Present : Pereira J. and De Sampayo A.J. 1913.

VYRAMUTTU *v.* SUDUAPPU *et al.*

147—D. C. Batticaloa, 3,622.

Promissory note—Assignment by deed—Assignee not a holder in due course—Past consideration insufficient to support a note.

The assignment of a promissory note by deed is a sufficient transfer of the transferor's interest on the note. The assignment has not the full effect of an indorsement, because the plaintiff cannot be looked upon as a "holder in due course" of the note, unaffected by defences of payment, lack of consideration, &c., which the maker may have as against the assignor ; but whatever defence the maker may maintain as against the assignor is also maintainable as against the assignee.

Under the Bills of Exchange Act (section 27) valuable consideration for a note may be constituted by (1) any consideration sufficient to support a simple contract, (2) an antecedent debt or liability. A past consideration is not a consideration which will support a simple contract.

THE facts appear sufficiently from the judgment.

J. Grenier, K.C., for the plaintiff, appellant.—The plaintiff is entitled to sue on the note by virtue of the deed of assignment. It is clear from the evidence that the note was in the possession of Mr. Sheriff on behalf of the payee.

Balasingham, for the defendants, respondents.—There is no consideration for the note. There is no evidence to show that Ponniah spent money in the testamentary case in which the first defendant was a party at the request of the first defendant. Even if the money was spent on behalf of first defendant, it is clear from the evidence that many persons were spending money in the hope of getting a share of the estate. There does not appear to have been any agreement to repay the money. If the payee could not sue first defendant apart from the note, he could not sue on the note. There was no antecedent debt or liability at the date of the making of the note. A past consideration would not support a note.

J. Grenier, K.C., in reply.

Cur. adv. vult.

June 16, 1913. PEREIRA J.—

In this case the plaintiff sues for the recovery of a half share of the principal on a promissory note granted by the first defendant to the second defendant and one Ponniah. The plaintiff bases his

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claim on a deed of assignment, whereby Ponniah conveyed to the plaintiff his " right, title, and interest " in and to the note. The first issue framed was whether the plaintiff was entitled to sue on the note filed by virtue of deed No. 10,396 dated September 6, 1912, that is, the deed of assignment referred to above. I think it is clear that the assignment was a sufficient transfer to the plaintiff of the rights of Ponniah on the note. The assignment has not the full effect of an indorsement, because the plaintiff cannot be looked upon as a " holder in due course " of the note, unaffected by defences of payment, lack of consideration, &c., which the maker may have as against the immediate payees; but whatever defence the maker may maintain as against the payees is also maintainable as against the plaintiff.

One of the defences in the case appears to me to be that the promissory note was not in fact granted by the first defendant to the second defendant and Ponniah, but that the whole transaction was inchoate. The note, it is said, was left in the hands of Mr. Sheriff, and it was to be operative only when, on the fulfilment of certain conditions, he parted with it by giving it to the payees. It is argued that this defence is not open to the defendants under the issues framed, but I find there is an issue that would admit of such a defence, and that is: " Is plaintiff entitled to recover the amount claimed ? " Strictly speaking, an issue should never be framed in such general terms. Any defence would be covered by such an issue. But I find that the issue has been expressly agreed to by the plaintiff, and that being so, it is not for him to complain against its being given its full effect. Now, as to the merits of this defence, it is quite clear on the evidence that it is only when the note was handed over by Mr. Sheriff to the payees that they were to be entitled to the benefit of it. It was suggested by the counsel for the appellant that possibly Mr. Sheriff was an agent of the payees, and that he held the note at their instance; but that is not the effect of Mr. Sheriff's evidence. The question was pointedly put to him whether the note was left with him because the payees did not trust each other. His answer was: " No, it was the makers who wished me to keep the note." This answer places beyond doubt the fact that so long as Mr. Sheriff held the note in question in this case it was to be deemed to be held by the maker. The next defence is that there was no consideration for the note. It appears that there was some costly and prolonged litigation over the will of one Sinne Tamby, Vanniah of Kallar, and in the course of this litigation persons who took sides with the parties immediately concerned spent money over matters in connection with the litigation; and possibly Ponniah, as he says in his evidence, spent money for this purpose, but there is not a scrap of evidence to show that he did so at the request of the first defendant, or that the first defendant in any way became liable to pay him the money so spent.

Anyway, the District Judge holds that by reason of a settlement arrived at by and between all the parties concerned the executor of the will was allowed to remain in possession of the property of the estate of the deceased and pay all persons who had spent money as stated above, and that he did so, and thereby the liabilities of all parties on promissory notes signed in the course of the settlement which were to remain as mere security were determined, or rather no liabilities actually accrued on those notes. Be that as it may, there was, to my mind, really and truly no consideration for the note sued upon. By section 27 of the Bills of Exchange Act, 1882 (45 and 46 Vict. ch. 61), valuable consideration for a bill may be constituted by (1) any consideration sufficient to support a simple contract, (2) an antecedent debt or liability. Clearly, in the present case there was no antecedent debt or liability. As observed already, there is nothing to show that Ponniah spent any moneys at the request of the first defendant, and that thereby or otherwise the first defendant incurred any debt or liability to Ponniah. As regards consideration to support a simple contract, it is clear law that a past consideration is in effect no consideration at all (see *Anson on Contracts, 9th ed., pp. 98, 101*).

I would affirm the judgment appealed from with costs.

DE SAMPAYO A.J.—I agree.

Appeal dismissed.