

1870.
August 2.

Referred Case.

TEJRA'M JAGRUPA'JIPlaintiff.
KUSA'JI bin GA'NGJI *et al.*Defendants.

Attachment—Salary—Government Servant.

The whole salary of a peon in the service of a Mámlatdár under Government is liable to attachment as it becomes due.

CASE referred for the opinion of the High Court, under Sec. 22 of Act XI. of 1865, by Janárdhan Vásudevji, Judge of the Small Cause Court at Puṇá :—

“The plaintiff applied for execution of a decree he had obtained against the defendant, who is a peon in the office of the Mámlatdár of Máwal táluká, by attachment of his salary. The questions for decision are (1) whether the salary of a Government servant is attachable in execution of a decree, and, if so, (2) whether the attachment can be continuous until the decree is satisfied; and (3) whether the whole salary, or a portion of it only, should be attached.

“As regards these questions, the late Šadr Adálat held that salary was not attachable as such, but only after it had become a debt (Circular No. 273, Opinion on Sec. 237 of Act VIII. of 1859).

“That opinion, however, is not a judicial ruling, and, as I have doubts regarding it, I submit this reference, in order that the point may be authoritatively determined.”

“It is true that salary is not specifically mentioned in the enumeration of property declared, under Sec. 205 of Act VIII. of 1859, to be liable to attachment, but it by no means follows, therefore, that it is exempt from attachment. The contrary is, I think, the inference to which the words ‘all other property whatsoever,’ used in that section, are calculated to lead, in the absence of an express provision for the exemption; for although salary is not a thing *in esse*, still it is a thing *in potentiá*, and as such it is as much property as anything else. This inference derives confirmation from the circumstance that a special provision has been made in a

recent enactment for the exemption from attachment of the pay and allowances of men enlisted in the native army : Act V. of 1869, Part III., para. *b*. For the Legislature would not have seen any necessity for this special provision if, by the absence of a specific mention of salary in Sec. 205 of the Code of Civil Procedure, it had intended to exempt from attachment the salaries of Government servants generally. I, therefore, think that execution can issue against the salary of a Government servant before it actually becomes due, and that it may continue in force until the decree is fully satisfied. I am, however, of opinion that the attachment should not extend to the whole of the salary, but to a portion only, say one-third, as was the practice before the introduction of the Code: as, if the whole salary be attached, the servant will be left without any means of subsistence, and inconvenience may thence result to the public service."

1870.
TEJRA'M
JAGRUPA'JI
v.
KUSA'JI
GA'NGJI
et al.

PER CURIAM (GIBBS and MELVILL, JJ.) :—The Court declines to decide the first question in such a general form. We are of opinion, however, that there is no reason why the salary of an official, such as the judgment-debtor in this case, a peon, should not be attached. With reference to the second question, the salary cannot be attached prospectively, but can only be attached as it becomes due; and further, if the application be made for the whole pay to be attached, the whole must be attached.

Special Appeal No. 224 of 1870.

August 25.

ENDAR LA'LA' and DAYA' KHUSHA'L... *Appellants.*
LALLU HARI *et al.* *Respondents.*

Tenancy—Presumption—Yearly Tenant.

When there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant.

THIS was a special appeal from the decision of C. G. Kemball, District Judge of Súrat, in Appeal Suit No. 256 of 1869, affirming the decree of the Subordinate Judge of Balsád.