

## PART H—ATTACHMENT

1. The law as to attachment is contained in section 60-64 and Order XXI, rules 41-57, Civil Procedure Code and section 141, Punjab Land Revenue Act. Attachment of standing crops, trees and salary.

The changes made in Rules 53 and 54 of Order XXI by the Punjab High Court (*vide* Chapter 21) should be noted as also the fact that in the Punjab standing crops, excepting cotton and sugar-cane, are not now liable to attachment or sale in execution of a decree (*vide* S. 10(1) of Punjab Debtors' Protection-Act). Standing trees, apart from land on which they stand, are also exempt from sale (*vide* section 10(2) of the Punjab Debtors' Protection Act.)

Attention is drawn to the amendments of section 60 of the Code of Civil Procedure by Act No. 66 of 1956. Now in execution of decrees for maintenance only one third of the salary would be exempt from attachment irrespective of the amount of the salary. In execution of decrees other than decrees for maintenance salary to the extent of first hundred rupees and one half of the remainder shall be exempt from attachment. Servants of the Government or a railway Company or local authority are given further protection as regards the periods for which their salary can be attached in execution of decrees other than decrees for maintenance.

2. The mode of attaching immovable property is by issuing a prohibitory order to the judgment-debtor and to the public generally (Order XXI Rule 54 when the property is land paying revenue to Government, three copies of the prohibitory order shall be prepared. In the case of other immovable property, only two copies are necessary. The details given in the schedule annexed to the order shall be identical with those given in the schedule of the property given in the warrant. Strict compliance with the provisions of law is necessary to make the attachment valid. Mode of attachment of immovable property.

3. The warrant, together with the requisite copies of the prohibitory order, shall be delivered to the Nazir, who will himself, or through his subordinates, fix up the copies and proclaim the order, in accordance with the directions given in the warrant. The Nazir will personally make upon the warrant the endorsement required by law, and return it duly endorsed within the specified time to the Court. Any person deputed by the Nazir, Mode of attachment of immovable property.

who performs any of the acts constituting the attachment, shall submit a separate return stating the manner in which, and the day and hour at which, he did such act. This return will be attached by the Nazir to the warrant.

Attention to compliance with legal formalities.

4. The attention of all civil courts is drawn to the necessity of making it a point to scrutinize the service of warrants of attachment before they take further action with regard to the sale or temporary alienation of the property attached. The attachment of land and houses requires particular care and the court should thoroughly satisfy itself that all the formalities necessary for a legal attachment, have been complied with. Failure to comply with these legal formalities may constitute material irregularity, within the meaning of Order XXI, Rule 90, Code of Civil Procedure, and may cause very serious trouble and loss to the parties later on. It should be noted that a copy of the attachment order is first to be affixed on the property and then upon the Court house. All Courts will, therefore require the Reader to record a note on the warrant of attachment or on file, that the specific formalities required by Law in the case, have been actually complied with. The Presiding Officer will carefully scrutinize such note and initial it in token of its correctness.

Warrant of attachment of land. Drum beating charges.

5. Where the order is for the attachment of land, the warrant should, in accordance with the provisions of Section 141 of the Punjab Land Revenue Act, XVII of 1887, be addressed to the Collector, and be sent to him for execution, along with the necessary copies of the prohibitory order. The Collector and his office will then be responsible for executing it in accordance with the specified legal formalities, and to affix the necessary prohibitory orders, first on the property and then on the Court house of the Judge issuing the attachment and in his own office. The Collector will return the warrant to the Court concerned when it has been duly executed, with an endorsement under his signature certifying that all the legal formalities required have actually been complied with, and the Court will thereafter proceed as directed in paragraph 4 above.

Payment of drum-beating charges may be allowed to be made at the discretion of the District Judge either:-

- (a) in cash at the spot, or
- (b) by postal stamps attached to the warrant, or
- (c) by Indian Postal Orders.

6. Upon the application of a decree-holder, the Court which passes a decree may issue a precept to another Court to attach the judgment-debtor's property, when this course is convenient, provided that the Court to which the precept is issued is competent to execute the decree (*see* Section 46, Code of Civil Procedure).

Precept.

7. It should be noted that on the dismissal of an execution petition, 'attachment' automatically comes to an end (*see* Order XXI, Rule 57.)

Effect of dismissal of execution petition.

8. The Central Government has issued the following notification under section 60 (1) (L) of the Civil Procedure Code:—

Notification.

The 2nd October, 1940.

No. 186/37. In pursuance of clause (L) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government is pleased to declare that the following allowance payable to any public officer in the service of the said Government, or any servant of a Federal Railway or of a Cantonment authority or of the port authority of a major port, shall be exempt from attachment by order of a Court, namely:

- (1) All kinds of travelling allowances.
- (2) All kinds of conveyance allowances.
- (3) All allowances granted for meeting the cost of:—
  - (a) Uniforms and
  - (b) Rations.

(4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.

(5) All house rent allowances.

\*(6) All allowances granted to provide relief against the increased cost of living.

\*\* (7) A foreign allowance or, in the case of heads of Diplomatic missions, *frais de* representation, assigned to officers serving in posts abroad.

\*Added in view of Government of India, Ministry of Home Affairs, Notification No. 57/4/49-Ests., dated the 31st May, 1949.

\*\*Added in view of Government of India, Ministry of Home Affairs, Notification No. 57/8/51-Ests., dated the 21st September, 1951, received with Punjab Government endorsement No. 10450-JJ-51/5482, dated the 27th October, 1951.

Ditto.

9. The Punjab Government has issued the following notification under clause (1) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure:—

HOME DEPARTMENT  
JUDICIAL

*The 5th January 1943*

No 8298J-42/489.-1n exercise of the powers conferred by clause (I) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Governor of the Punjab is pleased to declare that the "dearness allowance" payable to any public officer serving the Government in connection with the affairs of the State shall be exempt from attachment in execution of a decree.

10. In pursuance of sub-rule (1) of rule 48 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), the Central Government hereby appoints the officers specified in column 1 of the table below as officers to whom notices of orders attaching the salaries and allowances of the officers specified in the corresponding entries in column 2 of the said table shall be sent.

Officers to whom notices of attachment of salary etc may be given under order XXI, rule 48.

TABLE

Officers to whom Notice should be sent	Officers whose salaries and Allowances are attached
Accountant General Central, Revenues, New Delhi Assistant Financial Advisor (Establishment) Ministry of Finance (Defence), New Delhi Controller General of Defence Accounts, New Delhi	(1) Ministry of Finance (Defence) Gazetted Officers Non Gazetted officers
Controller of Defence Accounts, Eastern Command, Meerut.	(2) Office of the Controller General of Defence Accounts, New Delhi Gazetted and Non-Gazetted Officers.
Controller of Defence Accounts, Western Command, Meerut.	(3) Organisation of the Controller of Defence Accounts, Eastern Command, Meerut. Gazetted and Non-Gazetted Officers.
Controller of Defence Accounts, Southern Command, Poona.	(4) Organisation of the Controller of Defence Accounts, Western Command, Meerut. Gazetted and Non-Gazetted Officers.
	(5) Organisation of the Controller of Defence Accounts, Sothern Command, Meerut. Gazetted and Non-Gazetted Officers.

Joint Controller of Defence Accounts, Patna.	(6) Organisation of the Joint Controller of Defence Accounts, Patna. Gazetted or non-Gazetted Officers.
Controller, of Defence Accounts, (Other ranks) Secunderabad	(7) Organisation of the Controller of Defence Accounts (Other Ranks), Gazetted or non-Gazetted Officers.
Controller of Defence Accounts (officers) Poona.	(8) Organisation of the Controller of Defence Accounts (Officers) Poona. Gazetted or Non-Gazetted Officers.
Controller of Defence Accounts (Pensions) Allahabad.	(9) Organisation of the Controller of Defence Accounts (Pensions) Allahabad. Gazetted or Non-Gazetted Officers.
Controller of Defence Accounts (Factories) Calcutta	(10) Organisation of the Controller of Defence Accounts (Factories) Calcutta. Gazetted or Non-Gazetted Officers.
Controller of Defence Accounts (Air Force) Dehra Dun.	(11) Organisation of the Controller of Defence Accounts (Air Force) Dehra Dun. Gazetted or Non-Gazetted Officers.
Controller of Defence Accounts (Navy) Bombay	(12) Organisation of the Controller of Defence Accounts (Navy) Bombay. Gazetted or Non-Gazetted Officers.

(Government of India, Ministry of Finance (Defence), Notification No.S.R.O.1417, dated the 15<sup>th</sup> June, 1956).