

that possession from molestation, and it is important to note that this claim is based not on any contract, trust or fraud, or any circumstance giving rise to privity between the parties, but is brought to vindicate rights resulting from ownership and possession alleged to be with the plaintiffs.

The plaintiffs do not even ask for damages by reason of trespass, so that we have not to consider what would have been the result in that case: their prayers are directly concerned with the land itself and are so framed as in my opinion to constitute this a *suit for land* within the meaning of clause 12 of the Letters Patent.

The result is that the appeal must be allowed with costs throughout. The plaint will be returned to the plaintiffs who will take such other steps as they may be advised.

Attorney for the appellants: *Mr. B. Raghavaya*.

Attorneys for the respondents: *Messrs. Ardeshir, Hormasji, Dinsha & Co.*

W. L. W.

1904.

वाचोजी
v.
समाजी.

ORIGINAL CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Batchelor.*

VEERCHAND NOWLA AND OTHERS (PLAINTIFFS) v. B. B. & C. I.
RAILWAY COMPANY (DEFENDANTS).*

DOOLA DEVICHAND (PLAINTIFF) v. B. B. & C. I. RAILWAY
COMPANY (DEFENDANTS).*

Provident Funds Act (IX of 1897, as amended by Act IV of 1903), sections 2 (4), 4—Compulsory deposit—Provident Fund—Contributions by a railway servant—Liability of the contributions to be attached on the servant's leaving the Company's service—Attachment—Civil Procedure Code (Act XIV of 1882), section 278.

The contribution which the employé of a Railway Company makes towards the Railway Provident Fund, governed by the provisions of the Provident Funds Act (IX of 1897), is a "compulsory deposit" within the meaning of section 4 of the Provident Funds Act (IX of 1897, as amended by Act IV of 1903).

* References from the Court of Small Causes at Bombay in suits Nos. 11952 of 1904 and 12358 of 1904.

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The deposit does not cease to be compulsory, when the employe leaves the service of the Company : since it was not, when made repayable on demand, and was, therefore, at that time a "compulsory deposit"; and having once acquired that character with the attendant consequences it continued to retain it.

A "compulsory deposit" of the above description does not become liable to be attached, under section 268 of the Civil Procedure Code (Act XIV of 1882), on the subscriber's leaving the Company's service.

The expression "compulsory deposit", as used in the Provident Funds Act (IX of 1897, as amended by Act IV of 1903), is not merely descriptive of the sum deposited, but is a term of art, which by virtue of legislative provision includes that which is not within its natural meaning; for, under section 2, clause 4 of the Act, it includes "any contribution which may have been credited in respect of, and any interest or increment which may have accrued on, such subscription or deposit under the rules of the fund."

CASE stated for the opinion of the High Court by C. M. Cursetji, Third Judge, under section 617 of the Civil Procedure Code. The reference was as follows:—

"In both these suits the defendant is the B. B. & C. I. Railway Company. In a former suit No. 21245 of 1902 there was a decree obtained for Rs. 112-13-0 against one Goolabchand Premchand and in two other suits, No. 4102 of 1904 for Rs. 116-11-0 and No. 6483 of 1904 for Rs. 109-5-0 against one J. Fisher. In execution of these decrees prohibitory orders were issued against the B. B. & C. I. Railway Company attaching certain moneys in the Railway Provident Fund in the hands of the Company. Later Garnishee notices were served on the Company to show cause why the moneys so attached should not be paid into Court.

"2. All the three Garnishee notices were heard by me, when the Secretary to the defendants Railway Provident Fund appeared, and admitted holding moneys payable to the judgment-debtors aforesaid but contended same not liable to attachment according to section 4 of the Provident Fund Amendment Act of 1903 and declined to pay.

"3. The debts were subsequently sold at a Court sale and the plaintiffs in the present suits have become purchasers of the same. The plaintiffs have filed these suits for Rs. 114 and Rs. 130 respectively against the said Garnishee the B. B. & C. I. Railway Company.

"4. The only defence is that the amounts in the defendant's hands are not liable to attachment, that the attachments are invalid and so was the subsequent sale of the debts. The defendant admits that at date of the attachment, that is of the service of the prohibitory orders, they did hold Rs. 524-15-4 payable to aforesaid judgment-debtor Gulabbhai and Rs. 102-3-0 payable to the judgment-debtor Fisher on account of their deposits in the Provident Fund according to the Fund Rules; both such judgment-debtors having, prior to such date, left the Railway service. The defendant Company further admit it was liable to pay up and was willing to pay up the aforesaid sums to the said judgment-debtors at any time on demand at the date of the receipt of the prohibitory orders.

"5. The question then which I have to submit is, was the attachment of such sums valid under the circumstances above detailed? I am of opinion that it was. I am not, however, free from doubt, and as the point is one of much importance and of frequent occurrence I think it should be authoritatively disposed of by a ruling of the High Court.

"6. The defendant relies mainly on the provisions of the Provident Funds Act, 1897, as amended by Act IV of 1903, and on the ruling of the Bombay High Court in Appeal No. 1275, *re Alexander Miller and another*. As this decision is not I believe yet published, I annex a true copy of it, for ready reference. This ruling, however, does not appear to me to support the defendant's case. It merely rules that the Provident Funds Act as amended by Act IV of 1903 does not have a retrospective effect, and on this ground alone upholds the ruling of Russell, J., Commissioner in Insolvency (which see *V Bombay Law Reporter*, page 454).

"7. In disposing of the question above stated the main thing I beg to submit is to consider what is a *compulsory deposit*. Section 4 of Act IX of 1897 defines "compulsory deposit" as a subscription or deposit not repayable on demand or at the option of the subscriber, &c., that is to say, so long as the subscriber or depositor remains in the service he cannot withdraw the deposit and the Railway Company would not be bound to repay it to him, the deposit thus remains compulsorily a deposit. Such a deposit

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it is quite conceivable could not be attached as a debt, since so long as it is compulsory it does not become a debt capable of being attached and sold under the provisions of the Indian Civil Procedure Code.

"8. I submit, however, that as soon as the employé ceases to be in the service by retirement, resignation or dismissal, he becomes under the defendant's Provident Fund Rules entitled to be paid whatever sum that is there standing to his credit in the Provident Fund, less certain deductions to be made if any. In such a case the deposit clearly ceases to be a compulsory deposit as above defined and becomes a debt payable on demand or on order and such as could properly be attached under section 268 of Indian Civil Procedure Code.

"9. Mr. Justice Russell in his judgment *in re Miller*, above noted in paragraph 5 of this reference, has come to the same conclusion and I mainly rely on his ruling in support of my opinion in these cases. The sums standing to the credit of these judgment-debtors in the defendant's Provident Fund have become unconditionally payable to them ever since they left the defendant's service and to a demand by them for payment of the same to them or on their order to a third person the defendant could not plead the provisions of the Indian Provident Funds Act. No more I submit could the defendant do so, as Garnishee in respect of the same moneys which this Court has attached in due form after the same had ceased to be compulsory deposits and had become merely debts due from defendant to the said judgment-debtors."

The reference was heard by a Bench composed of Jenkins, C. J., and Batchelor, J.

The plaintiffs in both the cases were absent.

Lowndes, for the defendants.

JENKINS, C. J.:—I am of opinion that what was attached was a "compulsory deposit," and that the attachment was therefore bad.

It is suggested in the reference that the fund ceased to be a "compulsory deposit," when the debtor left the service of the Company, but I do not think this is so. The deposit, when it

was made, was not repayable on demand, and therefore at that time was "a compulsory deposit," and having once acquired that character with the attendant consequences, it continued (in my opinion) to retain it.

That this is so becomes the more apparent, when it is observed that the expression "compulsory deposit" is not merely descriptive of the sum deposited, but is a term of art, which by virtue of legislative provision includes that which is not within its natural meaning; for under section 2 (4) it includes "any contribution which may have been credited in respect of, and any interest or increment which may have accrued on, such subscription or deposit under the rules of the fund."

It cannot be suggested that there is a change in the character of "any contribution which may have been credited" or "any interest or increment which may have accrued" by reason of the subscriber's leaving the Company's service: the verbal argument, which has been applied to the deposit, has no place there. So far as the fund is made up of these elements it still is "a compulsory deposit," and I cannot suppose that it ever was intended that the fund should as to part be, and as to part not be, a "compulsory deposit."

There is nothing unreasonable in holding the fund to be exempt from attachment in the Company's hands, for it must be remembered that it is the result of contributions made by the debtor, not voluntarily, but under compulsion. The costs will fall as provided by the Act.

BATCHELOR, J.:—I agree.

Attorneys for defendants: *Messrs. Crawford, Brown & Co.*

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VERCHAND

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RAILWAY
COMPANY.