1954 *Present :* **Gratiaen J. and Sansoni J.**

HAI BAI, Appellant, *and* P PERERA, Respondent

S. C. 22 (Inty.)—D. C. Kandy, M. S. 3,480

Public Servants (Liabilities) Ordinance (Cap. 88)—Sections 2 and 3—Amending Act No. 10 of 1951—Retroactive effect—Interpretation Ordinance (Cap. 2), s. 6 (3) (b).

The Public Servants (Liabilities) Amendment Act, No. 10 of 1951, does not operate retroactively so as to extend its protection to a public servant in respect of a liability incurred by him prior to March 15, 1951 (the date when the amendment came into force).

Decree was entered in favour of the plaintiff on September 30, 1952, in an action on two promissory notes dated November 19, 1949, and June 30, 1950, respectively. At the time defendant borrowed money on the promissory notes, he was a public servant receiving a monthly salary exceeding Rs. 300. During execution proceedings he pleaded that, inasmuch as the Public Servants (Liabilities) Ordinance, as amended on March 15, 1951, by Act No. 10 of 1951, protected public servants drawing a monthly salary of Rs. 520 or less, he was entitled under section 3 to be discharged from the proceedings.

[1] *(1949) 52 N. L. R. 186; (1947) 48 N. L. R. 200; (1951) 53 N. L. R. 469; (1940) 19 C. L. W. 129.*

Held, that, by virtue of section 6 (3) (*b*) of the Interpretation Ordinance, the amending Act No. 10 of 1951 did not operate retroactively so as to extend to the defendant a statutory protection which he had not enjoyed at the time when his liability was incurred under the promissory notes sued on.

APPEAL from a judgment of the District Court, Kandy.

C. R. Gunaratne, for the plaintiff appellant.

No appearance for the defendant respondent.

R. S. Wanasundera, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

May 27, 1954. GRATIAEN J.—

The defendant has at all material times been a public servant in receipt of a monthly salary exceeding Rs. 300 but less than Rs. 520. On 19th November, 1949, and 30th June, 1950, respectively he incurred a liability to the plaintiff on two promissory notes, and was sued by the plaintiff on 17th January, 1952, for the recovery of the aggregate balance sum and interest due on the notes. A decree for this amount and costs was entered against him on 30th September, 1952.

On 30th October, 1952, the learned District Judge allowed the plaintiff's application for execution of the decree in his favour, but shortly thereafter the defendant objected that all the proceedings in the action were void because they contravened the provisions of the Public Servants (Liabilities) Ordinance (Cap. 88) as amended by the Public Servants (Liabilities) Amendment Act, No. 10 of 1951. The present appeal is from an order of the learned judge upholding the objection and recalling the writ.

The question for our decision, shortly stated, is whether the amending Act which passed into law on 15th March, 1951, operates retroactively so as to extend to the defendant a statutory protection which he had admittedly not enjoyed at the time when his liability was incurred under either of the notes sued on. The learned judge, purporting to follow the ruling of this Court in *Fernando v. Khan* [1], took the view that the amending Act does have retroactive operation except only in cases where an action to enforce the liability of a previously unprotected public servant had been instituted before 15th March, 1951. In my opinion this is not the *ratio decidendi* of *Khan's case* (*supra*).

Section 2 (1) of the principal Ordinance protected " public servants " from being sued in Courts of law upon certain classes of transactions, but section 2 (2) expressly limited the scope of this immunity to those who were in receipt of a monthly salary of less than Rs. 300 *at the time when the liability sought to be enforced was incurred*. The defendant admittedly did not belong to the protected income-group when he became indebted to the plaintiff on the promissory notes sued on, and the common

[1] (*1952*) *54 N. L. R. 142.*

law right of the plaintiff to enforce the liability in civil proceedings was therefore unaffected by the impact of the Ordinance. Indeed, it was expressly preserved by section 2 (2).

So matters stood until 15th March, 1951, when the amending Act extended the protection of the principal Ordinance to " public servants " of a higher income-group to which the defendant admittedly belonged at all material times—namely, " public servants " whose monthly salary fell between Rs. 300 and Rs. 520.

The defendant was not represented in appeal, and, as our decision may well affect the rights and liabilities of other creditors and other public servants, we requested the Attorney-General to be good enough to arrange for Crown Counsel to appear before us as *amicus curiae*. We are indebted to Mr. Wanasundera for the assistance he has given us.

The clear answer to the problem under consideration is to be found in section 6 (3) (*b*) of the Interpretation Ordinance (Cap. 2). A repealing Act, unless it expressly so provides, does not affect " any right acquired " under the earlier law. The amending Act does not expressly, or even by necessary implication, purport to destroy or reduce the rights which the creditors of previously unprotected public servants had acquired *on transactions entered into before 15th March, 1951.* In the result, section 6 (3) (*b*) of the Interpretation Ordinance preserves the rights of the plaintiff against the defendant in respect of the promissory notes sued on.

Fernando v. Khan (*supra*) was concerned only with a situation in which a creditor had, before 15th March, 1951, commenced an action to enforce the liability of a previously unprotected public servant who subsequently claimed the protection of the amending Act. In such a case, the rights of the plaintiff in the pending action were clearly preserved by section 6 (3) (*c*) of the Interpretation Ordinance. But the judgment must not be regarded as authority for the proposition that the prior institution of an action is a condition precedent to the preservation of a creditor's right to enforce a liability incurred before the amending Act passed into law. In the present case, it is section 6 (3) (*b*) of the Interpretation Ordinance which keeps the plaintiff's rights alive, and this Court had no occasion in *Khan's case* (*supra*) to consider a situation such as has now arisen.

In my opinion, the judgment under appeal must be set aside. The previous order dated 13th October, 1952, allowing the plaintiff's application for execution of his decree must be restored, and any seizure effected in pursuance of that order must be declared valid. The plaintiff is entitled to the costs of this appeal and to the costs of the inquiry in the Court below.

SANSONI J.—I agree.

Appeal allowed.