

Present : Drieberg J.

1928.

REDDIAR v. ABDUL LATIFF.

171—C. R. Colombo, 36,231.

Labourer—Driver of motor lorry—Civil Procedure Code, s 218 (j).

The wages of the driver of a motor lorry is not exempt from seizure under section 218 (j) of the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

H. H. Bartholomeusz, for appellant.

September 17, 1928. DRIEBERG J.—

The defendant, against whom the plaintiff obtained a money decree for Rs. 136, is a lorry driver in the service of the appellant, the Manager of the Colombo Electric Tramways and Lighting Company, Limited.

The defendant is paid wages at a certain rate for each day or part of a day for which he works, payment being made on Friday for the week ending on the previous Wednesday.

On Thursday, February 2, a notice under section 229 of the Civil Procedure Code was served on the appellant prohibiting him from paying to the defendant "his salary for the current week and succeeding weeks in February, 1928." The next day the appellant, despite this notice, paid the defendant Rs. 14, the wages then due to him, and wrote to the Fiscal that he returned the notice of February 2 as the defendant was a daily paid servant of the Company.

Mr. Bartholomeusz was very anxious to make it clear that the appellant acted *bona fide* and with no desire to disregard an order of Court; this is clearly so, for the plaintiff had before this issued two similar notices to the appellant, who then acted in the same way and sent the same reply to the Fiscal. The plaintiff's Proctor took no exception to this, and the appellant could fairly have thought on this occasion that he was acting rightly.

The only question is whether the defendant is a "labourer" so as to render his wages exempt from seizure under section 218 (j) of the Civil Procedure Code. The Commissioner held that he was not, and directed the appellant to pay the sum of Rs. 14 into Court. The appellant appeals from this order.

1928. In *Girigoris v. The Locomotive Superintendent*¹ Wood Renton J. DRIMBERG J. held that a mechanic in the employ of the Government Railway was not a labourer within the meaning of this section. The judgment does not state the exact nature of the work done by the mechanic but it proceeded on the ruling in two cases, according to which the defendant in this case cannot be regarded as a labourer.

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In *Riley v. Warden*² the question was the meaning of the words "workman or labourer" as used in the Truck Act. There Parke B. said :—

"It seems to me that this Act was intended to be applied to those who do a work by their own personal labour, and that the object of it is to protect such men as earn their bread by the sweat of their brow and who are, for the most part, an unprovided class."

In *Jechand Khusal v. Aba and Baika*,³ which was a decision on a provision of the Indian Civil Procedure Code similar to ours, it was held that labourers were those who earn, their daily bread by personal manual labour, or in occupations which required little or no skill or previous education. A lorry driver, whose occupation needs previous training, some degree of skill, and is not manual in the strict sense of the word, is not a labourer within the meaning of section 218 (j) of the Civil Procedure Code.

The appeal is dismissed.

Appeal dismissed.

¹ (1912) 15 N. L. R. 117.

² (1848) 2 Exch. Rep. 59. on p. 68.

³ (1880) 5 Bome. 132.