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."

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.

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ENDAR LA'LA' *et al.* v. LALLU HARI *et al.*

The plaintiffs, who were the heirs of Nichábhái Gopálji, instituted this suit to recover possession of certain land which had been let to the defendants for cultivation as yearly tenants, and to recover Rs. 45, being one year's rent of the land.

The defendants answered that they held the lands from the plaintiffs' ancestors for more than thirty years, and paid a fixed sum as rent for the land, exclusive of the Government assessment on the land. They contended that they were permanent tenants, and had a right to hold the land as long as they paid the fixed rent, and that the plaintiffs could not eject them, but could only claim the rent.

The Subordinate Judge of Balsád held that the defendants had failed to prove that they held the lands on a permanent tenure, and accordingly decreed possession to the plaintiffs, together with the net mesne profits for 1864.

The defendants appealed, on the ground that their long possession of the land at an invariable rent was evidence of their holding on a permanent tenure, and that the burden of proof was wrongly placed on the defendants, as it lay on the plaintiffs to establish their right to evict the defendants by showing that they were yearly tenants.

The District Judge, in affirming the decree of the Subordinate Judge, delivered the following judgment:—

"I find on the evidence of one of the defendants that they are admittedly tenants of the plaintiffs. The defendants admit further that they do not know on what terms they originally came into possession, and base their right to continue as against the plaintiffs upon the length of their tenancy. Looking to the relative position of the parties, and the fact that there is no evidence forthcoming of any special agreement defining the nature of their tenancy, the presumption which arises is that the defendants are annual tenants of the plaintiffs, and, that being so, the latter clearly have a right to recover, no matter for what period the tenancy may have lasted. The defendants admit that there

was not, so far as they are aware, any special agreement of lease to rebut the legal presumption arising from the facts. I, therefore, affirm the decree of the lower court with costs."

The defendants appealed from this decision, and the appeal was argued before GIBBS and MELVILL, JJ.

Nánábhái Haridás, for the appellants, contended that possession for several generations raised a presumption of permanent tenancy, which the lessor should rebut, as there were in Gujarát a class of cultivators, called *japti khedu*, who held land on a permanent tenure. He cited and relied on the case of *Annáji Appáji* v. *Kási Atmáji* (*a*).

Shántárám Náráyan, for the respondents:—In the case of *Annáji Appáji* v. *Kási Atmáji*, the Assistant Judge found that the rights of the defendant as occupant were contemporary with the plaintiff's rights as *inámdár*. The plaintiffs in this case own the land not as *inámdárs*, but as proprietors; that precedent, therefore, does not apply. The case of *Bái Gangá* v. *Dullabh Parág* (*b*) governs this case.

GIBBS, J.:—I sat in the case reported in the third volume, which is a Ratnágirí case, and there were local peculiarities in it which would not equally apply to other districts. In all ordinary cases the presumption of law is that a tenant is a tenant from year to year, unless a larger right can be shown by the evidence of a lease or agreement to that effect. In the case above quoted ninety years' possession was found, as also that the right of the occupants commenced simultaneously with the creation of the *inámdár's* rights, and the alleged lease was said to have been destroyed when a house was burnt. This is no precedent to govern the present case. The occupation here has only been for about thirty years, and the defendants rely simply upon their possession as conferring upon them a perpetual title. The presumption being that a tenant is a tenant from year to year, no length of possession by itself can confer a perpetual lease. Once a

(*a*) 3 Bom. H. C. Rep., A. C. J. 124.
(*b*) 5 Bom. H. C. Rep., A. C. J. 179.

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tenant, always a tenant, is the rule; and, unless there is evidence of a lease, the proprietor can oust after due notice. With regard to the objection about the want of notice, it was not urged below, and on referring to the exhibits we find that the defendants admit receipt of a notice. We are of opinion, therefore, that no presumption arises in this case of a perpetual tenancy; and we confirm the judgment of the court below.

Decree affirmed with costs.

Sept. 13.

Referred Case.

VENKA'JI LAKSHMAN DESHPA'NDE .....*Plaintiff.*
YAMUNA'BA'I, wife of Bháskarráv Deshpánde.....*Defendant.*

Jurisdiction—Small Cause Court—Hakwartana *Allowance.*

A suit by an alleged sharer in a *hakwartana* allowance to recover from the defendant, who received the whole of such allowance from Government, the plaintiff's share in it, was *held* not to be a suit cognisable by a Court of Small Causes.

CASE referred for the decision of the High Court by Trimalráv Vyankatesh, Judge of the Court of Small Causes at Hublí, under Sec. 22 of Act XI. of 1865:—

"Venkáji Lakshman brought this suit to recover from Yamunábái a fifth-share of a *hakwartana* allowance belonging to the *deshpánde watan* of their joint family, which fifth-share the plaintiff alleged he had received down to the year 1867-68, when the defendant, Yamunábái, in whose name the *watan* was entered in the Government books, as the head of the family, refused to pay the plaintiff his fifth-share of the allowance. The *hakwartana* allowance was payable by Government to the Deshpánde family. Down to the year 1867-68 the officers of Government deducted the amount of the allowance from the *judi* payment due from the members of the family, for the lands in their possession; but in that year the old practice was discontinued, and the Government paid the allowance to the defendant, who refused to pay to the plaintiff his fifth-share.