

MISCELLANEOUS CIVIL.

1917

January 9.

Before Mr. Justice Piggott and Mr. Justice Walsh.

H. F. B. D. HAY (PETITIONER) v. RAM CHANDAR (OPPOSITE PARTY).*

*Civil Procedure Code (1908), section 60—Execution of decree—Attachment—
Pay of officer in the Indian Army.*

Held that the pay of an officer of the Indian Army may be attached in execution of a decree against him to the extent of one half.

Lecky v. The Bank of Upper India, Limited, (1) distinguished. *Prins v. Murray & Co.* (2) followed.

THE facts of this case were briefly as follows :—

One-half of the pay of an officer of His Majesty's Indian Army was attached in execution of a Civil Court decree. The officer was a Major of the 43rd Infantry Regiment (Erinpura Regiment) and was on active field service. The case was referred to the High Court under section 13 of the Ajmere Code.

The parties were not represented.

PIGGOTT and WALSH, JJ. :—This is a reference under section 13 of the Ajmere Code (Regulation I of 1877). We have been obliged to consider the reference in the absence of the parties ; but as this course is clearly justified by the provisions of section 19 of the same Regulation, we do not think it necessary to keep the reference pending on that account. The question raised is whether one moiety of the pay of an officer of the Indian Army, while serving in this country, is attachable in execution of a decree under the Code of Civil Procedure. It is suggested in the order of reference that there has been a conflict of opinion on this point, and reference has been made to the case of *Colonel Lecky v. The Bank of Upper India, Limited*, (1), and to a decision of the Bombay High Court *Velchand Ohhaganlal v. E. Bourchier* (3). On the other hand, there are cases *Calcutta Trades Association v. Ryland*, (4) and *Watson v. Lloyd* (5), which are clearly in favour of the creditor in the present case. We have also been referred to a decision of the Oudh Court in the case of *Lieutenant E. G. A. Prins v. Messrs. Murray and Co.*, (2), in which the whole question is thoroughly discussed on

* Civil Miscellaneous, No. 252 of 1916.

(1) (1911) I. L. R., 33 All., 529. (3) (1912) I. L. R., 37 Bom., 26.

(2) (1914) 23 Indian Cases, 935 (4) (1898) I. L. R., 24 Cal., 102.

(5) (1901) I. L. R., 25 Mad., 402.

the basis of the law as it stood at the time when this decision was pronounced. It is worth while to note at once that the decision in *Colonel Lecky's* case was to the effect that the salary of an officer of the Royal Artillery, while serving in this country, was not capable of attachment. The line of reasoning followed by the learned Judges may or may not affect the somewhat different issue now before us ; but it is quite certain that the decision itself is no authority on the subject of the salary of an officer of the Indian Army. Moreover, it is to be observed that, whatever difficulty has been felt by any of the learned Judges with regard to the question now before us turned upon the wording of clause (b) of sub-section (2) of section 60 of the Code of Civil Procedure (Act V of 1908). That sub-section has been repealed by the Repealing and Amending Act No. X of 1914. On this ground, as well as because we agree generally with the line of reasoning followed and the conclusion arrived at by the learned Judges of the Oudh Court, we feel no hesitation about answering the reference. In our opinion the decision of the Ajmere court which has been referred to us was correct, and the order attaching one-half of the salary of the officer in question was rightly passed. The record may be returned with this answer.

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H. F. B. D.
HAY
v.
RAM
CHANDAR.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.*

EMPEROR v. PIARI LAL.

Act (Local) No. II of 1916 (*United Provinces Municipalities Act*), section 274 -
"Occupier."

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Held that a person of whom no more could be said than that he was held responsible for the upkeep and cleanliness of a temple by the former *adhibari* was not an 'occupier' of the temple and could not be convicted as such under section 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish on to the street.

THE facts of this case were, briefly, as follows :—

One Piari Lal was convicted under section 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish from a certain temple in Murtra on to the street and was fined Rs. 20.

* Criminal Revision No. 949 of 1916, from an order of G. R. Dampier, District Magistrate of Muttra, dated the 19th of October, 1916.