

1933

Present : Akbar J. and de Silva A.J.

NARAYAN CHETTY v. SILVA.

116—D. C. Galle, 29,562.

*Public Servants' (Liabilities) Ordinance—Dismissal of action on promissory note against public servant—Note rendered void—Subsequent action on note—Ordinance No. 2 of 1899, s. 4.*

The dismissal of an action on a promissory note on the ground that the defendant is a public servant renders the note void and of no effect and precludes a subsequent action on the note.

THE plaintiff sued the defendant on a promissory note in case No. 25,412 of the District Court of Galle, and the action was dismissed under the Public Servants' (Liabilities) Ordinance on the plea that the defendant was a public servant at the time.

The plaintiff instituted the present action on the same note after the defendant ceased to be a public servant.

*M. T. de S. Amerasekera* (with him *J. R. Jayewardene*), for defendant, appellant.—Plaintiff's first action was dismissed. We pleaded Ordinance No. 2 of 1899 (Public Servants' (Liabilities) Ordinance). The District Judge has only considered the question of estoppel. More important question is whether the note sued on is void under section 4. The object of that section is to penalize persons bringing actions in contravention of this Ordinance. The first action was in contravention of the Ordinance; therefore the penalty, that all documents are void, operates. The object of the Ordinance is not to protect individuals but the public service from interference. Plaintiff should have been aware of the Ordinance and the penalties attached. If documents are not void, plaintiff can bring a series of actions on the same document. The object of the Ordinance would be defeated. The promissory note is a document in the action. Section 4 rendered it void. Plaintiff cannot now sue on it. Previous cases under the Ordinance deal with actions against persons who have ceased to be public servants, but there has been no prior action while the person was a public servant as here. Section 116 of the Civil Procedure Code also enacts that documents made void by a decree need not be returned. Plaintiff cannot maintain an action on a void note.

*H. V. Perera* (with him *K. A. G. Perera*), for plaintiff, respondent.—This interpretation will create great hardship. The object is not to render documents void in the future but only as regards that particular action. If section 4 is to be interpreted in the way appellant wants, then "all proceedings and documents in or incidental to an action" will include the plaint and answer and decree. All these will be void. The purpose of the Ordinance cannot be this. The object of the Ordinance is not to allow public servants to escape their liabilities but to protect the public service. Our first action was dismissed. Defendant ceased to be a public servant, he cannot now plead this Ordinance.

*Amerasekera*, in reply.—Section 3 (1) says "no action shall be maintained against a public servant"—in certain circumstances. This is a prohibitory section. Section 4 penalizes the breach of prohibition in section 3 (1) by making "documents" void. It is not a question of aiding public servants, but punishing those who contravene section 3 (1) of this Ordinance.

May 31, 1933. DE SILVA A.J.—

In case No. 25,412 of the District Court of Galle, the plaintiff sued the defendant on a promissory note and on a plea being raised that the defendant was a public servant at the time, the action was dismissed under the provisions of the Public Servants' (Liabilities) Ordinance, 1899. In this case the plaintiff has sued the defendant, now no longer a public servant, on the same note.

Two issues were raised in the lower Court: (1) Can the note be sued upon in view of the provisions of section 4 of Ordinance No. 2 of 1899 and section 116 of the Civil Procedure Code? (2) Is the plaintiff estopped by the decree and proceedings in D. C. No. 25,412? It appears from the judgment that the learned Judge has addressed his mind to the second issue but he does not appear to have considered the first.

It has been held in decisions of this Court that the Ordinance affords no defence to an action brought at a time when a defendant is not a public servant. In these cases there had been no dismissal of a previous action and the effect of such a dismissal was not discussed.

It is argued for the defendant-appellant that section 4 of the Ordinance renders void and of no effect as against him the note which had been sued upon unsuccessfully in the previous action. Section 4 of the Ordinance says that "all proceedings and documents in or incidental to an action in contravention of the Ordinance shall be void". It is to be noted that not only the proceedings but "documents in or incidental to" the action are void. I have no doubt that the previous action was in contravention of the Ordinance and that the note sued on was a document of the description set out in the Ordinance. This appears to impose a somewhat severe penalty on a plaintiff who brings an action in contravention of the Ordinance. I find myself however unable to find a meaning for the words "documents in or incidental to an action in contravention of this Ordinance" which would not include the note sued upon, and Counsel for the respondent whom I pressed upon the matter was himself unable to furnish a satisfactory meaning which would exclude it.

I am of opinion therefore that the argument of the appellant is sound and that he is entitled to succeed. I set aside the order of the learned District Judge and dismiss the plaintiff's action with costs. The appellant will also be entitled to the costs of this appeal.

AKBAR J.—I agree.

*Appeal allowed.*

