1941 *Present*: **Moseley S.P.J.**

SAMUEL APPUHAMY *v.* DEONIS.

210—C. R. Colombo, 55,824.

Domestic servant—Assistant bar-keeper at a club—Civil Procedure Code, s. 218 (j).

An assistant bar-keeper employed at a club is a domestic servant within the meaning of section 218 (*j*) of the Civil Procedure Code.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

L. A. Rajapakse (with him *C. J. Ranatunga*), for plaintiff, appellant.

No appearance for defendant, despondent.

Cur. adv. vult.

June 6, 1941. MOSELEY S.P.J.—

The point for decision is whether the defendant-respondent, who has described himself as an assistant bar-keeper at the Colombo Garden Club, is a domestic servant within the meaning of paragraph (*j*) of section 218 of the Civil Procedure Code. If the answer is in the affirmative his wages are protected from seizure under a writ of execution. The learned Commissioner of Requests so answered the question, holding that the fact that the respondent was employed in a club and not in a private bungalow does not affect the question.

The section has its counterpart in section 60 of the Indian Civil Procedure Code. In neither enactment is the expression "domestic servant" defined, and no local or Indian authority bearing on the point has been brought to my notice. Counsel for the appellant, however, cited the case of *Pearce v. Lansdowne*[1] in which the point for decision was whether a potman employed in a public house was a "domestic or menial servant" so as to exclude him from the definition of "workman" within the scope and meaning of the Employers' Liability Act, 1880. Since the objects underlying the legislation relevant to that case and this particular provision of the Civil Procedure Code are different, it seems to me that care must be exercised not to draw an injustified comparison between that case and the present one. It clearly emerges, however, from a consideration of that case that the question is one of fact. Collins J. in his judgment, agreeing that the potman was a domestic or menial servant, observed that "the question must vary with the facts of each particular case". He quoted an excerpt from *Roberts and Wallace's Book on* Employers' Liability, at page 214,, namely, that menial servant (and no distinction was drawn between "menial" and "domestic") denotes "those persons whose main duty is to do actual bodily work as servants for the personal comfort, convenience, or luxury of the master, his family or guests, and who for this purpose becomes part of the master's residential or quasi-residential establishment".

The case of *Savoy Hotel Company v. London County Council*[2], is also hardly in point, the question being whether a page-boy in the hotel was within the exemption in section 10 of the Shop Hours Act, 1892, in favour of "any person *wholly* employed as a domestic servant". The finding of

[1] *69 L. T. 316.* [2] *1 Q. B. 665.*

the lower Court that he was not *wholly* employed as such was affirmed by Channell J. in these words:—"The learned Magistrate found that he was not; I think that there was evidence on which he could so find, and that his decision cannot be disturbed". In each of the cases cited it will be seen that the question was treated purely as a question of fact.

In the present case it seems to me that there is evidence upon which the learned Commissioner of Requests could find, as he did, that the respondent is a domestic servant within the meaning of paragraph (*j*) of section 218. Being employed in a club, and not in a private bungalow only affects the question to the extent that he is the servant of many masters instead of being the servant of one.

I would dismiss the appeal with costs, if any have been incurred by the defendant, respondent.

Appeal dismissed.