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TULSI SAHU  
v.  
MAHADEO DAS.

many people may be misled by its not having been so distinctly stated ; I think that the plaintiff in this case has certainly been misled by it. However that may be, as it is for this Court to carry out the law as it has been passed, if the plaintiff has made a mistake, the Court cannot assist him. The plaintiff's remedy was by petition to the Judge, and not by a civil suit.

The civil suit must therefore be dismissed.

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter*

IN THE MATTER OF J. HOLLICK AND OTHERS.\*

*Attachment of Salaries of Railway Servants—Jurisdiction of Mofussil Small Cause Courts—Procedure—Act VIII. of 1859, ss. 236, 239, and 240.*

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Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII. of 1859, section 236.

The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the agent of the Railway Company at the Head Office of the Company. It need not be sent through the High Court, although the Head Office is within the jurisdiction of the High Court.

CERTAIN money decrees having been obtained in the Small Cause Court at Monghyr, against some of the East Indian Railway Company's servants, in execution of one of the decrees, the Judge wrote to the Chief Paymaster, E. I. R. Co., at Calcutta, requesting him to attach and remit to his Court the amount of the decree from pay or any money due to the judgment-debtor. The Railway Company replied that they could only recognize an attachment issuing from the High Court :

Thereupon the Judge of the Small Cause Court submitted the following questions for the opinion of the High Court :

1st.—Whether the salaries of the Railway servants can be attached and deducted in satisfaction of Civil Courts decrees ?

2nd.—Is there any necessity for this Court to make the High Court, or any other Court, a medium in exercising the powers of attachment and deduction of salaries of judgment-debtors belonging to the Railway or any other department ?

\* Reference to the High Court by the Judge of the Small Cause Court at Monghyr.

Act. IV  
of 1882, Sec  
266.

3rd.—Can this Court lawfully send an order of attachment and deduction of the salary of a Railway servant residing within its jurisdiction to the Chief Paymaster, E. I. R. Co., Calcutta, as well as to the Paymaster, Jamalpore, or to the Head Pay Audit Department, Jamalpore.

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The judgment of the High Court was delivered by

PEACOCK, C. J.—With reference to the 1st question, salaries or other debts actually due from the Railway Company to any of its servants can be attached in satisfaction of Civil Court decrees, section 236 of Act VIII. of 1859.

As to the 2nd question, there is no necessity for a Small Cause Court to make the High Court, or any other Court, the medium of attachment. By section 236 of Act VIII. of 1859, extended to Small Cause Courts by section 47, Act XI. of 1865, attachments of debts are to be made by written order prohibiting the creditor from receiving the debts and the debtor from making payment thereof to any person whatever until the further order of the Court. In order to attach a debt, the attaching Court must make a written order according to that section. By section 240, after any attachment shall have been made by written order, any payment of the debt to the judgment-debtor, during the continuance of the attachment, is null and void, if it be made after the written order has been duly intimated and made known in the manner directed by the Act. By section 239, in the case of debts, the written order is to be fixed up in some conspicuous part of the Court-house, and a copy of the written order is to be delivered or sent registered by post to the debtor. In the case of the Railway Company, the registered letter should be addressed, directed, and sent to the agent of the Railway Company at the Head Office of the Company. It is not necessary, in our opinion, that the registered letter should be sent or delivered by the High Court, notwithstanding the head office is within the jurisdiction of the High Court and out of the jurisdiction of the Small Cause Court. If it were necessary for the High Court to attach the debt because the office of the Company is within the jurisdiction of the High Court, the interference of two Courts would be

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required for one execution; for the order prohibiting the creditor from receiving the debt must be made by the Small Cause Court within whose jurisdiction the creditor is residing. The execution of a debt is to be made by attachment, and the attachment is to be made by written order. There is no law which requires the Court which passed the decree to make one-half of the execution and then to send a certified copy of the judgment to another Court to make another part of the execution. Two orders cannot be necessary for the attachment of one debt. A copy of the written order should also be delivered to the creditor and to the Paymaster at Jamalpore.

The 3rd question is substantially answered in our answer to to the 2nd question.

I observe that the Judge of the Small Cause Court has directed the Paymaster to attach and hold in attachment the pay due to the judgment-debtor. That is a mistake. The order attaching the debt must be made by the Court, and a copy served upon the debtor.

*Before Mr. Justice Boyley and Mr. Justice Macpherson.*

TARA CHAND GHOSE, DECREE-HOLDER, v. ANAND CHANDRA CHOWDHRY, JUDGMENT-DEBTOR.\*

*Set-off—Decrees—Special Appeal.*

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A and B having obtained a decree for a sum of money against C & D, sold part of their interest therein to E, who afterwards sold the same to F. G obtained a decree against F, and, in execution, attached and sold F's interest in the decree obtained by A and B, and H became the purchaser of the same. H applied for execution against C and D. C claimed to have set off the amount of a decree obtained by his son, I, against G, and which C alleged was held by I benami for him as a cross-decree within the meaning of section 209 of Act VIII. of 1859. *Held*, the decrees could not be set off.

Also *held*, that a special appeal lies from a regular appeal heard *ex parte*

HARAN CHANDRA MEHALDAR and Ramjiban Mehaldar obtained a money-decree against Anand Chandra Chowdhry and Madhusudan Mittra.

Haran and Ramjiban sold to Chandranath Dutt a 15-anna share of their rights in the decree, reserving one anna share for themselves.

Miscellaneous Special Appeal, No. 397 of 1868, from a decree of the Officiating Judge of Jessore, reversing a decree of the Principal Sudder Ameen of that District.

See also Act.  
XIV of 1882  
Sec 246.