Present: Wood Renton J. **1912.**

GRIGORIS *v.* THE LOCOMOTIVE SUPERINTENDENT.

463—C. R. Kandy, 20,190.

Civil Procedure Code, ss. 229, 232, and 218—Seizure of wages due to mechanic in hands of the Locomotive Superintendent — Prohibitory notice—Attachment in the hands of the Attorney-General as representing the Crown—Public servant—Labourer.

The respondent (judgment-creditor), through the Fiscal, served on the appellant (Locomotive Superintendent of the Ceylon Government Railway) what purported to be a prohibitory notice under section 232 of the Civil Procedure Code, requesting him to hold a sum of Rs. 47.50 out of the moneys due to the defendant (judgment-debtor), who was a mechanic employed on daily wages on the Ceylon Government Railway.

Held, that the seizure was not in order.

The wages ought to have been seized in the manner indicated in section 229, and not by a prohibitory notice under section 232.

If the respondent can attach the debt at all, it must be attached in the hands of the Attorney-General.

A mechanic in the position of the judgment-debtor is neither a public officer or servant under section 218 (*h*), nor a labourer under section 218 (*j*).

[1] *(1901) 2 Br. 240.* [2] *(1903) 1 A. C. R. 3.*

1912.

Grigoris v. The Locomotive Superintendent

THE facts appear sufficiently from the judgment of Wood Renton J.

Walter Pereira, K.C., S.-G., for the appellant.

J. W. de Silva, for respondent.

Cur. adv. vult.

February 2, 1912. WOOD RENTON J.—

The appellant in these proceedings is the Locomotive Superintendent of the Ceylon Government Railway in Nawalapitiya. The respondent is the judgment-creditor of one Don Peiris, alleged to be a mechanic employed on daily wages on the Ceylon Government Railway. The amount of the judgment-debt, including costs, is Rs. 47.75. The respondent, through the Fiscal, served on the appellant what purported to be a prohibitory notice under section 232 of the Civil Procedure Code, requesting him to hold the " said sum out of moneys due to the defendant. " There was no allegation in the prohibitory notice that at the date on which it was issued there were in fact any moneys due to the judgment-debtor as wages, or that such moneys were in the appellant's custody within the meaning of section 232. The appellant appeared and moved for a notice on the respondent to show cause why the prohibitory notice just referred to should not be discharged with costs. It was contended on his behalf that there was no money in his hands as Locomotive Superintendent owing to the judgment-debtor; that any money he might have had was due by the Crown; that that being so, the prohibitory notice should not have been served upon him; that it could not be served on the Attorney-General, as the Crown is not bound by section 232; that the wages being a debt should have been seized under section 229 (*a*) of the Code, and not under section 232; and, finally, that such wages could not be seized in execution at all, inasmuch as the judgment-debtor was either a public officer within the meaning of section 218 (*h*), or a labourer within the meaning of section 218 (*j*), of the Civil Procedure Code. The learned Commissioner of Requests refused to discharge the prohibitory notice, and the present appeal is brought against his refusal to do so.

The prohibitory notice is clearly defective, in that it contains no specific allegation that there is in the appellant's custody any sum of money due to the judgment-debtor, out of which the respondent can claim payment in whole or in part of his debt. Moreover, I do not think that wages in the hands of a public officer, and due to an employè in the position of the judgment-debtor here, are " property " at all within the meaning of section 232 of the Code. They appear to me to come under section 229 (*a*), and to constitute " a debt not secured by a negotiable instrument. " If that view is right, then, assuming such wages to be seizable at all, they ought to have been seized in the manner indicated in section 229, and not

by a prohibitory notice under section 232. Section 229 (*c*), after dealing with (*a*) debts not secured by a negotiable instrument, (*b*) shares in the capital of any public company or corporation, provides that (*c*) other movable property not in the possession of " the judgment-debtor except property . . . . . in the custody of a public officer " shall be seized by a written prohibitory notice signed by the Fiscal. This provision is, I think, applicable only to property other than (*a*) debts not secured by a negotiable instrument, and including wages, and (*b*) shares in the capital of any company or corporation. This construction of the section is corroborated by the words in which the mode of seizure of the " other movable property " referred to in section 229 is defined: " in the case of the other movable property except as aforesaid "—that is to say, except as regards property in the custody of a public officer, the seizure is to be effected " by a written notice prohibiting the person in possession of the same from giving it over to the judgment-debtor. " Section 232 prescribes the manner in which the excepted property is to be seized, and, in my opinion, does not apply to claims for wages, which are debts and nothing more. The cases which have been decided under section 232 support my construction of the section. The property with which they dealt did not consist of wages due to employés, but of sums of money deposited by such employés with the heads of their departments for the due discharge of their duties under Government (*Albrecht v. Grebe,*[1] *Thiakarajapillai v. Ranganather,*[2] and *Chittampalam v. Bottoni* [3]).

If the only section of the Civil Procedure Code that can be made applicable to the present case is section 229, the order under appeal must clearly be set aside. The notice required by section 229 has not been given, and the appellant, the Locomotive Superintendent of the Ceylon Government Railway at Nawalapitiya, is not the debtor of the judgment-debtor Don Peiris within the meaning of that section. If the respondent can attach the debt at all, it must be attached in the hands of the Attorney-General, the representative of the real debtor, namely, the Government of Ceylon.

I may say at once that I do not think that the present case can be brought either under clause (*h*) or clause (*j*) of section 218 of the Civil Procedure Code. A mechanic in the position of the judgment-debtor here is not a public officer or servant [clause (*h*)], and I do not think that he can fairly be regarded as only a labourer [clause (*j*)] (see *Jeehand Khusal v. Aba and Baika* [4]).

Although it is unnecessary for the purpose of the present appeal to decide the point, I was pressed by the learned Solicitor-General to give a ruling on the question whether the Crown is bound by the provisions of section 229 of the Civil Procedure Code. I think that this point is one on which it is desirable that the opinion of a Bench

[1] *(1894) 3 C. L. R. 59.*
[2] *(1908) 3 A. C. R. 123.*
[3] *(1896) 3 A. C. R. 125.*
[4] *(1880) 5 I. L. R. Bom. 133.*

1912.

Wood Renton J.

Grigoris v. The Locomotive Superintendent

of two Judges should be taken, and I direct that the case should be referred to such a Bench accordingly.* After it has been decided, I will give formal judgment on the appeal.

March 14, 1912. Wood Renton J.—

In conformity with the order of His Lordship the Chief Justice and Grenier J., I set aside the order under appeal. The appellant is entitled to the costs of the appeal as well as those incurred in the District Court.

Set aside.