

1935

Present : Akbar J. and Koch A.J.

SAMSUDEEN BHAI *v.* GUNAWARDENE.

191—D. C. (Inty.) Kandy, 41,215.

*Public Servants' Liabilities Ordinance—Action on a promissory note—Failure to claim the benefit of the Ordinance—Execution proceedings when the defendant had ceased to be a public servant—Liability—Ordinance No. 2 of 1899, ss. 3 and 4.*

Where a public servant, who was sued on a promissory note, failed to plead the benefit of the Public Servants' Liabilities Ordinance, he is not debarred from raising the plea in execution proceedings against him in the same action, even though he has ceased to be a public servant at that stage.

**A** PPEAL from an order of the District Judge of Kandy.

R. C. Fonseka (with him J. R. Jayewardene), for plaintiff, appellant.

T. S. Fernando, for defendant, respondent.

*Cur. adv. vult.*

June 4, 1935. AKBAR J.—

This case raises an interesting and important point, under the Public Servants' Liabilities Ordinance, No. 2 of 1899, which is a continuation of the problem which was decided in the case of *Narayan Chetty v. Silva*<sup>1</sup>. The facts arising in this case which are material to this appeal are as follows:—The plaint was filed on May 27, 1931, by the plaintiff who is obviously an Afghan money-lender, claiming the sum of Rs. 994.50 on a promissory note dated August 9, 1930. Summons having been reported served on the defendant, a decree was obtained on July 3, 1931. Apparently, the plaintiff recovered a portion of his debt by the sale of the defendant's property and finding that he could not get full satisfaction he applied on May 8, 1934, for a notice to examine the defendant under section 219 of the Civil Procedure Code. On May 31, 1934, the defendant filed an affidavit in person, pleading the benefit of the Public Servants' Liabilities Ordinance, as he was a Government Servant. This affidavit was rejected on the ground that it was not properly stamped, whereupon

<sup>1</sup> 35 N. L. R. 210.

the correct stamp duty was supplied on June 6, 1934, on which date, however, the defendant had ceased to be a public servant. The case was finally inquired into on October 23, 1934. It was admitted on behalf of the plaintiff that the defendant was a public servant who was entitled to plead the benefit of the Ordinance, that the defendant was still a public servant on May 31, 1934, when he filed his affidavit, and even on June 5, 1934, when the deficiency in the stamp duty was forwarded to the Court he was still a public servant. But he had ceased to be a public servant on June 6, and, of course, on the date on which the inquiry was held, October 23, 1934.

On the authorities cited to us, I have no doubt whatsoever with regard to the law on the subject as stated in sections 2, 3, and 4 of the Ordinance. It will be noticed that the word "action" includes not only legal proceedings, the plaint, &c., but even any process of any kind which issues during the course of the action. Section 3 states definitely that no action shall be maintained against a public servant upon certain kinds of contract. All the facts are admitted by the plaintiff by which it is clear that the action as instituted on May 27, 1931, was in direct contravention of the provisions of section 3. Section 4 of the Ordinance states that all proceedings and documents in or incidental to an action in contravention of the Ordinance shall be void. So that the whole proceedings including the promissory note, which was annexed to the plaint, appear to be void under section 4, because the action at the time it was instituted was in contravention of the provisions of the Ordinance.

Mr. Jayewardene, who appeared for the plaintiff-appellant, cited certain cases, and he argued that as the object of the Ordinance appeared to be to protect public servants from being worried by legal proceedings during their tenure of service as such public servants, that object ceased to apply in this case to the public servant as he had ceased to be a public servant at the time when he claimed the protection of the provisions of the Ordinance. It is, of course, highly dangerous to try to interpret an Ordinance according to the intention which the legislature is said to have had for the passing of the Ordinance, when the words of the sections of the Ordinance are clear and without any doubt. But it may be that the object of the legislature was not merely what Mr. Jayewardene states it was but also possibly to warn off petty money-lenders from having any dealings with public servants of the class mentioned in section 3. The cases he has cited are the one that I have already referred to, namely, *Narayan Chetty v. Silva* (*supra*) and *Nagamuttu v. Kathiramen*<sup>1</sup> and *Wijesinghe v. de Silva*<sup>2</sup>. I can see nothing in any one of those judgments which seems to be contrary to the interpretation I have put on the sections of the Public Servants' Liabilities Ordinance. In fact, it seems to me, if I may say so respectfully, that the judgments are quite correct on the special facts of those cases.

In my opinion, the judgment of the learned District Judge is correct and the appeal should be dismissed with costs.

Koch A.J.—I entirely agree.

*Appeal dismissed.*

<sup>1</sup> 2 A. C. R. 165.

<sup>2</sup> 2 C. W. R. 121.