

1939

Present : de Kretzer J.

WIKRAMATUNGE v. PERERA

236—C. R. Colombo, 39,710.

Execution—Wages of a tramway conductor—Not exempt from seizure—Civil Procedure Code, s. 218 (j).

A tramway conductor is not a labourer within the meaning of section 218 (j) of the Civil Procedure Code and his wages are not exempt from seizure under the section.

APPEAL from an order of the Commissioner of Requests, Colombo.

S. Subramaniam, for defendant, appellant.

T. Nadarajah, for plaintiff, respondent.

March 17, 1939. DE KRETZER J.—

The only question raised in this appeal was whether the learned Commissioner of Requests was right in holding that the defendant was not a labourer and that therefore his wages were not exempt from seizure under section 218 (j) of the Civil Procedure Code.

The defendant has been described as the conductor of a tramway car and his duties have been described in the evidence to consist in issuing tickets to passengers and collecting the fare and it has been said that he has to control the passengers in the tramway car and in doing so exercises his discretion.

It has been said that in employing conductors the Company looks to their character and honesty.

It is clear from this description that the defendant does not come within the meaning which one naturally and ordinarily attaches to the word "labourer".

In the case of *Grigoris v. The Locomotive Superintendent*¹, Wood Renton J. held that a mechanic employed by the Railway Department on a daily wage was not a labourer.

In the case of *Reddiar v. Abdul Latiff*, Drieberg J. held that a lorry driver was not a labourer.

In *Stroud's Dictionary* a labourer is defined to be "a man who digs and does other work of that kind with his hands. A carpenter or a bailiff or a parish clerk is not called a labourer".

In *Morgan v. The London General Omnibus Co.*², Brett M. R. dealt with the case of an omnibus conductor and although that decision was under

¹ 15 N. L. R. 117.

² 13 Q. B. D. 832.

³ 30 N. L. R. 95.

the Employers' and Workmen's Act, it nevertheless is of assistance. In that case he refused to distinguish between the conductor of a tramway car and the conductor of an omnibus.

All there is said on the other side is that in the Bombay case referred to in the two previous local decisions a spinner was held to be a labourer and the opinion was expressed that the provision in the Code was meant to relieve those who had no other means of livelihood other than their daily earnings.

I do not think that the conductor of a tramway car can be put on the same footing as a spinner, nor do I see any reason for placing him on a lower footing than a mechanic or a lorry driver.

I therefore dismiss the appeal.

Appeal dismissed.

