Present : Hutchinson C.J. and Grenier J.

Feb. 3, 1911

WIJESEKERA *et al. v.* PERERA.

322—*D. C. Colombo*, 30,890.

Public Servants' Liabilities Ordinance, No. 2 of 1899, s. 3—Agreement to give dowry—Is it "security"?

An agreement in writing to give a specified sum by way of dowry is not a security within the meaning of section 3, sub-section (c), of "The Public Servants' Liabilities Ordinance."

The word "security" must be read as if it were *ejusdum generis* with the other documents mentioned in section 3, sub-section (c).

THE facts are set out in the judgment of Hutchinson C.J.

Allan Drieberg, for the appellant.—The agreement sued upon is not a security within the meaning of "The Public Servants' Liabilities Ordinance." The context shows that the word "security" applies to documents of the nature of those expressly mentioned in the sub-section—promissory notes, bills of exchange, bonds, &c. The real object of sub-section (*c*) is to prevent an evasion of sub-sections (*a*) and (*b*). A security, speaking generally, "is anything that makes the money more assured in its payment or more readily recoverable" (*Stroud's Judicial Dictionary*, *p.* 1815). The term "security" cannot be understood as referring to what is merely evidence of a debt ; an I. O. U. is not a security.

The agreement sued upon now does not gain any additional force by reason of its having been reduced to writing.

If the interpretation of the District Judge be accepted, even a contract of sale would be a security. Counsel also referred to *In re Rollason*,[1] *Nagamuttu v. Kathirasamen*.[2]

Bawa (with him *A. St. V. Jayewardene*), for the respondent.—The action on the writing is obnoxious to sub-section (*c*) of section 3 of the Ordinance. According to Stroud's definition cited by the appellant's counsel, anything is a security which renders the debt more easily assured or recoverable. The agreement sued upon comes within that definition. [Hutchinson C.J.—Is a written order to send goods to a shopkeeper a security ?] No. The obligation to pay arises on the delivery of the goods and not on the order. The contract sued upon in this action creates the debt.

The document sued upon may be said to be either a bond or a promissory note, [Hutchinson C.J.—It cannot be called a promissory note for many reasons ; it is not unconditional.]

[1] *(1887) 34 Ch. Div. 495.*

[2] *(1907) 2 A. C. R. 165.*

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The term " valuable security " is defined in the Penal Code. This agreement falls within that definition. [Hutchinson C.J.— That definition is only for the purpose of the Penal Code.]

The term " security " as defined in the *Encyclopoedia of the Laws of England* includes every document or transaction by which the payment of money is assured or its recovery facilitated. The *Imperial Dictionary* defines security as follows : An evidence of debt or of property, as a bond, a certificate of stock, or the like. Counsel referred to *Suttukkammah v. Vachchiravagu.*[1]

Allan Drieberg, in reply.

Cur. adv. vult.

February 3, 1911. HUTCHINSON C.J.—

The plaintiffs alleged that by an agreement in writing between the first plaintiff and the defendant it was agreed that the first plaintiff should marry the second plaintiff, who is the defendant's daughter, within three years from the date of the agreement, and that in consideration of the marriage the defendant should give the second plaintiff on the day of the marriage Rs. 7,000, or immovable property to the value of Rs. 7,000, and that in accordance with the agreement the first plaintiff married the second plaintiff within the three years, and the plaintiffs accordingly claim Rs. 7,000. The answer, as amended, if I rightly understand it, admits the marriage at the date stated in the plaint, and admits the agreement alleged in the plaint, except that its terms are not correctly set out in the plaint, and further says that the marriage was not in pursuance of any agreement whatsoever. The effect of this not very clear answer is that at the trial the plaintiff will have to prove the terms of the agreement ; and to do that he must put in evidence the writing in which the agreement is contained. The defendant in his amended answer further says that he is a public servant within the meaning of the Public Servants' Liabilities Ordinance, and that this action is not maintainable against him in view of the provisions of that Ordinance. The Court decided the issue of law : Can this action be maintained against the defendant, who is a public servant within the meaning of Ordinance No. 2 of 1899 ? It was admitted that the defendant is and was at the time of the alleged agreement a public servant within the meaning of the Ordinance, and in receipt of a salary of less than Rs. 300 a month. The Court held that the action was not maintainable and dismissed it. This is the plaintiff's appeal against the dismissal. The Ordinance enacts that no action shall be maintained against a public servant on any bond, bill of exchange, promissory note, or other security made, drawn, accepted, endorsed, or given by him. The learned District Judge held that the agreement alleged in the plaint was a " security." He thought that it fell within the terms of certain definitions which he

[1] *(1909) 12 N. L. R. 289 ; 1 Cur. L. R. 130.*

quoted ; definitions which, while admitting that the word has no very precise or well-defined meaning, and while not professing to be authoritative or exhaustive, say that generally the word " includes every document or transaction by which the payment of money is assured or its recovery facilitated," or " anything that makes the money more assured in its payment or more readily recoverable." There are many kinds of documents and transactions which every one would class as securities ; many which no one would so class ; some which are doubtful, and which in some contexts one might think to be included in the term, in others not. The word has, as above stated, no very precise or well-defined meaning. If I agree to buy something for a certain price, I thereby incur an obligation ; if the agreement is in writing, or if it is not in writing, but some one is present in order to be a witness to the transaction, one would not call the writing or the calling in of the witness a " security," although the writing is a document, and the calling in of the witness is a transaction which facilitates the recovery of the money. A cheque, a bill of exchange, a promissory note, a bond, a mortgage—these are common examples of securities ; and in some contexts money paid into Court to abide the event of an action, or a judgment for a sum of money, or a debenture, or a life policy would be a security, although probably not under this Ordinance, because such things are not securities *ejusdum generis*, as bonds and bills and notes, nor are they " made, drawn, accepted, endorsed, or given " by the defendant. But an I. O. U. is perhaps not a security, although that might depend on the context, nor is a writing, which is merely a request to your grocer to send you goods, or an order to your tailor to make you a suit of clothes, or an agreement for sale of goods, or for services to be performed, or (as this agreement is) for some act to be done. The only reason which I can give is that, in the absence of any statutory definition including them, they are not securities in the ordinary meaning of that word, and that they have never, so far as I know, been held to be securities. The Solicitor-General for the respondent suggested that this agreement is a promissory note, and, therefore, I suppose he would say it is a negotiable instrument, but it is not an unconditional promise to pay, and, therefore, it is not a promissory note. The decree of the District Court must be set aside, and the case go back for trial. The respondent must pay the appellants' costs of the appeal in any event.

GRENIER J.—

I cannot regard the agreement in question as a security within the meaning of section 3, sub-section (*c*), of the Public Servants' Liabilities Ordinance, No. 2 of 1899. The Ordinance, as is well known, was passed in the interests of clerks and other public servants in the receipt of small salaries, less than Rs. 300 a month, who were

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liable to run into debt, especially upon promissory notes, and thus impair their usefulness in the service of Government. In my opinion the word " security " must be read as if it were *ejusdum generis*, with the other documents mentioned in section 3, sub-section (*c*). However much of the meaning of the word " security " may be stretched when used in other connections, the intention of the Legislature in making use of the words " other security " after the words " bond, bill of exchange, promissory notes, drawn, accepted, endorsed, or given by him " was clearly to give them a limited meaning consistent with the object and scope of the Ordinance. I agree to the order proposed by His Lordship the Chief Justice.

Case sent back.