1902.

September 10 and 15.

SOKALINGAM CHETTY *v.* DE HOEDT.

C. R., Colombo, 19,153.

Promissory note—Material alteration—Unauthorized insertion of rate of interest—Bills of Exchange Act, 1882, ss. 20 and 62—Rights of holder in due course.

In an action brought by the endorsee of a promissory note against the maker for the principal and interest alleged to be due thereon, the defendant pleaded that he did not stipulate for interest, and that the figures appearing on the face of the promissory note as regards interest were inserted without his authority.

Held that, though the unauthorized insertion of the rate of interest was a material alteration of the note, yet, as such alteration was not apparent to the holder in due course, he had the right, in terms of section 64 of the Bills of Exchange Act, 1882, to enforce payment of the principal only, according to the original tenor of the note.

THE plaintiff in this action sought to recover from the defendant a sum of Rs. 120, being principal, and Rs. 120 interest, alleged to be due to him upon a promissory note made by the defendant in favour of one Susey Victoria, and by him endorsed to the plaintiff. The defendant denied that there was any agreement on his part with the payee of the said promissory note to pay interest at the rates of 45 per centum per annum, and that the insertion of the figures 45 on the note was made without his authority.

The Commissioner, after hearing evidence, entered up judgment for the plaintiff for Rs. 120, with legal interest from the date of action till payment in full. He believed the defence set up was straightforward and bore the impress of truth.

The plaintiff appealed.

The case was argued on the 10th September, 1902.

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Walter Pereira, for appellant.—The defence may bear the impress of truth, but it cannot affect the appellant, who is a holder in due course, and who is not proved to have been fixed with the knowledge of the alleged agreement between the maker and payee. On the defendant's own showing the note was a printed one and the amount of interest was left blank. If the payee filled the blank up, an innocent endorsee must not suffer, but rather the maker, whose carelessness enabled the payee to get value from the endorsee. If defendants story is true, he will have his remedy against the payee. Bills of Exchange Act of 1882, section 20.

Cur. adv. vult.

15th September, 1902. MONCREIFF, A.C.J.—

On the 5th December, 1898, the defendant made a note in favour of one Susey Victoria for a sum of Rs. 120 and, as alleged by the plaintiff, with interest thereon at 45 per cent. per annum. The plaintiff says that Susey Victoria endorsed the note to him in consideration of the payment of Rs. 220. The plaintiff then sued the defendant, the maker of the note, who was astonished to find that the rate of interest had been inserted in the note at 45 per cent. The note was made upon a printed form, and the rate of interest was inserted in the concluding words of the form. The defendants says that he did not fill in the interest at 45 per cent. or at any other figure; and the Judge believed him, and I believe him.

The plaintiff say that it is quite immaterial whether the payee inserted the interest or not, because by virtue of section 20 of the Bills of Exchange Act he was entitled to fill in the blank which the defendant had left. By that provision the holder of the note has *primâ facie* authority to insert such an amount as the stamp will cover, and when the note is " wanting in any material particular " to fill up the omission in any way he thinks fit.

Now, I have some doubts as to this insertion being in respect of a material particular, because, as a matter of fact, the amount of stamp duty is not affected by the interest; that is to say, the stamp which would cover a note for a certain amount is sufficient, although that amount when increased by the amount of interest is greater than the value covered by the stamp. However, the fact which we have to deal with here is that, after the note was made and given, the rate of interest was inserted by the payee. By section 64 of the Bills of Exchange Act it is provided that a note is avoided if it is materially altered, except as against persons who had a hand in the alteration or were privy to it, or subsequent endorsers. It appears to have been held that there is a material alteration if a specified rate of interest at 3 per cent. is altered to 2½ per cent., or if a bill payable " with lawful

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MONCRIEFF, A.C.J.

interest " is altered by substituting the words " interest at 6 per cent."

Lord Justice Brett says* that any alteration seems to be material which would alter the business effect of the note is used for any business purpose. There is, however, the proviso of section 64 to the effect that, where the material alteration is not apparent, the holder in due course may avail himself of the note as if it had not been altered, and may enforce payment of it according to its original tenour.

In this case it does not appear that the plaintiff had anything to do with the alteration, and the alteration is not apparent on the face of the note. The plaintiff is therefore entitled to recover the amount of the note according to its original tenour. That the defendant has admitted all along, and it is on that basis that the Commissioner has given the plaintiff judgment. I agree with the Commissioner's judgment. The plaintiff's appeal is dismissed with costs.