, s. 23—Reputed ownership—Charge on debts—Civil Procedure  
Code—Act XIV of 1882, s. 372—Devolution of interest of judgment-debtor upon  
Official Assignee.*

An order dismissing an application by a judgment-creditor of an insolvent for a sum of money in the hands of the Official Assignee to be paid by the Official Assignee to the judgment-creditor, is a "judgment" within the meaning of article 15 of the Letters Patent, and an appeal lies therefrom.

In March 1897, B covenanted to repay by instalments a sum of money owing by him to plaintiff, and mortgaged his stock-in-trade and all outstandings and moneys then due and owing and thereafter to become due and payable to him. B remained in possession. In July 1899 plaintiff sued B on the mortgage-deed, In August 1899, upon an *ex-parte* application by the plaintiff, an order by way of injunction was made in the suit restraining the mortgagor from disposing of the stock-in-trade and outstandings and debts payable to him. This injunction was subsequently dissolved. In the same month plaintiff gave notice to a person indebted to B that plaintiff claimed the amount of the debt under his mortgage. In September 1899 B was adjudged an insolvent and the usual vesting order was made. In October 1899, plaintiff obtained a decree in his suit, by which it was ordered that B should pay the principal and interest due under the mortgage-deed

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(1) I.L.R., 24 Calc., 102.

\* Original Side Appeal No. 2 of 1901 against the decree of Mr. Justice Boddam in Civil Suit No. 143 of 1899.