

Present: De Sampayo A.J.

1915.

SAIBO v. PUNCHIRALA.

17—C. R. Matale, 11,042.

Public Servants' Liabilities Ordinance, 1899 — Arachchi and police headman — Public servant — No remuneration received by the officer.

A person holding the office of arachchi and police headman is a public servant within the meaning of the Public Servants' Liabilities Ordinance, 1899.

The protection provided by the Ordinance does not turn upon the fact of remuneration being received by the public servant.

THE facts are set out in the judgment.

D. B. Jayatilleke, for plaintiff, appellant.—An arachchi and police headman is not a public servant under the Public Servants' Liabilities Ordinance. He does not receive any salary from the Government. He has no fixed appointment. (*Palaniappa Chetty v. Fernando.*¹) Sub-section (2) of section 3 of the Ordinance excludes from the operation of the Ordinance a public servant "in receipt of a salary in regard to fixed appointment of more than Rs. 300 a month." This clearly implies the receipt of a salary by a public servant and his fixed appointment under the Government. The object of the Ordinance is to prevent the salary of a public servant from being seized in execution.

Wadsworth, for defendant, respondent.—There is nothing in the Ordinance to show that a public servant should be in the receipt of a salary. Section 2 of the Ordinance defines a "public servant"

¹ I A. C. R. 27.

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as a " person employed in the service of the Government. " An arachchi and police headman is so employed by the Government Agent and is removable at his pleasure. He receives certain emoluments, such as commissions in the amounts collected as poll tax. His appointment is a fixed one. In *Tempoe v. Murugasu*¹ it was held that an irrigation headman was a public officer within the definition of section 5 of the Civil Procedure Code. The intention of the Legislature was to protect the public, and not the individual public servant. *Narayanan Chetty v. Samarasinghe*,² *Nagamuttu v. Kathiramen*³ Provision is made in the Civil Procedure Code (section 218) preventing the salary of a public servant from being seized in execution.

Cur. adv. vult.

February 9, 1915. DE SAMPAYO A.J.—

The plaintiff sues the defendant on a promissory note dated October 3, 1913. The defendant pleads that at the date of the note he was, and still is, a public servant, and claims the exemption provided by the Public Servants' Liabilities Ordinance, 1899. The Commissioner of Requests has upheld this defence and dismissed the action, and the plaintiff has appealed.

The defendant is arachchi and police headman of Embitiyawa, having been appointed as such by the Government Agent on July 30, 1912. The question is whether he is a public servant within the meaning of the Ordinance, which defines the term to mean " a person employed in the service of the Government of the Colony. " I think this definition is broad enough to include an arachchi. In *Tempoe v. Murugesu*¹ it has been held that an irrigation headman who, though appointed by a committee, performs his duties subject to the Government Agent's direction and control, and is removable by the Government Agent is " a public servant employed by the Government of Ceylon " within the contemplation of the definition of the term " public officer " in section 5 of the Civil Procedure Code. There is no doubt that an arachchi appointed by the Government Agent, is a public servant. " It is argued, however, that the intention of the Public Servants' Liabilities Ordinance is to protect only public servants who receive salary for their services. I may note in this connection that the defendant's office is not altogether without any emolument. It appears that his duties include the collection of poll tax, for which he receives a commission of seven and a half per centum. He is also entrusted with the business of writing and granting cattle vouchers, for which he is entitled to certain fees. But the protection provided by the Ordinance does not turn upon the fact of remuneration being received by the public servant. There

¹ *Cur. L. R.* 107.

² *3 Bal.* 243.

³ *A. C. R.* 163.

are no words in the Ordinance leading to such a conclusion, nor does the object of this legislation justify it. Mr. D. B. Jayatilleke, for the plaintiff, has referred me to sub-section (2) of section 3, which excludes from the operation of the Ordinance a public servant "in receipt of a salary in regard to his fixed appointment of more than Rs. 300 a month." But this does not necessarily imply that others who are protected must receive a salary. The servant, in order to be entitled to the benefit of the Ordinance, must no doubt have a fixed appointment (*Palaniappa Chetty v. Fernando*¹ and *Perera v. Perera*²) but the appointment need not have a salary attached to it. It is contended that the intention of the Ordinance is to prevent the salary of a public servant from being seized in execution and to safeguard him and his family. But I think its object is much wider. It is to secure to Government the services of its employes unhampered and unimpaired by the burden of debts and consequent litigation. As was pointed out in *Narayanan Chetty v. Samarasinghe*,³ the object of the Ordinance is to "prevent the obstruction of public business as a consequence of legal proceedings against public servants," and "to protect the public and not the individual servant." See also the observations of Hutchinson C.J. and Middleton J. in *Nagamattu v. Kathiramen*.⁴ This being so, I think that the Commissioner is right in applying to the defendant in this case the provisions of the Ordinance and in dismissing the plaintiff's action. The only point left to be considered is the matter of costs. The defendant, in addition to his legal defence, pleaded payment, and endeavoured to prove it by evidence, which the Commissioner did not accept. In these circumstances, I do not think that he is entitled to costs in the Court of Requests. I therefore delete the order awarding him those costs. Subject to this modification, the judgment appealed against is affirmed, with costs of appeal.

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Affirmed.

¹ 1 A. C. R. 27.

² (1910) 13 N. L. R. 257.

³ 3 Bal. 243.

⁴ 2 A. C. R. 165.