from being time-barred. The Legislature could not have intended to throw upon any person the disadvantages of a *status* without its advantages. Even if the son in this case purchased with the family funds, the purchase must remain good so long as no authority could be proved as been having given by the father to the son.

JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—The sale in this case was made before the passing of Act XII of 1879, and is, therefore, governed by the first paragraph of s. 294 of Act X of 1877. Under the law, as contained in that paragraph, a purchase contrary to its provisions would be absolutely void. The question is, whether a purchase by the son of the decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of the paragraph. We are of opinion that, if the purchase were made with funds, which were the joint property of the father and son (and, in the absence of evidence to the contrary, the legal presumption would be that the funds were joint), the purchase, being for the joint benefit of the decree-holder and the son, would constitute the decree-holder a purchaser within the meaning of the paragraph. We cannot, however, decide the question [132] in this case, without giving to the decree-holder an opportunity of showing that the purchase was not made with joint funds, and for the joint benefit of himself and his son. We must remand the case in order that the decree-holder, Konherrao Kashi, may be made a party. The original decree and the proceedings in execution are not before us: but we are informed that there were other decree-holders besides Konherrao, and it may be that they have received portion of the purchase-money, or are otherwise interested in maintaining the sale. If so, they also should be made parties. We think that there is no reliable evidence of any irregularity in publishing or conducting the sale, and that there is, therefore, no reason for setting aside the sale upon this ground. We reverse the order of the Subordinate Judge, and remand the case, in order that the necessary parties may be brought upon the record, and have an opportunity afforded to them of giving evidence on the question at issue; and that thereupon a new decision may be passed, in accordance with the law, as above laid down. Costs to follow the final decision.

Order reversed and case remanded.

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5 B. 132.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

JECHAND KHUSAL (*Applicant*) *v.* ABA AND BAIKA, (*Opponents*).*
[26th July, 1880.]

Civil Procedure Code, Act X of 1877, s. 266, *cl.* (*j*)—*Labourer—Wages—Execution—Attachment.*

Persons who agree to spin cotton belonging to spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of s. 266 of the Code of Civil Procedure, Act X of 1877, and, therefore, their remuneration is wages, which, under cl. (*j*) of the section, cannot be attached in execution of a decree.

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* Extraordinary Civil Application, No. 31 of 1880.

1880 JULY 26. — APPELLATE CIVIL. — 5 B. 132.

THIS was an application, under the Court's extraordinary jurisdiction, to set aside the order made by R. S. Ramchandara Banaji, Subordinate Judge of Jalgaon, in the district of Khandesh.

The applicant, Jechand, sued the opponents, Aba and Baika, for the recovery of Rs. 57-10-6, and obtained a decree. He then applied [133] to the Subordinate Judge to attach certain moneys due to the opponents by the Khandesh Spinning and Weaving Campany in the hands of the said Company, and the application having been granted, an attachment was placed on the said moneys by the Judge. The opponents applied to have the attachment raised, alleging that the moneys in the hands of the Khandesh Company were wages due to them as labourers, and, therefore, not liable to attachment. Jechand alleged that they were spinners who had entered into an agreement with the Company to receive payment on the number of pounds of cotton spun by them calculated at a certain rate for every 100 pounds, and that the amount attached was the money due to them under the said agreement. He contended that this money was not wages. The Subordinate Judge overruled the contention, and held that the opponents' earnings were wages within the meaning of s. 266 of the Code of Civil Procedure, and were protected from the process of attachment by clause (j). He, therefore, removed the attachment.

Gokaldas Kahandas, for the applicant, moved the High Court for a *rule nisi*, on the ground that as the opponents were spinners paid, not by the day, but according to the amount of work done, the sums to which they became entitled for work performed did not fall under the denomination of wages, and were not exempted from attachment.

The rule having been granted,

Thakordas Atmaram, appeared for the opponents to show cause.—The money is wages, and is exempt from attachment. There is no definition of the word "labourer" in any of the enactments of the Indian Legislature. The protection clause enacted in s. 266 of the Code was probably borrowed from "The Wages Attachment Abolition Act, 1870," 33 and 34 Vic., cap. 30. There is no definition of either "labourer" or "wages" in this Act. But in 1 and 2 Will. IV, cap. 37, commonly called the Truck Act, it is laid down in s. 25 that "any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain [134] amount, or for a time or an amount uncertain, shall be deemed and taken to be the 'wages' of such labour."

Mill hands were, therefore, included in the operation of this Act. In *Riley* v. *Warden* (1) Parke, B., thus distinguishes a contractor from an ordinary labourer: He says: "The reward which he (the contractor) is to receive, is not to be paid for his personal labour, but it is the contract price, from which he may derive a profit, by the assistance and labour of others. It seems to me that this Act (the Truck Act) was intended to be applied to those who engage to do a work by their own personal labour, and that the object of it is to protect such men as earn their bread by the sweat of their brow, and who are, for the most part, an unprovided class, and that it was not intended to have any application whatever to persons who take work upon a great scale." In the present case the earnings sought to be attached are undoubtedly of people who work for bread by the sweat of their brow. The cases of *Weaver* v. *Floyd* (2) and *Bowers* v. *Lovekin*(3) were also cited.

(1) 2 Exch. Rep. 59. (2) 21 L. J. Q. B. N. S. 151.
(3) 25 L. J. Q. B. 371.

JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—We think that those persons are "labourers" within the meaning of s. 266 of Act X of 1877 who earn their daily bread by personal manual labour, or in occupations which require little or no art, skill, or previous education. The defendants, who perform the lowest kind of manual labour in a spinning and weaving mill, and earn thereby Rs. 10 or 12 a month, come within the category. Nor does it appear to us that their remuneration is any the less "wages," because the amount is made to depend upon the number of pounds of cotton spun. The commonest class of labourers in this country, *viz.*, the coolies employed on railways or other similar works, are ordinarily paid, not by the day, but by the number of baskets of earth carried; and it is impossible to suppose that the Legislature did not intend the earnings of this class to be protected.

The rule is discharged with costs.

Rule discharged.

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5 B. 135.

[135] APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kemball.

ASMAL SALEMAN AND OTHERS (*Original Plaintiffs*), *Appellants v.* THE COLLECTOR OF BROACH, AS MANAGER OF THE KHERWADA THAKOR'S ESTATE (*Original Defendant*), *Respondent.**
[25th August, 1880.]

Broach Talukdar's Relief Act XV of 1871—*Civil Court jurisdiction.*

The Broach Talukdar's Relief Act XV of 1871 does not bar the cognizance, by the Civil Court, of a suit to recover the amount improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under s. 23 of the Act, the Manager of a Thakor's estate is exempt from personal liability for anything done by him *bona fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property.

THIS was a second appeal from the decision of H. Birdwood, Judge of Surat, confirming the decree of H. F. Aston, Assistant Judge.

The plaintiffs sued, *first*, to recover certain moveable property, or its value, the property having been distrained and sold by order of the defendant as manager of the minor Thakor of Khervada, in the Broach Collectorate, for rent of certain *vanta* lands which the plaintiffs claimed to hold rent-free; *secondly*, to set aside the sale of certain houses and to recover possession of them, or their value, the sale having been made for the purpose of realizing rent in respect of these lands; and, *thirdly*, to obtain an injunction restraining the defendant from levying any further rent in respect of them.

The defendant denied that the plaintiffs' lands were *vanta*, or that they had any proprietary title to them, and asserted that the plaintiffs' claim, if any, was time-barred. The Assistant Judge held that a part of the claim was time-barred, and that the rest of it was not proved. The District Judge, in appeal, raised an objection to the cognizance of the suit

* Second Appeal No. 204 of 1880.