1941 *Present :* **de Kretser J.**

RATNAYAKE *v.* AMARASEKERE.

79—C. R. Colombo, 59,151.

Public Servants' Liabilities Ordinance, s. 2 (1) (a) (Cap. 88)—Promissory note by public servant—Plaintiff an accommodating party to the note, discharges note—Action to recover money—Defendant's plea under the Ordinance.

The plaintiff and the defendant made a promissory note in favour of J. W. de S. The money was borrowed for the benefit of the defendant, the plaintiff being merely an accommodating party. J. W. de S. having threatened to sue on the note, the plaintiff discharged the note and sued the defendant for the money paid.

The defendant, who was a public servant, pleaded the benefit of the Public Servant's Liabilities Ordinance.

Held, that the plea was good.

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

J. R. Jayawardene, for plaintiff, appellant.

J. Alles, for defendant, respondent.

Cur. adv. vult.

September 2, 1941. DE KRETSER J.—

The plaintiff and the defendant made a promissory note in favour of one J. W. de Silva. Though they both signed the note, the money was taken by the defendant and the plaintiff was merely an accommodating party who guaranteed repayment of the loan. Defendant is a public servant who is protected by the Public Servants' Liabilities Ordinance.

J. W. de Silva having threatened to sue on the note, plaintiff paid him and discharged the note and then sued defendant for the money he had so paid. Eventually, of consent, decree was entered for plaintiff and defendant was allowed the concession of having the amount of the debt reduced and also of paying by instalments, provided he paid promptly and regularly. Defendant failed to pay, and plaintiff then took out execution against defendant, who then pleaded the Public Servants' Liabilities Ordinance. His plea was upheld by the learned Commissioner and the plaintiff appeals.

It is agreed that it is section 2 (1) (*a*) that would apply, if at all. Undoubtedly the Ordinance must be strictly construed. Dalton J. in the case of *Samarasundera v. Perera* [1], said "the limits within which public servants are protected are very carefully prescribed in the Ordinance", and he refused to extend it to cover an agreement to pay damages for breach of a promise to marry. I was impressed by Mr. Jayawardene's argument that even if the defendant were being sued upon an implied promise he was not being sued for money paid or advanced to him or to another person at his request. The case of *Sleigh v. Sleigh* [2], deals with a case of a payment made by the person who drew and endorsed a bill of exchange for the defendant's accommodation, and Parke B. said "To

[1] *31 N. L. R. 292.*

[2] *(1850) 5 Exch. 514.*

make a person liable in this form of action for money paid to the defendant's use, the plaintiff must not merely show that the money paid *pro tanto* discharges the liability of the defendant to the holder of the bill, but also that it was paid at the request, express or implied, of the defendant. Here the money paid clearly discharges *pro tanto* the liability of the defendant, as acceptor, to the holder ; and it is also clear that there was no *express* request from the defendant to the plaintiff to pay the money.

"It remains therefore to be seen whether there was, from the circumstances, an *implied* request for him to do so. Now there is no doubt that, if a person lends his name to another for his accommodation, the party accommodated undertakes to pay the bill at maturity, and further, to indemnify the person accommodating him, in case that person is compelled to pay the bill for him (*Byles on Bills, p. 94*) ; and this, no doubt, is an implied authority to such person to pay it, if he be in that situation that he may be compelled by law to pay the bill, though the holder do not actually compel him to do so ; and after payment he may sue the party accommodated for money paid on his account ; for such payment is, in truth, under the implied authority given by the contract of accommodation between the parties ; and whether this be a payment of the whole bill or of only a part of it makes no difference."

Where one of several persons jointly liable under a contract is called upon to perform the contract in full, he has, as a general rule, a right to call upon his co-debtor to contribute. The action is merely an application of the implied contract of indemnity which arises where one person is compelled to pay the debt of another—vide *15 Halsbury 471.* The only question therefore that arises is whether section 2 (1) (*a*) of the Ordinance covers the case of money paid to another at the implied request of the person sued.

The case of *Sleigh v. Sleigh* (*supra*) is authority for the proposition that there is an implied request to pay. But the section 2 (1) (*a*) refers to a promise, implied or expressed, to repay what has been paid or advanced at the request of the public servant to another. Provision is made for the implied *promise* but not for the implied *request.*

Considering the object of the Ordinance, I think it would be straining its provisions too far to make such a nice distinction. The Legislature contemplated liability on a promise to repay, and it made it clear that it made no difference whether that promise was express or implied. It then proceeded to make it plain that the provisions apply whether the money had been paid to the public servant or advanced to him or whether it had gone to another person on the responsibility of the public servant. I think, therefore, that the conclusion arrived at by the learned Commissioner is right.

Respondent's Counsel referred me to *16 Halsbury 109* where it is stated that the surety cannot recover from the principal debtor sums paid in respect of a claim which is statute-barred. In my opinion that does not apply here both because the plaintiff was not strictly a surety and also because the claim on the promissory note as against the plaintiff was not statute-barred.

The appeal is dismissed with costs.

Appeal dismissed.