1949 *Present :* **Gratiaen J.**

MADAN, Appellant, *and* NANA ANDY, Respondent

S. C. 212—C. R. Colombo, 9,656

*Public Servants Liabilities Ordinance—Plea rejected—No appeal from judgment—Plea taken again in execution proceedings—*Res judicata*—Exception to rule.*

Defendant in this action pleaded that he was a public servant and claimed the benefit of the Public Servants Liabilities Ordinance. His plea was rejected and judgment entered against him. There was no appeal from the judgment. In execution proceedings the defendant sought to raise the plea again and have the decree vacated on the ground that the proceedings in the action were void in terms of the Ordinance.

Held, that the was not precluded from raising the plea and that the previous finding did not operate as *res judicata.*

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

K. S. Rajah, for plaintiff appellant.

S. W. Jayasuriya, for defendant respondent.

N. D. M. Samarakoon, Crown Counsel, as *amicus curiae.*

Cur. adv. vult.

June 13, 1949. GRATIAEN J.—

In October 1947 the appellant sued the respondent in this action for the recovery of a sum of Rs. 200 and interest due to him on a contract of loan. The respondent pleaded certain defences all of which were later abandoned. At the trial, however, he claimed for the first time that he was entitled to the protection of the Public Servants (Liabilities) Ordinance (Chapter 88). Some evidence was led on this issue, but the learned Commissioner held that the proof relied on by the respondent was inadequate. He accordingly rejected the claim to statutory protection, and entered judgment in favour of the appellant as prayed for with costs. The respondent did not appeal against this judgment.

The judgment remained unsatisfied for some time, and the appellant proceeded to take steps to have the decree executed. The respondent then made an application to the Court renewing his claim to the protection of the Public Servants (Liabilities) Ordinance and asking *inter alia* that the decree against him be vacated on the ground that the proceedings in the action were void. At the inquiry he proved to the satisfaction of the learned Commissioner that at the date of the loan he was in fact a " public servant " entitled to the protection of the Ordinance. The learned Commissioner accordingly declared all proceedings in the action to be void. The appellant has appealed from this order.

I am not prepared to hold that the learned Commissioner has wrongly decided that the respondent was a " public servant ". The only question which remains to be decided is whether the respondent was precluded in law from reagitating at the inquiry the identical issue which he had unsuccessfully raised at the trial—namely, whether he was at the relevant *date a* " public servant " within the meaning of the Ordinance.

There can be little doubt that the principle of *res adjudicata* would normally have operated against the respondent. This principle of the English law, which is embodied in the Civil Procedure Code, is intended, in the interests of finality, to prevent litigants from reagitating " not only points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but also every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have put forward at the time ". *Henderson v. Henderson* [1]. The need for this general rule of estoppel is very clear, because otherwise " litigation would have no end, except when legal ingenuity is exhausted "—per Lord Shaw in *Hoysted v. Taxation Commission* [2]. Indeed, in this country, it might well be found that the litigation would in the majority of cases endure until the lawyer's ingenuity and the litigant's purse have both given up the unequal struggle.

In England there are recognised exceptions to the operation of the general rule to which I have referred. For instance, the principle of estoppel and the principle of *res adjudicata* cannot apply where to give effect to them would be to go counter to some statutory direction or prohibition. This exception was recently given effect to in *Griffiths v. Davis* [3] where a tenant against whom a decree for rent in excess of the amount authorized by the Rent Restriction Acts was nevertheless held entitled to challenge the validity of the decree by raising this issue which he had omitted to raise at the original trial. " There is a statutory direction to the Court ", said the Master of the Rolls, " to abstain from giving a judgment for recovery of rent which is shown to the Court to be excessive . . . . The earlier judgment cannot give to the Court a jurisdiction which the Act has denied to it ". The Master of the Rolls adopted the proposition laid down by the House of Lords in an Irish case *Bradshaw v. M'Mullan* [4] (the report of which I regret is not available to me) that *where there is a statutory prohibition or direction, it cannot be over-ridden or defeated by a previous judgment between the parties.*

If this exception to the rule of *res adjudicata* is applicable in Ceylon—and for reasons which I shall shortly indicate I am satisfied that it is—its operation seems to me especially appropriate to cases such as the present case. The protection afforded by the Public Servants (Liabilities) Ordinance was granted in the general interests of the public and not with the idea of conferring any special favours or privileges on public officers. In order that officers in receipt of salaries below a prescribed limit may be protected from the dangers and temptations arising from indebtedness to money-lenders, Section 2 of the Ordinance expressly prohibits legal proceedings from being maintained in certain

[1] *(1843) 3 Hare at p. 114.*
[2] *(1926) 95 L. J. P. C. 79 at p. 83.*
[3] *(1943) 112 L. J. K. B. 577.*
[4] *(1920) 2 Ir. R. 412.*

cases against certain classes of public servant. Section 3 declares all proceedings in or incidental to an action in contravention to the Ordinance to be void; it also directs the Court to examine and to take action upon complaints that any public officer has been dealt with in contravention of the Ordinance by any process, execution or order. It seems to me that the statutory prohibitions, declarations and directions contained in the Ordinance are absolute, and that the whole scheme of the Ordinance would be defeated if a public servant were to be precluded from claiming the protection of the Ordinance by reason of any act or omission on his part or by the terms of any judgment entered against him which is proved to have been obtained in contravention of the Ordinance. In *Perera v. Perera*[1] Sir Alexander Wood Renton held that a public servant who had not raised the plea of privilege and claimed the protection of the Ordinance at the time was not precluded from raising it at a later stage when he was arrested for his debt. This authority has been consistently followed in our Courts, but, as far as I am aware, the question has not previously been considered in relation to a public servant who had claimed the protection of the Court at the trial, but unsuccessfully. On principle, however, I cannot see that this circumstance can override the unequivocal statutory prohibitions and directions which the legislation has deemed it necessary to introduce for the public benefit. If the doctrine of *res adjudicata* embodied in Section 207 of the Civil Procedure Code were to apply to the present case, it would be equally applicable in a case where a plea of protection which was available to a public officer was not raised by him at the trial. In my opinion the principle of *res adjudicata* cannot give validity to any judgment or decree which is declared by the express provisions of the Public Servants (Liabilities) Ordinance to be void. I dismiss the appeal with costs. In conclusion I desire to express my indebtedness to learned Crown Counsel for the assistance which he gave me as *amicus curiae* at the argument of this appeal.

Appeal dismissed.