1938 *Present :* **Maartensz S.P.J.**

ALANOOR BHAI *v.* EDWIN.

62—C. R. Kurunegala, 10,377.

Public Servants' (Liubilities) Ordinance, No. 2 of 1899, ss. 4 and 6—Promissory note by two persons—One a public servant—Note not void against the other.

A joint promissory note by two persons, one of whom is a public servant, is not void against the other.

APPEAL from a judgment of the Commissioner of Requests, Kurunegala.

This was an action on a joint promissory note made by two persons of whom the first defendant was a public servant. The defendants pleaded the benefit of the Public Servants' (Liabilities) Ordinance, No. 2 of 1899, and the plaintiff's action was dismissed on the ground that the note was void. The plaintiff appealed against this order in so far as it affected the second defendant and made only her a respondent to the appeal.

D. W. Fernando (with him *A. E. R. Corea*), for plaintiff, appellant.—The benefit of the Public Servants' (Liabilities) Ordinance can be invoked only by a public servant. Section 4 makes the note void only as against him. *Narayan Chetty v. Silva*[1] is an authority for the proposition that the note was rendered void and of no effect as against a public servant. The object of the Ordinance is to protect public servants.

N. E. Weerasooria, K.C. (with him *Stanley de Zoysa*), for second defendant, respondent.—Section 4 of the Public Servants' (Liabilities) Ordinance renders the promissory note and also all proceedings void. *Samsudeen Bhai v. Gunawardene*[2]. Also *Parangodun v. Raman*[3]. The document is absolutely void and no action is maintainable on it. The note cannot be void as against one and valid as against the other. Further, the appeal should be against both defendants, as the action is on a joint note. Dismissal against one enures to the benefit of the other. (*Pirie v. Richardson*[4].) Judgment against one of two joint debtors is a bar to an action against the other. (*Suppraya Reddiar v. Mohamed and another*[5].) The rights on the note are merged in the judgment which affects both defendants. There is only one cause of action, and the dismissal of the action as against one defendant extinguishes the liability of the other too. It is not material whether the election to sue one and not the other is voluntary or not. The rule applies equally in the one case as in the other, that on the discharge of one of the joint debtors, the other is also discharged.

Cur. adv. vult.

August 4, 1938. MAARTENSZ S.P.J.—

This is an action for the recovery of the balance amount due on a joint note made by the defendants in favour of the plaintiff.

The defendants who are husband and wife set up various defences but the only one which appears to have been pressed at the trial was that

[1] *35 N. L. R. 210.*
[2] *37 N. L. R. 367; 14 Law Rec. 195.*
[3] *16 Law Rec. 74*
[4] *(1927) 1 K. B. 448*
[5] *17 Law Rec. 136; 10 C. L. W 44*

" the first defendant having been a public servant at the date of execution of the promissory note in suit the said promissory note and these proceedings are void in law and the plaintiff is not entitled to have and maintain this action ". The first defendant was admittedly a public servant.

The learned Commissioner upheld this defence and dismissed the action against both defendants.

The plaintiff appeals from the dismissal of the action against the second defendant.

The defence put forward by the defendants is based on the provisions of section 4 of the Public Servants' (Liabilities) Ordinance, 1899. The Ordinance enacts that no action shall be maintained against a public servant upon, *inter alia*, any promissory note made by him; and the relevant portion of the section 4 reads as follows:—" All proceedings and documents in or incidental to an action in contravention of this Ordinance shall be void ".

I am not prepared to dissent from the decision in the case of *Narayan Chetty v. Silva* [1], that the promissory note sued on is a document of the description referred to in section 4.

The question for decision therefore is whether the second defendant who is not a public servant can plead the provisions of section 4 of the Ordinance. This question is not covered by authority and must be determined by first impression. The section, it is true, is expressed in very general terms; but I am of opinion that these terms are restricted by the purpose for which the Ordinance was enacted.

It was enacted, according to the preamble, " To protect public servants from legal proceedings in respect of certain liabilities ", and I cannot conceive that the Legislature ever intended that persons who were not public servants should be protected by any of the provisions of the Ordinance. I accordingly hold that the promissory note sued on is not void as against the second defendant.

Another plea was raised in appeal, namely, that the note sued on being a joint note, the plaintiff's appeal cannot succeed as he has not appealed against the dismissal of his action against the first defendant. I do not think the plea can be referred to any principle of law. The case of *Reddiar v. Mohamed* [2], where it was decided that if judgment is taken against one of the makers of a joint note, judgment could not be entered against the other or others, has no application; nor has the case of *Pirie v. Richardson* [3], where it was held that " a successful defence by one joint contractor, which is common to the whole contract, enures for the benefit of the others whether they have pleaded it or not "; for the successful defence of the first defendant is not one which is common to the whole contract, but to himself personally.

I am accordingly of opinion that this plea also fails. I set aside so much of the decree as directs a dismissal of plaintiff's action against the second defendant and enter judgment for plaintiff against the second defendant as prayed for with costs in both Courts.

Appeal allowed.

[1] *(1933) 35 N. L. R. 210.*

[2] *17 Law Rec. 136; 10 C. L. W. 44.*

[3] *(1927) 1 K. B. 448.*