

1934

*Present : Dalton S.P.J. and Maartensz J.*MUTTIAH CHETTIAR *v.* ABEYSINGHE68-69—D. C. (*Inty.*) Kandy, 43,956.

Public officer—Execution—Salary exempt from seizure—Municipal servant not included in term—Civil Procedure Code s. 218 (h).

A Municipal servant is not a public officer within the meaning of section 218 (h) of the Civil Procedure Code.

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

N. E. Weerasooria (with him Kariapper), for plaintiff, appellant, in appeal No. 69.

No appearance for defendant, respondent.

October 22, 1934. Dalton S.P.J.—

Appeal No. 68 is by the defendant. He has not appeared on his appeal, and we find, on reference to earlier proceedings in this matter, the appellant filed at the Registry, on June 19 last, a consent motion asking to withdraw this appeal. There was no appearance before the Court when that application came up and hence no order was made thereon. The fact, however, that the defendant had withdrawn this appeal no doubt explains his absence to-day, and the fact that he presumably does not wish to continue the appeal. Appeal No. 68 will therefore be dismissed.

Appeal No. 69 by the plaintiff arises out of the same proceedings. The question to be decided in respect of this matter is whether the learned Judge was correct in holding that the term "public officer or servant" as used in section 218, sub-section (h), of the Civil Procedure Code, includes Municipal officers.

The defendant is stated to be an officer in the employment of the Municipal Council, Kandy, and his salary appears to have been attached by the plaintiff in execution of a decree obtained by the plaintiff against the defendant.

The learned Judge has come to the conclusion that section 218, sub-section (h), applies to Municipal officers as well as to officers employed under the Imperial Government or under the Government of Ceylon. I regret I am unable to agree with the learned Judge in his finding. He appears to hold that the definition of "public officer" in section 5 of the Civil Procedure Code, includes other persons than those employed by or under the Imperial Government or the Government of Ceylon. He asks himself in the judgment, what is the ordinary and popular meaning of the terms "public officer" and "public servant"? In reply to that question he says, the man in the street would normally view such a person as the defendant, who is stated to be the Chief Revenue Officer of the Municipal Council of Kandy, to be a public officer or a public servant, and if so, then in view of the use of the word "includes" in the definition, such an officer is included in the term "public officer".

The learned Judge, however, has come to the conclusion that whereas the term "public officer" in section 218 includes Municipal officers such as the defendant, nevertheless a Municipal officer is not a public officer within the meaning of section 461 of the Civil Procedure Code. I entirely agree with the learned Judge in his conclusion that a Municipal officer does not come within the term of "public officer" in section 461, but in view of the definition in section 5 of the Ordinance I feel myself quite satisfied that neither is a Municipal officer a public officer within the meaning of the words as used in section 218.

The learned Judge was wrong, in my opinion, upon his construction of section 218, sub-section (h), of the Civil Procedure Code, which does not in my opinion apply to this case.

In those circumstances the salary of the defendant is not exempt from seizure, and the appeal must therefore be allowed with costs.

MAARTENSZ J.—I agree.

Appeal allowed.