

1889

MARCH 28.

13 B. 673

## APPELLATE CIVIL.

APPEL-  
LATE  
CIVIL.*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*RAVJI MORESHVAR, (*Decree-holder*) v. SAYAJIRAO GANPATRAO  
*Judgment-debtor.\** [28th March, 1889.]

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*Civil Procedure Code (Act XIV of 1882), s. 266, cl. (h)—Percentage received by a khot liable to attachment.*

A percentage received by a *khot* for collecting the assessment on *dhara* lands is not "salary," nor is such a *khot* a "public officer," within the contemplation of s. 269, cl. (h) of the Civil Procedure Code (Act XIV of 1882). The Collector, therefore, cannot object to the attachment of such percentage in execution.

THIS was a reference from Rav Saheb B. S. Joshi, Subordinate Judge of Mahad, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case are as follows :—

The decree-holder in this case having applied for attachment, in execution of his decree, of a certain sum of money due and payable to the judgment-debtor for compensation for collection of the assessment due to Government from *dharekaris* in his right as [674] as *kabulayatdar khot* and farmer of revenue of a *khoti* village, and lying in the hands of the Mamlatdar, the money was attached under s. 272 of the Civil Procedure Code, and the Mamlatdar was requested to send it to the Subordinate Judge's Court for being applied towards satisfaction of the decree. The Mamlatdar, however, professing to act under the Collector's orders, refused to send the money, on the ground that it was not liable to attachment under s. 266, cl. (h) of the Civil Procedure Code.

The Subordinate Judge referred the following question for the High Court's opinion :—

Whether the Collector is entitled to take the objection, relying on s. 266, Civil Procedure Code?

The Subordinate Judge's opinion was in the negative.

*Shivram Vitthal Bhandarkar*, for the decree-holder, contended that the percentage received by the *khot* is not a salary, so as to be exempt from attachment under s. 266, cl. (h) of the Civil Procedure Code. The Collector could not, therefore, prevent it from being attached in execution of the decree.

*Vishnu Krishna Bhatvadekar*, for the debtor.

## JUDGMENT.

SARGENT, C. J. — We are of opinion that the Collector cannot take such an objection relying on s. 266 of the Civil Procedure Code, as a *khot* is not a "public officer", and the percentage received by him for collecting the assessment on *dhara* lands is not "salary", within the contemplation of s. 266, cl. (h), of the Civil Procedure Code.

\* Civil Reference, No. 16 of 1888.