

1937

*Present : Moseley J. and Fernando A.J.*IBRAHIM SAIBO *et al.* v. PHILIPS.

105—D. C. Kurunegala, 18,79

Execution—Gratuity to public officer—Not exempt from seizure—Civil Procedure Code, s. 218 (g).

A retiring allowance paid to a public officer under clause 15 of the Minutes on Pensions is not exempt from seizure under section 218 (g) of the Civil Procedure Code.

A PPEAL from an order of the District Judge of Kurunegala.

H. V. Perera, K.C. (with him *Mahroof*), for plaintiffs, appellants.

S. de Zoysa, for defendant, respondent.

Cur. adv. vult.

October 20, 1937. MOSELEY J.—

The appellants seized, under a writ of execution, certain monies alleged to belong to the respondent in the hands of the Controller of Finances and Supply. There is no evidence on record to indicate the nature of the monies seized, but throughout the proceedings it appears to have been taken for granted that they represent a retiring allowance granted by the Governor as provided by section 15 of the Minutes on Pensions. That at least was the attitude taken up by Counsel for the respondent, and I do not think that any useful purpose would be served by remitting the case for evidence on the point.

Following the seizure, the respondent moved that the monies be released on the ground that they were exempt from seizure under section 218 of the Civil Procedure Code, paragraph (g) whereof provides that “stipends allowed to naval, military, and civil pensioners of Government

and political pensions" are not liable to seizure. The learned District Judge was of opinion that the "gratuity" is not liable to seizure and ordered its release. The appeal is against that order.

Now, it will be observed that the exempting provision upon which the respondent relies makes no express mention of a gratuity. This word appears in the corresponding paragraph of section 266 of the Indian Civil Procedure Code of 1882, which served as a model for the Ceylon Code which made its appearance seven years later. While it must be conceded that the object of the paragraph is to protect pensions payable to Government officers, it would seem that the omission of the word "gratuity" must have been deliberate. Counsel for the respondent argued that the word "stipend" is sufficiently comprehensive to include a payment of this nature. In my view, the word is inseparable from the notion of periodical payments and cannot therefore embrace a lump sum such as the payment in the present case.

Counsel for the respondent further argued that the payment is in the nature of a gift, that the respondent had no disposing power over the monies, and that so far he has no seizable right, inasmuch as it is open to the Governor to revoke the grant. He cited in support an Indian case in *6 Allahabad* p. 643. It seems to me, however, that in the present case the Governor had approved the grant, the Legislature had voted the money, and the latter was in the hands of the Controller to whom the respondent was in a position to give directions as to its payment either to himself or to another party, e.g., his bankers.

On these grounds I would allow the appeal with costs, and declare that the monies are liable to be seized.

FERNANDO A.J.—I agree.

Appeal allowed.

