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some way satisfied; and if a person entitled to receive a sum of money annually for life neglects to enforce the decree for many years the presumption arises as strongly as if the decree had been for payment of one single sum at one time, and the ground for the interposition of a law of limitation is the same. The words of Section 20 would clearly include such a case, and we think the spirit of the provision, as explained in the decision above referred to, as well as the letter, applies.

The petitioner, however, alleges satisfaction of the decree down to the end of October 1865, and that allegation is, we think, sufficient to get rid of any difficulty under Section 206 of Act VIII of 1859; and if the decree was satisfied to the end of October 1865, then it was not enforceable by execution until after that day, and the present application is not barred by lapse of time.

We must therefore reverse the decision of the Civil Judge, and direct him to hear the application after notice to the defendants; for it seems to us that the defendants ought to have the opportunity of answering the allegation that the decree has been satisfied to the end of October 1865, and of showing any other cause why the decree ought not now to be executed as regards three years' arrears.

Appellate Jurisdiction (a)

Civil Miscellaneous Regular Appeal No. 178 *of* 1868.

MAHOMED ABDUL VAKAB SAHIB.....*Appellant.*

COMANDUR RAMASAMY AIYANGAR.....*Respondent.*

The stipend of a Carnatic Stipendiary is not liable to attachment in execution of a decree obtained against the Stipendiary, it being one of the description of personal grants expressly protected from attachment in satisfaction of any decree or order of a Court by Section 3, Regulation IV of 1831, extended by Act XXIII of 1838.

These enactments are not impliedly repealed by Sections 205 and 237 of the Code of Civil Procedure.

1869. *April* 2. *C. M. R. A, No.* 178 *of* 1868.

APPEAL against the orders of W. S. Whiteside, the Acting Civil Judge of Chingleput, dated 15th February and 13th March 1868.

(a) Present: Scotland, C. J., and Collett, J.

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Mahomed Yakab Sahib, the petitioner, who was in the Civil Jail of Chingleput in execution of the decree in Original Suit No. 46 of 1867 on the file of the High Court of Madras, applied to the Civil Court praying to be discharged from Jail. The judgment creditor, Ramasawmy Aiyangar, the plaintiff in the above suit, opposed the application of the petitioner unless he complied with certain terms submitted by the judgment creditor.

The Acting Civil Judge of Chingleput, finding that the petitioner was in possession of a Carnatic pension of rupees 53 per mensem, made an order directing the Collector to forward to the Court the sum of money in deposit in his treasury on account of the arrears of pension payable to the petitioner. The amout would be paid to the judgment creditor in part satisfaction of his claim. The Collector was further directed to forward every month to the Court the amount of the pension out of which Rs. 38 would be paid to the judgment creditor and Rupees 15 to the petitioner for his maintenance. The petitioner would be detained in custody until the arrears of pension had been received from the Collector's Office when he would be set at liberty.

The petitioner appealed upon the grounds that Carnatic Stipends were not liable to attachment by process of the Civil Court, and that the Civil Court had no jurisdiction to pass the order made.

The Advocate General, for the appellant.

Vencatapathy Row, for the respondent.

The Court delivered the following

JUDGMENT:—This is an appeal from an order made in execution of a decree obtained by the respondent against the appellant for Rupees 3,159-12-0 with interest at 6 per-cent from date of decree till payment.

It appears that the appellant, having been in jail under process of execution for six months, petitioned the Civil Court for release from further imprisonment on the ground that he possessed no property or means except a monthly allowance of Rs. 53 which had been granted to

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him as one of the Carnatic Stipendiaries by the Government and was then in arrear for several months: and thereupon the Court, after examining the petitioner, made the order. The question to be determined is whether the order is invalid either wholly or in part by reason of the allowance not being liable to process of execution in satisfaction of the decree.

It is one of the numerous pecuniary provisions enjoyed from the Government by the descendants of members of the family of Azeem Oo-Dowlah, the Nabob of the Carnatic, in 1801, and all these provisions originated, (as we learn, from Mr. Balfour's compilation of the orders of the Government relating to Carnatic Stipendiaries) in personal grants made by the Government in accordance with a Minute of Lord Clive drawn up in 1801 under the treaty of that year, absolutely vesting the Government and revenues of the territories of the Carnatic in the East India Company. The original grants were considered as made only for *life*, and rules subsequently laid down by the Government provide for reductions of their amount on the deaths of the original grantees and for distributive grants of the reduced amounts in certain proportions amongst surviving members of their families, and under one of these distributive grants the allowance in question is payable to the defendant.

It thus appears to be a State stipend or pension granted to the defendant personally by the favour of the Government, and one of the descriptions of personal grants expressly protected from "attachment in satisfaction of "any decree or order of Court" by Section 3 of Regulation 4 of 1831 as extended by the provision in Act XXIII of 1838. If therefore these provisions still continue in force, the order is wholly illegal. They are not among the enactments mentioned in the Schedule to the general Repealing Act 8 of 1868, and the question arises, are they impliedly repealed by Sections 205 and 237 of the Code of Civil Procedure on which the Civil Judge has proceeded, and after some consideration we are of opinion that the Sections have not that effect.

The rule of construction "*leges posteriores priores*

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"*contrarias abrogant*" is no doubt applicable to a new affirmative enactment, but it has application only when there is such complete contrariety or repugnancy between it and a prior enactment as makes it certain that the Legislature could not have intended the latter to stand. When there is an admissible construction by which both enactments can reasonably have operation together, that construction must be adopted. This is the well settled rule, and the instance of its application most apposite to the present case is that of a special and particular enactment and a subsequent general enactment relating to the same subject but without negative terms. It has been more that once laid down that in such a case the special enactment is not repealed.

Here the Regulation and the Act extending it are pecularly special and limited laws and their very purpose was to exempt the kinds of property particularized in the Regulation from liability to attachment under the then general law of procedure, just as was subsequently done by Act 6 of 1849 in regard to other kinds of pensions and allowances; and the reasons for the exemption remain the same. On the other hand, the Code of Civil Procedure was passed with reference to the general law of procedure and embodies it, and the Sections under consideration are simply affirmative. Section 205 is declaratory of the property of a judgment debtor which was and is liable to attachment, and Section 237 is one of a series providing for the manner of attaching the different kinds of property under a decree for money, and points out the particular proceeding to be taken when the property consists of money payable to the defendant in the hands of a Court of Justice or an Officer of Government. The language of both provisions admits of their being construed as part merely of the law intended to take the place of the general law of procedure in force when the Regulation was passed, and, so construed, they may well subsist together with the particular exemption provided by the Regulation and the Act extending it, without contrariety or repugnancy, and we think such was the intention of the Legislature. It follows that the stipend of the defendant was not liable to attachment in execution of the decree in the suit, and

the order is altogether invalid and must be set aside. Each party will bear his own costs of the appeal and of the application for the order in the Court below if any.

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Appellate Jurisdiction (*a*)

Regular Appeal No. 93 *of* 1868.

MALRAJA *alias* KRISHNAMA RAJAH.....*Appellant.*

NARAYANASAMY RAJAH and another... ...*Respondents.*

In a suit for a partition of family property in the possession of the plaintiff and defendants, part of the property was attached at the instance of one of the defendants in 1852 and the remainder of the property in 1864. Nothing was done with respect to the first attachment, but in 1865 a petition was presented by the plaintiff praying for the removal of the attachments. The petition was rejected, and the plaintiff brought this suit within one year from the date of the rejection of his petition. The plaintiff and defendants remained in possession notwithstanding the attachments.

Held, that the plaintiff's suit was not barred by the Act for the Limitation of Suits.

1869. *April* 15. *R. A. No.* 93 *of* 1868.

THIS was a Regular Appeal from the order of W. S. Whiteside, the Acting Civil Judge of Chingleput, in Original Suit No. 36 of 1865.

The suit was brought for the recovery of real and personal property valued at rupees 1,589-5-8, to which the plaintiff and the sons of his elder brother Ramaswamiraja (who are under the plaintiff's protection,) were entitled as their one share out of 2¼ shares of real and personal property under the stipulations of a deed of division made between the 1st defendant and plaintiff's father on the 23rd August 1834.

The plaint stated that a dispute arose between the 1st defendant and the plaintiff's father Goparaja, whereupon an agreement was passed in the presence of the cirkar on the 23rd August 1834. It is stipulated therein that both the parties should appoint a gumasta in common for the management of all the ancestral property inclusive of the shrotriem village, and having divided it into 2¼ shares, and after deducting expenses of management, one and quarter share should be taken by the 1st defendant and one share by the plaintiff's father.

(*a*) Present: Scotland, C. J. and Collett, J.