1902.
August 28.

VELANDAN *v.* PERERA.

C. R., Colombo, 18,010.

Promissory note—Public Servants' Liabilities Ordinance, No. 2 of 1899, s. 3—Liability contracted before commencement of Ordinance.

A promissory note given in renewal of another promissory note simply suspends the liability of the maker until the dishonour of the new note.

Therefore, an action instituted against a public servant upon a promissory note which was made after the commencement of the Public Servants' Liabilities Ordinance, but in renewal of a liability contracted before such commencement, cannot be taken exception to, under section 3 of that Ordinance.

ACTION on a promissory note dated 19th April, 1899. Plea taken under the Public Servants' Liabilities Ordinance (No. 2 of 1899), which came into operation on 6th March, 1899: no action could be maintained against the defendant, as he was a public servant receiving a salary of Rs. 125 a month from the Government.

The Commissioner dismissed the plaintiff's action on the ground of the above exception.

The plaintiff appealed.

F. M. de Saram, for appellant.—The note sued upon was shown to be one given in renewal of another note made before the Ordinance No. 2 of 1899 commenced. A promissory note given in renewal is not a discharge of the old debt, but only a conditional payment. If at its due date the note is dishonoured, the original liability is revived (*Chalmer's Bills, p. 305*). In the present case the new note was dishonoured, and the debt due thereon is none other than the old debt, which existed before the Ordinance came into operation. The dismissal of the action is therefore wrong.

Wadsworth, for defendant, respondent.—The plaintiff does not sue upon the old promissory note, but upon the one dated 19th April, 1899. The Ordinance draws no distinction between old liability and new liability. The note sued upon clearly falls within the express terms of the Ordinance (section 3, sub-section 4).

28th August, 1902. MONCREIFF, A.C.J.—

The plaintiff sues the defendant upon a promissory note dated the 19th April, 1899, which fell due on the 18th June, 1899. It was presented for payment at the Bank of Madras and was dishonoured and noted for non-payment. In reply to the claim, the defendant pleaded the benefit of section 3 of Ordinance No. 2 of 1899, which is

styled the Public Servants' Liabilities Ordinance. Sub-section (4) provides that the benefit of the section is not to extend to any liability contracted before the commencement of the Ordinance, that is to say, before the 6th March, 1899. It became a question, therefore, whether the liability in this case was contracted before the 6th March, 1899.

The plaintiff says that this note was a renewal of a note which was made on the 15th February, 1899, which fell due on the 16th April, and was noted at the bank for non-payment. He says, in fact, that the liability was contracted a considerable time ago, and had been the subject of several renewals before the making of this note. The defendant says that the note sued upon had no connection with any previous note, and that it was made in respect of a debt contracted at the time it was made.

The learned Commissioner has not found which of those stories is correct, and I think that the case must go back in order that a finding upon that issue may be recorded. If the defendant's story is true, he is entitled to the benefit of the Ordinance; but if the plaintiff's story is true, it seems to me that the liability was contracted before the Ordinance came into operation.

It is clear that a negotiable instrument is only conditional payment of a debt, and that a bill given in renewal of a former bill simply suspends the liability until the dishonour of the bill. When the bill is dishonoured, the liability is revived. Mr. Wadsworth endeavoured to persuade me that, although that was the case, the liability in this instance could not be dated back to the day on which the preceding note of February, 1899, was made. He said that if the dishonour of the last note revived the old liability, then the plaintiff should have sued upon the old note, or upon the liability which was revived. I am not aware that such is the practice. So far as I am aware the plaintiff is entitled to sue upon the dishonoured note, and at present I should be disposed to think that the mere fact that he does so does not prevent the renewal of the liability from which the note sued upon has sprung. If the plaintiff's statement is correct, this note was a renewal of the note of February, 1899. If such should prove to be the case, I am inclined at present to think that there should be judgment for the plaintiff, but the point may remain open for consideration. More than that it is impossible to say until the facts have been found.