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the affirmative. It follows, therefore, according to the decision in this case that the plaintiff fails. We are not competent, in appeal after remand, to question in any way the decision of this Court in the case.

Some observations were addressed to us as to whether the arrangement in this case could be treated otherwise than one come to in good faith. There is undoubtedly evidence upon which the lower Appellate Court could arrive at the conclusion it has come to in this matter. Leaving aside everything else, the arrangement as to the gift of the garden and house to the son is one which any Court dealing with facts must have viewed with the greatest suspicion, even if it did not affirm that it tainted the whole transaction with fraud. An arrangement of that kind could only have been come to for the purpose of defeating in any rate some classes of creditors. It is difficult to conceive how it could be otherwise. That circumstance of itself is abundant evidence upon which the learned Judge could arrive at the conclusion he has come to.

With regard to the other question, that has been found in the affirmative. Therefore the plaintiff fails.

In our opinion this appeal fails, and must be dismissed with costs. In order to prevent any misapprehension as to the effect of our judgment, we think we ought to make it clear by saying that the appeal is dismissed, and the suit stands dismissed with all costs.

S. C. C.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Sule.

CALCUTTA TRADES ASSOCIATION v. RYLAND.*

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Sept. 17.

Attachment—Subjects of attachment—Pay of Military Officer in Indian Staff Corps—Officer not officer of Regular Forces—Civil Procedure Code (Act XIV of 1882), section 266, clause (h)—Army Act (1831) section 151—Public Officer.

An Officer of the Indian Staff Corps is a "Public Officer" within the meaning of clause (h) of section 266 of the Civil Procedure Code, read with

* Suit No. 43 of 1895.

the interpretation clause (section 2) of the Code. His pay is therefore subject to attachment in execution of a decree against him, but the operation of the attachment must be restricted to pay received from the Indian Government. The pay of an Officer of the Regular forces is not so subject to attachment.

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The attachment in this case was allowed subject to a decree previously passed against the defendant by which, under section 151 of the Army Act, half his pay was ordered to be deducted and applied in payment of the amount due under that decree—the repeal of that section not affecting a decree previously passed under it, and the right to enforce such a decree continuing until satisfaction has been obtained.

THIS was an application in chambers for the attachment in execution of a decree of the pay of Major H. G. Ryland, an Officer of the Indian Staff Corps and Assistant Commissary General at Allahabad, in the hands of the Pay Examiner, Bengal Command, Military Accounts Department, Calcutta. In another suit against him a decree had been passed, in execution of which half his pay had, under section 151 of the Army Act, 1881, been ordered to be deducted and applied in satisfaction of the decree. Section 151 has since been repealed by subsequent Army Acts. The following note furnished by the Registrar (Mr. Belchambers) sets out fully the present state of the law.

“ In 1875 the question whether the pay of a Military Officer was liable to attachment in execution under the provisions of the Code of Civil Procedure (Act VIII of 1859), was considered by the High Court of the North Western Provinces. The result is thus stated:—“ The pay of a Military Officer is not expressly made liable to attachment under the provisions of that Act. If it be so liable it would be necessary for an attaching creditor to show that the pay falls within the provisions of section 205 of the Act and is a debt due to, or in some form or other the property of, the judgment-debtor. It is a general rule that a debt which the debtor cannot sue for cannot be attached, and, as far as we are able to ascertain, the pay of an Officer does not become his property until it actually reaches his hands. He is not in a position to maintain any action or suit for its recovery * * * Until it can be established that the pay is a *debt* or *property* within the meaning of section 205, it cannot be attached under the provisions of Act VIII of 1859 ”—*Dansi Lall v. Mercer* (1).

“ Subsequently by section 151 of the Army Act, 1881, it was provided that : “ A Civil Court or Court of Small Causes, upon adjudging payment of any sum by any person subject to Military law, other than a soldier of the regular forces, may either award execution thereof generally, or, may direct

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specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction not exceeding one-half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction."

"This was a special enactment, the object of which was to enable a Civil Court either to stop the pay or other public money payable to an Officer, or award execution generally under the ordinary rules of procedure.

"That section has now been repealed by the Army (Annual) Act, 1895, but without affecting the right to enforce unsatisfied decrees previously obtained which is preserved by section 38 of the Interpretation Act, 1889, (52 and 53 Vict. C. 63). An Officer is thus freed from the operation of that section except as to liabilities incurred under its provisions previous to its repeal. That being so, what is the effect of this alteration in the law in regard to his pay? Is that placed beyond the reach of his creditor?

"It appears that by the Army (Annual) Act, 1895, the Army Act was amended not only by the repeal of section 151 but also by the modification of other sections, including 136, to which was added the words "or by any law passed by the Governor-General of India in Council." That section with the added words, is as follows: "The pay of an Officer or soldier of Her Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being or by any law passed by the Governor-General of India in Council."

"This authorizes deductions to be made from the pay of an officer. Under this section, without the added words, only such deductions could be made as were 'authorized by this' (the Army) 'Act or by any other (English) Act, or by any Royal Warrant for the time being,' but now, with the added words the pay of an officer is also made liable to deductions under 'any law passed by the Governor-General of India in Council.'

"This suggests the question whether any law has been passed by the Governor-General in Council under which deductions can be made from the pay of an Officer.

"Act VIII of 1859, under which it was held that the pay of an Officer was not liable to attachment, was repealed. Its provisions, as re-enacted with extensive additions and modifications, are now contained in Act XIV of 1882. One of the additions to the Interpretation Clause is as follows: 'Public Officer' means a person falling under any of the following descriptions, namely,
 * * * * * 'Every Commissioned Officer in the Military and Naval Forces of Her Majesty while serving under Government.'

"A wide meaning is given to the term 'Government,' which includes the Government of India as well as the Local Government.

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"Section 205, referred to in the decision of the High Court of the North West Provinces, has also been modified, and in its present form, as section 266, contains new provisions. It states what is liable to be attached in execution, including 'debts' and 'saleable property' and adds—'Provided that the following particulars shall not be liable to such attachment or sale.' The particulars are mentioned in various clauses; those mentioned in clause (h) with which we are immediately concerned being as follows: 'The salary of a public officer or of any servant of a Railway company or local authority to the extent of—

'(I) The whole of the salary where the salary does not exceed twenty rupees monthly;

'(II) Twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and

'(III) One moiety of the salary in any other case.

"This clause, read with the Interpretation Clause, which extends the meaning of 'Public Officer' so as to include a Military Officer, would seem to alter the previously existing conditions and to place a Military Officer on the same footing as any other Public Officer whose salary is liable to be attached under section 266. This would be so but for the words in the Interpretation Clause 'while serving under Government.'

"Military Officers not only hold their Commissions from the Crown, but Officers of the regular force, who perform purely regimental duties, also receive their pay from the Crown out of money granted by Parliament. It cannot be said that such Officers are serving under the Government of India or any Local Government; or that the pay of such Officers is liable to be dealt with under the provisions of the Code applicable to Public Officers.

"Officers, whether of the British or Indian forces, are, after two years service, of which one must be in India, and a further period of probation, eligible for Commissions in the Staff Corps of one of the Indian Presidencies. Officers so commissioned leave their regiments and are employed, according as the Government of the Presidency to which these corps belong direct, in any Military or Civil employment irrespective of their ranks in the Staff corps"—*Manual of Military Law, p. 259.*

"Officers so employed answer the description of 'Public Officer' within the meaning of the Interpretation Clause :—

Presumably these officers while serving under Government receive pay from Government and not from the Crown, but if they also receive pay from the Crown, to such pay the decision of the High Court of the North Western Provinces would still be applicable, but not to pay receivable from

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Government which would stand on the same footing as the pay of a Public Officer and would be liable to be dealt with as such."

Mr. Upton (Messrs. Sanderson & Co.) appeared for the applicant in chambers.

SALE, J.—This is an application for an attachment of the pay of a Military Officer in execution of a decree.

I have been furnished with a note by the Registrar, Mr. Belchambers, which gives, I think, a correct view of the present state of the law on the subject. It would appear that while the pay of an Officer of the regular forces is not liable to attachment the pay of an officer of the Indian Staff Corps is liable to attachment, the reason for the distinction between the two cases being that an Officer of the Staff Corps is a Public Officer within the meaning of clause (h), of section 266 of the Civil Procedure Code read with the Interpretation Clause, whereas an Officer of the regular forces is not.

The defendant, Major Ryland, who is described as "Assistant Commissary General, Allahabad," is, I understand, an Officer of the Staff Corps, but it appears that in another suit a decree has been obtained against him by which, under section 151 of the Army Act, half his pay was ordered to be deducted and applied in satisfaction of the amount due under the decree. Section 151 has since been repealed, but the repeal of that section, as pointed out in Mr. Belchambers' note, does not affect a decree previously passed under it. The right to enforce such a decree in the manner therein provided continues, until full satisfaction has been obtained.

The attachment asked for may be made, but it must be subject to the decree to which I have referred, and its operation must be restricted to pay which the defendant receives from Government.

Attorneys for the applicant : Messrs. Sanderson & Co.

C. B. G.