

1948

Present : Gratlaen J.

GUNAWARDENE, Appellant, and THE ATTORNEY-GENERAL,
Respondent.

S. C. 36—C. R. Negombo, 45,612.

Pension—Retired Government Servant—Action by administrator of estate—Not recoverable at law.

The right of a retired Government servant to a pension is not one that can be enforced in a Court of law.

APPEAL from a judgment of the Commissioner of Requests
Negombo.

H. W. Jayewardene, for the plaintiff, appellant.

V. Tennekoon, Crown Counsel, for the defendant, respondent.

Cur. adv. vult.

May 27, 1948. GRATIAEN J.—

A person named Victor Benjamin Fernando Gunewardene was a retired Government clerk drawing a pension of Rs. 72.09 from the Government of Ceylon. He died on April 29, 1945, and it is common ground that he had not drawn his pension in respect of the month of April, 1945, at the date of his death, and the plaintiff, who is the administrator of Gunewardene's estate now sues the Attorney-General as representing the Crown for the recovery of this amount.

The plaintiff's claim was successfully resisted by the Attorney-General in the lower Court on the ground that Gunewardene had no legally enforceable right to recover any pension from the Crown. In other words, it

was contended, a Court of law has no jurisdiction in any matter relating to the payment of pensions to retired Government servants, such matters depending entirely upon the grace and bounty of the Crown. In my opinion the learned Commissioner's judgment upholding this objection was correct. The payment of pensions to retired Government servants at the relevant date was regulated by certain rules sanctioned by the Secretary of State for the Colonies and incorporated in the Minutes of Pensions dated February 5, 1934. Rule 1 expressly provides that "public servants have no absolute right to any pension or allowance under these rules." These words which I have quoted follow the language of section 30 of the Superannuation Act (4 & 5 William 4, Chapter 24) of England, which have been construed in the English Courts as "destroying the possibility of a claim of legal right" (*Cooper v. The Queen*¹). The authorities were exhaustively reviewed by the Court of Appeal in *Nixon v. Attorney-General*², which judgment was affirmed by the House of Lords in appeal (1931, A. C. 184). In view of the similarity of language between the local pension rules and the English Acts I would hold that the Minutes of Pensions merely regulates the administration of pensions by those in whose hands that duty is placed, and does not confer upon retired Government servants any legal rights in respect thereof. I would accordingly dismiss the plaintiff's appeal with costs.

Appeal dismissed.

¹ (1880) 14 Ch. D. 311.

² (1930) 99 L. J. Ch. 259.