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The suit is therefore within time. We dismiss the appeal with costs.

Appeal dismissed.

1909. *February* 10.

Before Mr. Justice Aikman, and Mr. Justice Richards.

DEVI PRASAD (DECREE-HOLDER) *v.* A. H. LEWIS (JUDGMENT-DEBTOR).*

Code of Civil Procedure (Act No. XIV of 1882), *section* 266—*Execution of decree—Attachment of future salary of private servant.*

Where a decree-holder applied on the 18th November 1907, for attachment of the judgment-debtor's salary for November and the succeeding months, the judgment-debtor being a lawyer's clerk, *held* that the unearned salary of a private servant in whole or in part was not liable to attachment in advance. *Holmes* v. *Millage* (1), and *Ayyavayyar* v. *Virasami* (2), referred to and followed. *Barshankar* v. *Baijnath* (3), distinguished.

THE facts of this case are as follows:—

The appellant Debi Prasad obtained a decree against the respondent who was a private clerk in the employment of Pandit Pirthinath, a pleader of Cawnpore. On the 18th November 1907, the appellant applied for attachment of the salary of his judgment debtor for November and the succeeding months. The judgment-debtor objected to the attachment on the ground, among others, that on 25th November 1907, his salary for November was not due and that future salary could not be attached. Both the lower courts allowed the objection. The decree-holder appealed to the High Court.

Babu *Satya Narain* (with him Pandit *Baldeo Ram Dave*), for the appellant, contended that the salary of a private servant was a debt and was therefore liable to attachment under section 266 of the Civil Procedure Code. It was clear that future debts could be attached, as the explanation to section 266 exempted from attachment certain properties, future salary not being among them. By section 268 the manner in which the future salary of a Public Officer could be attached was indicated. There was no difference in principle between the salary of a public servant

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* Second Appeal No. 726 of 1908 from a decree of J. H. Cumming, District Judge of Cawnpore, dated the 30th of April 1908, confirming a decree of Girdhari Lal, Subordinate Judge of Cawnpore, dated the 1st of February 1908.

(1) (1893) 1 Q. B., 557. (2) (1897) I. L. R., 21 Mad., 393.
(3) (1901) I. L. R., 23 All., 164.

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and that of a private servant. He referred to *Ayyavayyar* v. *Virasami Mudali* (1), *Harshankar* v. *Baijnath* (2), *Maniswar* v. *Bir Partab* (3).

No one appeared for the respondent.

The following judgments were delivered:—

RICHARDS, J.—This appeal arises out of an application for the attachment of the salary of the respondent, who is a clerk in the employment of Pandit Pirthi Nath, a vakil practising in Cawnpore. There is nothing to show that any salary was actually due at the time of the application for attachment and having regard to the date of the application none would be due in the ordinary course of events. Both the courts below have treated the application as being an application for the attachment of the future salary of the respondent. The application itself was an application to attach a sum of Rs. 150 every month. Section 266 of the old Code of Civil Procedure (which was in force at the time) specifies the classes of property etc. liable to attachment and sale in execution of a decree. They are as follows:—"Land, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public company or corporation, and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf." It is perfectly clear that the future salary of the respondent is not included in the above enumeration unless it is covered by the expression 'debts'. It certainly does not come under the heading "other saleable property.' It is in fact not 'property' at all. It seems to me also that giving the word 'debt' its ordinary and natural meaning, future or unearned pay of a lawyer's clerk is not a debt. The respondent could not sue his master for salary before it is earned. It is not even a debt payable in *future*. Its payment depends

(1) (1897) I. L. R. 21 Mad., 393. (2) (1901) I. L. R. 23 All., 164.
(3) (1871) 6 B., L. R. 646.

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upon the continuance of the contract of service. If the section had ended with the passage quoted above, I think it perfectly clear that the order of the Court below would be perfectly correct and that the future salary of the respondent could not be attached in execution of the decree. It has strongly been urged, however, that some of the exceptions set forth in the remainder of the section clearly show that future earnings are capable of attachment; for example, clause *(i)* partially exempts the salary of certain public officers and servants, clause *(c)* absolutely exempts the wages of labourers and domestic servants. It is said that the introduction of these exceptions demonstrates that but for these exceptions the salaries of public servants and wages of domestic servants could be attached. The explanation to the section is also relied on as showing that the section contemplates non-excepted wages being attached before they are due. It is further urged that section 268 shows that in the case of the salary of a public officer or a Railway servant the attachment might be of the salary in advance. This section provides, amongst other things, that in the case of the salary of a public officer or the servant of a railway company the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the court may direct. This provision does appear to imply that in the case of public officers and railway servants an attachment of future salary is contemplated. It is said that section 268 merely contains directions how the attachment of certain classes of debts etc. is to be carried out and that it does not purport to make attachable property or debts of railway or public servants that would not be attachable if they belonged to other persons. I confess that I feel the weight of these arguments. The wages of domestic servants seems to me in principle not to be distinguishable from the salary of a vakil's clerk, and if unearned wages of a domestic servant are not debts or other saleable property within the meaning of the section, it is hard to understand where the necessity was for making the exception, unless it was for the purpose of enacting that such wages could not be attached even when they had become debt. If this was what was desired, it could have been provided for in a much simpler way. It is, however, quite

clear that in England unearned salary in a case like the present could not be made available in execution of a judgment by garnishee proceedings or by the appointment of a receiver by way of equitable execution. See *Holmes* v. *Millage* (1). No case has been cited to us in which in this country unearned salary of a servant has been attached and in the case of *Ayyavayyar* v. *Virasami Mudali* (2), it was held that such wages could not be attached in whole or part before they were earned. The public inconvenience of allowing such wages to be attached is obvious.

I have already pointed out that unearned salary does not come under any of the descriptions enumerated in section 266 in the natural and ordinary sense of such descriptions. I think therefore that I am justified in resisting the argument that the rest of section 266 and the provisions of section 268 necessarily imply that unearned salary in a case like the present can be attached in execution of a decree. Following therefore with some hesitation the decision of the High Court in Madras and what appears to have been the universal practice, I would dismiss the appeal.

AIKMAN, J.—I am also of opinion that this appeal must be dismissed. The case relied on by the court below, namely *Ayyavayyar* v. *Virasami Mudali* (2), fully supports the Judge's order and I agree with the decision in that case. Neither the old nor the new Code contains any provision for the attachment in advance of the salary of an employé like the respondent. The exemptions contained in section 266 of Act No. XIV of 1882 may be read as applying to salaries already earned. The learned vakil for the appellant, who argued the case extremely well, was unable to refer us to any decision either in this country or in England in which an attachment such as prayed for here was granted. He relied on one case *Harshankar Prasad Singh* v. *Baijnath Das* (3), but that case is easily distinguishable from the present. Their property was sold. Part of the consideration was cash paid down and part was an annuity payable to the vendor. It is clear that in that case there was an existing debt, although the payment of it was deferred. I would also dismiss the appeal.

(1) (1893) 1 Q. B., 551. (2) (1897) I. L. R., 21 Mad., 393.
(3) (1901) I. L. R., 23 All., 164.

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BY THE COURT:—The appeal is dismissed but without costs as the respondent is not represented.

Appeal dismissed.

1909. *February* 11.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.

THAKUR PARSHAD (PLAINTIFF) *v.* JAMNA KUNWAR AND OTHERS (DEFENDANTS.)*

Will—Construction—Malik—*Meaning of—Absolute interest—Hindu widows.*

Unless there is something in the context qualifying it the word *malik* used in a will bears its technical meaning. When a testator bequeathed his property to his issue if he happened to have any, and if he had no issue then to his mother and wife who were to be "*malik aur kabiz*," *held* that the ladies obtained an absolute interest. *Surajmani* v. *Rabi Nath* (1) referred to.

THE facts appear from the judgment of their lordships.

Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the appellant.

Pandit *Motilal Nehru*, Munshi *Gobind Prasad* and Babu *Satya Chandra Mukerji*, for the respondents.

STANLEY, C. J., and BANERJI, J.—The only question in this appeal is whether Suraj Prasad, the last owner of the property in suit, conferred upon his mother Jamna Kunwar by his will, dated the 9th of April 1902, an absolute estate in one half of the property left by him. The will provides that in the event of his marrying again and having issue, such issue shall be the owner (*malik*) of his property like himself. It then goes on to say "If I happen to have no issue, the names of my wife and mother shall be entered in equal shares and they shall be owners and in possession (*malik aur kabiz*)." It is urged that the mother of the deceased, Musammat Jamna Kunwar, acquired a life-estate only and not an absolute estate under the terms of this will. The word *malik* has been interpreted in the recent ruling of the Privy Council in *Surajmani* v. *Rabi Nath Ojha* (1). In that case their Lordships observe that "in order to cut down the full proprietary rights that the word (*malik*) imports something must be found in the context qualifying it." In the present case there is nothing in the context to qualify the word *malik* and

* First Appeal No. 248 of 1907 from a decree of B. J. Dalal, Additional District Judge of Cawnpore, dated the 11th of June 1907.

(1) (1904) I. L. R., 30, All., 84, P. C.