

1937

MA KYIN  
MYA  
MAUNG  
SIT HAN.

SPARGO, J.

I see no reason therefore to alter the order respecting the woman. As to the maintenance ordered for the child I cannot see that it is insufficient and I therefore dismiss this application.

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## CIVIL REVISION.

*Before Mr. Justice Mosely.*

C. MACLEOD

*v.*

THE BOMBAY FURNITURE MART.\*

1937

Feb. 15.

*Attachment before judgment—Salary of public officer—Property at the disposal of defendant—Salary not earned or paid—Civil Procedure Code (Act V of 1908), s. 60, O. 38, r. 5.*

Property for the purposes of Order 38, rule 5 of the Civil Procedure Code means property already in existence, belonging to and at the disposal of the defendant. Salary which has not yet accrued or been earned is not attachable in execution, and the special exception made in s. 60 of the Code as to attachment in execution of the salary of a public officer or servant has not been applied to attachments before judgment.

The salary, not having yet been earned or paid, cannot be "disposed of" until it has at least become payable, and so it is illegal to attach before judgment the salary of a public servant or of any employee until it has accrued.

*Aaron* for the applicant.

*K. C. Sanyal* for the respondent.

MOSELY, J.—This is an application in revision against an order of the Small Cause Court directing a moiety of the salary of the defendant, a temporary public officer, to be attached before judgment. The order purported to be passed under Order XXXVIII, rule 5, of the Civil Procedure Code. The application was made on the day that the suit was filed, and in the affidavit of the plaintiff's agent on which the application was granted

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\* Civil Revision No. 397 of 1936 from the order of the Small Cause Court of Rangoon in Civil Misc. No. 666 of 1936.

he merely said that goods ordered to the value of Rs. 69 about 18 months before the suit had not been paid for, and that the defendant had promised to pay out of his salary for the preceding month, and had failed to do so.

1937  
 MACLEOD  
 v.  
 THE  
 BOMBAY  
 FURNITURE  
 MART.  
 MOSELY, J.

Order XXXVIII, rule 5, reads :

“ Where, \* \* \* \*, the Court is satisfied, \* \* \* \*, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.”

the Court may direct the defendant either to furnish security for such portion of the property as may be sufficient to satisfy the decree, or show cause against such an order.

“Property” for the purposes of Order XXXVIII rule 5 of the Civil Procedure Code includes property of every description, movable or immovable, *Chedi Lal v. Kuarji* (1). “To dispose of property” means to realize it or alienate it by sale, or other similar disposition of it, —pledge, mortgage, or gift, and if money, to secrete it perhaps. “Property” must mean property already in existence, belonging to and at the disposal of the defendant. It is on this principle that salary which has not yet accrued or been earned is not attachable in execution, the special exception made in section 60 as to attachment in execution of the salary of public officers or servants not having been also applied to attachments before judgment made under Order XXXVIII, rule 5.

The reason why it has not been applied is obvious. The salary, not having yet been earned or paid, cannot be “disposed” of until it has at least become payable.

(1) (1894) I.L.R. 17 All. 82.

1937

MACLEOD  
v.  
THE  
BOMBAY  
FURNITURE  
MART.

MOSELY, J.

It is therefore clearly illegal to attach before judgment the moiety of the salary of a public servant or of any employee until it has accrued. In any case the bulk of an officer or employee's salary is ordinarily meant to be "disposed" of by being spent on his maintenance or that of his family, and strong grounds would have to be shown for believing that he was about to dispose of the remainder of it with the intent specified in rule 5, before the Court passed an order attaching any portion of salary that had accrued. This application in revision will therefore be successful, and it will be ordered that the attachment be removed with costs of this application, advocate's fee two gold mohurs.

### APPELLATE CRIMINAL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and  
Mr. Justice Leach.*

1937

Feb. 17.

### AUNG PE v. KING-EMPEROR.\*

*Accomplice's testimony—Law in India and England—Competency of accomplice as witness—Rule of law and rule of practice—Observance of both rules—Trial by and without jury—Court's duty—Tainted character of approver's evidence—Necessity of corroboration—Corroboration by independent evidence of untainted kind—Special circumstances—Evidence Act (I of 1872), s. 133, illustration (b) to s. 114.*

The law as to an accomplice's testimony is the same in British India as in England. The rule of law, embodied in s. 133 of the Evidence Act, makes an accomplice a competent witness, and the rule of practice, embodied in the illustration to s. 114, says it is almost always unsafe to convict upon the testimony of the accomplice alone. But the rule of law to this extent triumphs over the rule of practice that if special circumstances exist which render it safe in an exceptional case to act upon the uncorroborated testimony of an accomplice and upon that alone, the Court will not merely for the reason that the conviction proceeds upon such uncorroborated testimony say that the conviction is illegal. Both the rules must be considered together with equal care as though the rule of law comprised the rule of practice.

\* Criminal Appeal No. 97 of 1937 from the order of the Additional Sessions Judge of Tharrawaddy in Sessions Trial No. 44 of 1936.