

1934

*Present : Garvin S.P.J. and Akbar J.*SARAVANAMUTTU *v.* SITAMPALAM.

220—D. C. Anuradhapura, 1,830.

Public servant—Pay-agent of Medical Department—Liability on a note—Public Servants' (Liability) Ordinance, No. 2 of 1899.

A pay-agent employed in the service of the Medical Department is a public servant within the meaning of section 2 of the Public Servants' (Liabilities) Ordinance.

A PPEAL from a judgment of the District Judge of Anuradhapura.

Nadarajah, for substituted plaintiff, appellant.

H. V. Perera (with him *Thiagarajah*), for defendant, respondent.

Cur. adv. vult.

July 19, 1934. AKBAR J.—

The only question to be decided in this appeal is whether the District Judge was right in upholding the plea of the defendant that he is a public servant and that he is therefore not liable to be sued on the promissory note on which the plaintiff sues.

¹ 13 *Ceylon Law Recorder* 133.

The defendant is a Registrar of Marriages and also a Pay-agent of the Medical Department. It is unnecessary for me to consider the office of Registrar of Marriages which the defendant holds, for the purposes of this appeal, for I have come to the conclusion that the judgment was right when one considers the second office which the defendant holds. The defendant gave evidence and produced his letter of appointment D 2 dated July 9, 1917, under which he was appointed an itinerating pay-agent for the North-Central Province with the sanction of Government. His duty was to receive from Rs. 1,500 to Rs. 2,000 every month from the Head of the Medical Department and distribute it among the apothecaries, vaccinators, and minor employees of the Medical Department in the North-Central Province. He had to give security and was entitled to the other privileges and disadvantages of public servants, namely, the 10 per cent. levy, holiday warrants, and leave regulations. He drew his salary every month on furnishing the ordinary pay abstracts. It is urged for the appellant that inasmuch as the defendant was allowed by the Government to carry on his own private business as a general merchant, auctioneer, broker, and dealer in petrol he was not a public servant within the meaning of Ordinance No. 2 of 1899. Section 2 of that Ordinance defines a "public servant" as a person employed in the service of the Government of the Colony. In my opinion the defendant was a person who was employed in the service of the Medical Department which is under the Government of the Colony. The fact that he was allowed to carry on his own private business at the same time was simply an incident in the terms of his contract of service under the Government. In section 3 (2) there is a reference to a fixed appointment. In the case now before me the defendant has been employed as a pay-agent continuously from July 9, 1917. Mr. Justice de Sampayo applied a similar test in the case of *Saibo v. Punchirala*¹ and came to the conclusion that the Ordinance provided protection even to public servants who were in the service of the Government and who may not receive any remuneration at all.

The appeal is dismissed with costs.

GARVIN S.P.J.—I agree.

Appeal dismissed.
