

**(1868) 12 CAL CK 0017**

**Calcutta High Court**

**Case No:** None

In Re: J. Hollick and Others

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Dec. 12, 1868

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### **Judgement**

Sir Barnes Peacock, Kt., C.J.

With reference to the 1st question, salaries or other debts actually due from the Railway Company to any of its servants can be attached in satisfaction of Civil Court decrees, Section 236<sup>1</sup> of Act VIII of 1859. As to the 2nd question, there is no necessity for a Small Cause Court to make the High Court, or any other Court, the medium of attachment. By Section 236<sup>2</sup> of Act VIII of 1859, extended to Small Cause Courts by Section 47,<sup>3</sup> Act XI of 1865, attachments of debts are to be made by written order prohibiting the creditor from receiving the debts and the debtor from making payment thereof to any person whatever until the further order of the Court. In order to attach a debt, the Attaching Court must make a written order according to that section. By Section 240, after any attachment shall have been made by written order, any payment of the debt to the judgment-debtor, during the continuance of the attachment, is null and void, if it be made after the written order has been duly intimated and made known in the manner directed by the Act. By section 239, in the case of debts, the written order is to be fixed up in some conspicuous part of the Court-house, and a copy of the written order is to be delivered or sent registered by post to the debtor. In the case of the Railway Company, the registered letter should be addressed, directed, and sent to the Agent of the Railway Company at the Head Office of the Company. It is not necessary, in our opinion, that the registered letter should be sent or delivered by the High Court, notwithstanding the head office is within the jurisdiction of the High Court and out of the jurisdiction of the Small Cause Court. If it were necessary for the High Court to attach the debt because the office of the Company is within the jurisdiction of the High Court, the interference of two Courts would be required for one execution; for the order prohibiting the creditor from receiving the debt must be made by the

Small Cause Court within whose jurisdiction the creditor is residing. The execution of a debt is to be made by attachment, and the attachment is to be made by written order. There is no law which requires the Court which passed the decree to make one-half of the execution and then to send a certified copy of the judgment to another Court to make another part of the execution. Two orders cannot be necessary, for the attachment of one debt. A copy of the written order should also be delivered to the creditor and to the Paymaster at Jamalpore.

2. The 3rd question is substantially answered in our answer to the 2nd question. I observe that the Judge of the Small Cause Court has directed the Paymaster to attach and hold in attachment the pay due to the judgment-debtor. That is a mistake. The order attaching the debt must be made by the Court, and a copy served upon the debtor.

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Attachment of debts not being negotiable instruments, and of shares in public companies, &c., by prohibitory order.	Sec. 236:--Where the property shall consist of debts not being negotiable instruments, or of shares in any Railway, Banking, or other public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof, and the Manager, Secretary, or other Proper Officer of the Company or Corporation from permitting any such transfer or making any such payment until such further order.
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[q. v. supra, 2 B.L.R. A.C. 109.]