

1942

Present: Hearne and Jayetileke JJ.

PONNUDURAI *v.* WIJEYEWICKRAMA.

229—D. C. Colombo, 12,617.

*Public servant—Action to recover money—No answer filed—Defendant files affidavit claiming the benefit of Public Servants (Liabilities) Ordinance, Cap. 88 (s. 3.)*

The plaintiff sued the defendant for the recovery of a sum of Rs. 800, which he alleged he had entrusted to him in the form of a cheque for clearance at a Bank.

On the date fixed for filing the answer, the defendant filed no answer but contented himself with filing an affidavit in which he denied that the sum of money was due from him, and, stating that he was a Government servant, claimed the benefit of the Public Servants (Liabilities) Ordinance.

The learned District Judge entered judgment for the plaintiff.

*Held*, that the Judge was bound to inquire into the claim for statutory protection made by the defendant in terms of section 3 of the Public Servants (Liabilities) Ordinance.

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

L. A. Rajapakse, for defendant, appellant.

N. Nadarajah, K.C. (with him T. K. Curtis), for plaintiff, respondent.

*Cur. adv. vult.*

July 17, 1942. HEARNE J.—

The plaintiff respondent sued the defendant appellant for the recovery of Rs. 800, which he alleged he had entrusted to him in the form of a cheque for clearance at a bank. As framed the action did not fall within section 2 (a) of the Public Servants (Liabilities) Ordinance.

On the date fixed for filing the answer, the defendant filed no answer but contented himself with filing an affidavit, in which he denied that the sum of Rs. 800 or any sum was due from him and stating that he was a Government servant in receipt of a salary of Rs. 233.33 per month, claimed the benefit of the Public Servants (Liabilities) Ordinance.

The learned Judge held that there was nothing before him to show that the transaction upon which the plaintiff had sued fell under section 2 of the Ordinance and, upon Counsel for the plaintiff thereupon filing an affidavit in support of the plaintiff's case, he entered a decree nisi which was later made absolute.

In deciding the case as he did, the Judge overlooked the peremptory provisions of the Ordinance. Section 3 states that "where complaint is made by a public servant . . . that such public servant is dealt with in contravention of this Ordinance . . . the Court or some Judge shall examine into the complaint . . .". The mere assertion of a claim to protection requires an examination of that claim.

If it was held that the complaint was without foundation, the Judge in thereafter disposing of the case would no doubt take note of the fact that no answer had been filed, but the failure to file an answer did not absolve the Judge from inquiring into the complaint once it had been made.

The appeal is allowed with costs. An inquiry into the claim of statutory protection must be made. The appellant must be given an opportunity of substantiating the claim and the respondent must, of course, also be given an opportunity of resisting it. After it has been adjudicated upon, the trial will proceed according to law. All costs hitherto incurred and that may hereafter be incurred in the trial Court will be in the discretion of that Court.

JAYETILLEKE J.—I agree.

*Appeal allowed.*

