IMRAY *v.* PALAWASEN.

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D. C., Ratnapura, 884.

Planter and coolies—Promissory note given by kankani to superintendent—Consideration therefor—Customs of tea planters in Ceylon—Tundu *system of advances—Object for which kankani gives promissory note to superintendent—Principal and surety.*

Where coolies owed debts to superintendents of various estates on which they had been previously working and to Chetties and boutique-keepers, and where it was proved that, according to the custom among tea planters in Ceylon, one tea planter will not take into his service a cooly who had served on another tea estate unless he is satisfied that he is leaving his employer with the latter's consent, and that he has paid off all the moneys he owed to the former employer in respect of advances and shop debts; and where it was usual for the kankani who had collected the coolies and taken them to the new employer to grant a promissory note to him for the amount mentioned in the *tundus*, or written memorandums of the former employers showing the sum for which the coolies are indebted,—

Held, upon the evidence led, that such a promissory note was given by the kankani only as security that the coolies would pay the amount mentioned in the note by working it off; that, so long as the coolies worked on the estate, the liability of the kankani on the note did not arise; and that if the coolies ran away or died, the employer could sue the kankani.

And where the kankani joined with P, another kankani who did not live on the estate where the coolies worked nor superintended the labour himself, in making the promissory note, and a dispute arose between the two makers, when it was found that out of the amount of the promissory note exactly half thereof had been worked off, and there remained only the other half due; and where the employer, having received payment in full settlement from the plaintiff, transferred to him the whole labour force together with the promissory note duly endorsed, without however informing him that P (the joint maker), though labouring on another estate, was recognized as his kankani and might have exercised supervision over the coolies to see that they paid their debts; and where it was proved that, when coolies go from one estate to another, it was the practice of the late employer to hand the promissory note back to the kankani, and not to his new employer,—

Held, in an action brought by the new employer against P on the promissory note which he had jointly made with the other kankani, that as the plaintiff had taken over the coolies without recognizing the defendant as their kankani and so giving him a control over them as regards the payment of their debts, the position of the defendant as surety for the coolies was materially affected, and that he was entitled to be discharged from liability on the note in suit.

THE plaintiff, alleging himself to be the Manager of Hapugastenna estate, stated in his plaint that the defendant and one Carumbairam Kankani granted a promissory note for Rs. 15,560.48 in favour of "the Superintendent of the New

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Rasagala estate " payable on demand, and that the said superintendent, to wit, P. D. G. Clark, to the plaintiff as Manager of Hapugastenna estate; that plaintiff had received payment of Rs. 7,780.24 upon the said note; and that there was now due and owing to the plaintiff a balance sum of Rs. 7,780.24, for which he prayed judgment.

The defendant admitted the note as also the endorsement thereof, but he pleaded that it was made and delivered to the payee under the following circumstances:—According to the practice and custom among tea planters in Ceylon, when a body of coolies employed on one estate leaves the same and takes service on another estate the superintendent of the latter estate has to pay to that of the former the amount of the advances made and debts due to the coolies, which then becomes a debt due by the coolies to the second estate during their employment; and the amount so paid, or so much thereon as may remain unliquidated by reduction out of wages or otherwise, is, when the coolies again are discharged from the second estate and take service on another estate, in turn paid to the proprietor or superintendent of the second estate by the new employer, such bodies of coolies being under the leadership of a chief kankani, who receives head-money from the employer for the time being according to the number of coolies.

Defendant, after pleading this custom, alleged that in April, 1897, the advances and debts of certain coolies who were about to be discharged from a certain estate amounted to Rs. 15,560.48; that Mr. Clark, Superintendent of the New Rasagala estate, desiring to take them into his service, paid the same amount to his former employer; that they and their head kankani Carumbairam went on to the New Rasagala estate; that as collateral security for the said coolies not leaving the said estate without discharging their debt, Carumbairam Kankani and the defendant made the note in favour of the Superintendent of the New Rasagala estate, agreeing between themselves to divide the head money due in respect of the said coolies; that save as aforesaid there was no valuable consideration for the making of the said note; that subsequently and before the endorsement of the said note to the plaintiff, the said coolies were discharged from service by the Superintendent of the New Rasagala estate and were with Carumbairam Kankani taken into service by the plaintiff on Hapugastenna estate; that, whether the debts of the coolies were paid up or not, the liability of the defendant on the promissory note was discharged when the said coolies were discharged from service on the New Rasagala estate and taken into service on

Hapugastenne estate; that there was no value or consideration for the endorsement of the note to plaintiff; and that at the time of such endorsement the plaintiff was fully aware of the circumstances above stated.

The District Judge, after evidence heard, dismissed the plaintiff's action, holding that the note was granted by the makers as only security for debts due by their coolies; that it should have been discharged and returned to the defendant as soon as plaintiff agreed to take over the coolies and pay their debts; that it was proved that this debt of the coolies had been paid by plaintiff to Mr. Clark; and that therefore the defendant, as surety, was entitled to be discharged.

Plaintiff appealed.

Wendt, Acting A.-G., for appellant.

H. J. C. Perera (with *Sampayo*), for respondent.

BONSER, C.J.—

This is an action on a promissory note brought by the holder against one of the makers. The promissory note is dated 30th April, 1897, and is in the following terms:—" On demand we, the " undersigned Palavasam, Head Kankani, and Carbyarum, Kan- " kani, of above estate, jointly and severally promise to pay to the " Superintendent of New Rasagala estate the sum of Fifteen " thousand Five hundred and Sixty Rupees and Forty-eight Cents, " for value received."

That promissory note was made under the following circumstances. The two makers are kankanis who had collected a labour force of some two hundred coolies and took that force to the New Rasagalla estate, of which the superintendent was Mr. Clark. These coolies owed debts to superintendents of various estates on which they had been previously working and to Chetties and boutique-keepers. The amount of those debts was the amount for which the promissory note was given. It is the well-understood practice amongst tea planters that one tea planter will not take into his service a cooly who had served on another estate, unless he is satisfied that he is leaving his employer with the latter's consent, and that he has paid off all the moneys he owes to the former employer in respect of advances and shop debts.

It is usual for the gang of coolies (for there is generally a gang under the headship of one kankani) to produce to the person with whom they wish to take service what is called a *tundu*, which is a written memorandum by the former employer to the effect that he is willing to discharge them from his service

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upon being paid a certain sum stated in the *tundu*, being the amount of their debts; and it was proved to be the practice that the kankani should give to the new employer a promissory note for that amount after the new employer has paid it to the former employer. It was stated in the evidence in this case, and, in my opinion, proved, that these promissory notes are given by the kankanis as security that the coolies would pay that amount by working it off.

If the coolies run away or die, then the employer can sue the kankani. But the custom is that, so long as the coolies work on that estate, the liability of the kankani on that promissory note does not arise.

In the present case, a difficulty has arisen in consequence partly of a quarrel between the two makers of the note and partly in consequence of the course adopted by Mr. Clark. Mr. Clark was apparently anxious to get rid of this gang, as their advances were very heavy and amounted to a large sum, and he found that Mr. Imray was willing to take them off his hands. It appears that the defendant was a sort of sleeping partner with the other maker of the note in his labour force, but he did not live on the estate and superintend the labour himself. He was living on another estate in the neighbourhood, where he was head kankani. The coolies were managed entirely by the other maker, Carbyarum. A dispute arose between Carbyarum and this defendant, and the defendant was anxious to sever his connection with Carbyarum, and so informed Mr. Clark. Mr. Clark gave a *tundu* to Carbyarum, which was accepted by the plaintiff in this case. By that time the amount of the coolies' debts had been reduced by their having worked off a part of it, and the debt amounted to exactly half of what it was, that is to say, Rs. 7,780.20, which is the amount sought to be recovered in this action. The plaintiff paid Mr. Clark this sum to take over the whole of this labour force. Mr. Clark did not inform Mr. Imray that the defendant had anything to do with these coolies, and, as the District Judge says, this is the real origin of the trouble in this case.

The plaintiff thought he was dealing with Carbyarum alone, and had no idea that the defendant had any connection with the coolies. So that, as far as regards the plaintiff, he is now suing for a benefit which he had not bargained for when he took over these coolies, and which he had no idea he was going to get. The evidence is that when coolies go from one estate to another the late employer, when he is paid by the new employer, hands the promissory note, which had been given him by the kankani

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in security of the debts of the gang, back to that kankani. It is not the practice to hand it over to the new employer. For some reason or other, which is not explained, Mr. Clark thought fit to depart from the usual practice, and instead of returning this promissory note to the makers he endorsed it over to the plaintiff, and the latter thereupon put it in suit as against this defendant. I must say I do not quite understand his position, for it was admitted at the trial by his counsel that he had been treating the amount for which he now sues the defendant as the debt of the coolies, and that he is still making deductions from their wages in respect of these debts. So that it may be that by this time there is absolutely nothing due in respect of this debt. In my opinion, the judge came to a right conclusion in substance, though I do not agree with that part of his judgment in which he says that this document was not a promissory note. I agree with him in his finding as to the custom and the fact that this note was merely given as a security to secure Mr. Clark against loss. Again, if this note was given as a security and the defendant was merely a surety, his position has been altered materially without his consent. So long as these coolies were employed under Mr. Clark this defendant was recognized as his kankani and might have exercised supervision to see that they paid their debts. They having now gone to another employer who knows nothing of this defendant, and has not recognized him as a kankani of these coolies, it is obvious that his position is materially affected. That being so, I am of opinion that the appeal should be dismissed.

MONCREIFF, J.—

I agree with the opinion of the Chief Justice. A kankani who gives a promissory note of this description does so in the capacity of a surety. In this case, the defendant gave the note in accordance with the usual custom which prevails, but subject to certain special terms binding only on him and on the person to whom he gave the note. When Mr. Clark allowed the coolies to leave the estate, in my opinion he discharged the defendant from his liability, and had no power to hand over the security to the plaintiff in this case.