

Present: Fisher C.J. and Driberg J.

1929

AMBALAVANAR v. KANDAPPAR.

56—D. C. Jaffna, 20,034.

*Pension—Pensioner of Federated Malay States—Deposit at Kachcheri—
Seizure—Writ of execution—Civil Procedure Code, s. 218 (g).*

Money deposited at the Jaffna Kachcheri as pension due to a person who had been employed under the Federated Malay States Government is not exempt from seizure under section 218 (g) of the Civil Procedure Code.

A PPEAL from an order of the District Judge of Jaffna. The appellant obtained a writ in execution of a decree against the respondent, who was a pensioner of the State of Selangor, and seized a sum of money deposited at the Jaffna Kachcheri as pension due to the respondent by arrangement with the Government of the Federated Malay States. The learned District Judge held that the respondent's pension was exempt from seizure under a writ obtained in Ceylon.

Weerasooria, for defendant, appellant—The defendant's salary does not come under any one of the exemptions mentioned in section 218 of the Civil Procedure Code. Sub-section (g) speaks of civil pensioners of Government and political pensions. Section 5 defines Government as the person or persons authorized by law to administer Executive Government in Ceylon. The plaintiff is a pensioner of the State of Selangor and cannot therefore claim this exemption. Political pensioners may be placed on a different footing. The plaintiff is a civil pensioner.

Cross da Brera, for plaintiff, respondent—Under section 218 only "Saleable property" can be seized. The pension of the plaintiff is not only not saleable but it is not seizable. Under rules made by the Federated Malay States Government the pension of the plaintiff cannot be seized in execution. The English Courts have declined to uphold the seizure of the pension of an officer in

1929
Ambakivinar
v.
Kandappar

the Indian Army on the ground that they should see that the pension rules of another country are respected (*Lucas v. Harris*¹ *Birch v. Birch*²). Our Courts too should adopt the same principle. Public policy requires that pensions should be free from seizure.

Weerasooriya, in reply.

July 5, 1929. FISHER C.J.—

In this case the appellant obtained a writ in execution of a decree for payment of costs by the respondent. The respondent is a pensioner of the State of Selangor, and by arrangement between the Federated Malay States Government and the Ceylon Government the pension is paid to him from the Jaffna Kachcheri. The sum of Rs. 74 was deposited in the Kachcheri in respect of the pension and the appellant applied to the District Court for an order authorizing its seizure under his writ. It appears that in the Federated Malay States pensions are exempt from seizure, and the learned District Judge held that the sum in question in this case was therefore exempt from seizure in Ceylon and dismissed the appellant's application. In the course of his judgment the learned Judge said: "As a matter of public policy the State protects the salaries and pensions of its servants from execution. The Federated Malay States form a federation and come under the category of British possessions or protectorates. The principle enunciated is also common to Ceylon, which also protects the pensions of its servants. I think the Courts of this colony are bound to respect the principle where it concerns the pensions of another colony."

In the absence of any express legislation, I do not think that the law of the Federated Malay States on this question can be held to be operative in Ceylon. If this sum is exempt from seizure in Ceylon, it can only be so by virtue of some express provision of the law which is in force in Ceylon. The only such provision which, it is sought, to make applicable to this case is sub-section (g) of section 218 of the Civil Procedure Code, and, in my opinion, we are entirely confined for the purposes of our judgment to a consideration of the construction of that sub-section. The sub-section exempts from seizure or sale (*inter alia*):—" (g) Stipends allowed to naval, military, and civil pensioners of Government and political pensions." There is, in my opinion, nothing in the subject or context which requires us to extend the meaning of the word "Government" beyond that assigned to it in the interpretation clause of the Civil Procedure Code, section 5, under which the word "Government" is to be construed as meaning "the person or persons authorized by law to administer Executive Government

¹ (1886) 18 Q. B. D. 127

² (1883) 8 P. D. 163.

in Ceylon." Clearly, therefore, the sum in question does not come within that sub-section and, if the amount which the appellant is entitled to recover under the decree is still unpaid, there is nothing to prevent it being available for the appellant in executing his decree against the respondent.

1929
FISHER, C.J.
Ambalavannar
v.
Kandappan

The appeal, therefore, is allowed and the respondent must pay the costs of the contest in the District Court and of this and of the previous appeal.

DRIEBERG J.—I agree.

Appeal allowed.
