1938 *Present:* **Maartensz and Koch JJ.**

ADAIKAPPA CHETTY *v.* LETCHUMAN CHETTY.

290—D. C. Negombo, 10,207.

Promissory Note—Document with an account followed by promise to pay balance due—Payee indicated with reasonable certainty—Restrictive endorsement—Bills of Exchange Ordinance, No. 25 of 1927, s. 35 (1).

A document was drawn up in the following terms:—Credit of Pana Lana Nawanna Suna Pana of Negombo. Debit of Ana Nana Theeanna Layna of the above place. Then followed a statement of accounts showing that on a certain date a sum of Rs. 3,525 was due and a promise to pay "to your order on demand Rs. 3,525 with interest at ½ per cent. per month". It was signed A. N. T. L. Letchuman. On the reverse side of the document were the following words:—The principal and interest herein mentioned shall be collected from the therein signed Ana Nana Theeanna Layna by Rawanna Mana Adaikappa Chettiar. (Signed) P. L. N. S. P. Suppramaniam.

Held, that the document was a promissory note and that the payee was indicated with reasonable certainty.

Held, further, that the endorsement was a restrictive endorsement within the meaning of section 35 (1) of the Bills of Exchange Ordinance, No. 25 of 1927.

THIS was an action on a promissory note brought by the plaintiff as endorsee against the defendant, the maker of the note. The District Judge gave judgment for the plaintiff. The main question argued in appeal was whether the document the terms of which are set out in the head-note was a promissory note.

N. E. Weerasooria (with him *W. W. Mutturajah* and *H. A. Chandrasena*), for defendant, appellant.—The document sued upon has the characteristics not of a promissory note but merely of an account stated. The action is therefore barred by prescription. The payee is neither named nor adequately indicated by the letters P. L. N. S. P. There is also no proper endorsement but a mere written promise or direction (on the reverse side of the document) that the money "shall be collected" by a certain person. These facts seems to indicate that it was not the intention of the parties to make a promissory note at all but a mere written memorandum only of some obligation based upon a looking into of accounts between them. The holder of a note into whose hands it may lawfully come should be able to say without further inquiry who is liable to be sued upon the note. Every bill of exchange or promissory note should be upon the face of it, a contract complete in itself. Even if the document has some or all of the properties of a valid note, it is the intention of the parties to create the obligations arising upon a promissory note that determines the true nature of the document—see *Sibbree v. Tripp* [1].

N. Nadarajah (with him *G. E. Chitty*), for plaintiff, respondent.—Every requirement of the Bills of Exchange Ordinance necessary for the creation of a valid promissory note is satisfied by the terms of the document sued upon.

[1] *15 M. & W. 23.*

As regards the payee's name it is only necessary that the payee should be indicated with reasonable certainty. See section 7 (1) of the Bills of Exchange Ordinance. Particularly among the Natucottai Chettiars who are admittedly the parties to this transaction, it is common to use the initials alone to designate a party. The endorsement though usually by a signature only, does not become invalid by reason of the use of additional words. At lowest there is here a restrictive indorsement contemplated by the Ordinance. See section 35 (1) of the Act. Even a mere agent for collection who is a holder can sue. See *Halsbury (Hailsham ed.), vol. II., p. 657.* Even if a wrong name has been given to the payee it can be shown whom the parties intended. See *Willis v. Barrett*[1]. See also the case of *Green v. Davis*[2]. The defendent here has actually admitted that the person referred to was Suppramaniam Chettiar. That the document was intended as a promissory note seems further to be indicated by the fact that it has been stamped as such (viz., with a six-cents stamp). The action as on a promissory note would not be statute-barred in less than six years and the plaintiff is therefore in time.

Cur. adv. vult.

July 13, 1938. KOCH J.—

The plaintiff, as endorsee, sued on a document which he alleged was a promissory note made by the defendant. There was no defence on the merits. The learned District Judge entered judgment for the plaintiff. The defendant has appealed.

The argument put forward on behalf of the appellant was confined to two points, namely—

(1) that the document sued upon is not a promissory note for two reasons:—(*a*) that the name of the payee does not appear nor has the payee been indicated with reasonable certainty, and (*b*) that in other respects the document does not conform to the requirements necessary to constitute it a promissory note; and

(2) that if the document is found to be a promissory note, the endorsement is defective and does not give the plaintiff a right to sue.

The document is in Tamil and it was agreed that the translation D6 should be accepted as correct.

Mr. Weerasooria's argument is that the document can only be regarded as an account stated coupled with a promise to pay.

Now, assuming for the purposes of the argument that the document is an account stated, each of the parties to it must have known who the other was. The document commences with the words, "Credit of Pana Lana Nawanna Suna Pana of Negombo, debit of Ana Nana Theeanna Layna of the above place". Then follow the words referring to a payment of Rs. 3,000 and stating that the balance on this day the 1st day of April, 1934, was Rs. 3,525. Immediately after this are the words, "I shall pay to your order on demand the said "sum of Rupees Three thousand Five hundred and Twenty-five together with interest thereon at ½ per centum per month and take back this letter". The document is signed by A. N. T. L. Letchuman, the defendant. This shows that the words, "debit of ", were regarded as meaning debtor and the initials, Ana Nana

[1] *(1816) 2 Stark 29.* [2] *4 B. & Cr. 235.*

Theeana Layna, referred to Letchuman. Applying the same reasoning, the words, "credit of", should be regarded as meaning creditor and the initials, P. L. N. S. P., must have been intended by the signatory to also refer to the individual who was known by these initials. It is a common practice among Chetties to refer to a member of their community by his initials which he obtains from his father's name, and sometimes from his grandfather's name as well.

Two cases, namely, *Green v. Davis* [1] and *Sibbree v. Tripp* [2], were cited, the latter by the appellant's and the former by the respondent's Counsel. I do not think that it is necessary to comment on either of these decisions as the language in the documents dealt with in those cases was different from that in the document before us.

Section 7 (1) of the Bills of Exchange Act, 1882, runs:—"Where a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty".

In *Willis v. Barrett* [3], the bill was payable to "the order of J. Smythe". It was held that evidence was admissible to show that J. Smith was intended to be described thereby.

I cannot therefore see why in the case before us, in a transaction between Chetties where in the document a Chetty is referred to and described by his initials by another Chetty, extrinsic evidence cannot be led to show who the individual described was intended to be. I therefore hold that the payee on the document sued upon has been indicated with reasonable certainty. Moreover, it is admitted that the person referred to was Suppramaniam Chettiyar—*vide* paragraph 3 of the answer.

On the next point, I am of opinion that the words I have quoted from the document read in conjunction with the context contain all the necessary essentials of a promissory note, and that it was intended by the parties that the document should operate as a note, the payee being P. L. N. S. P.

The value of the stamp which has been affixed is six cents—just what is necessary for an "on demand" note. Had the document been intended to be an account stated, the stamp value would have been considerably higher. The words, "pay to your order", mean "pay to you or to your order". In *Willis v. Darrett* (*supra*), the words were, "to the order of Smythe", and it was held that the document was a bill.

The remaining point is whether the endorsement is in order.

On the reverse side of the document are the words, "the principal and interest herein-mentioned shall be collected from the therin signed Ana Nana Theeanna Layna by Rawanna Mana Adikappa Chettiar of Nattarasankottai", and immediately below this is the signature of P. L. N. S. P. Suppramaniam.

Now, the Bills of Exchange Act to which I hve referred provides for various kinds of endorsements and one of them is what is known as "a restrictive endorsement". Section 35 (1) refers to such a type of endorsement and defines it as one *inter alia* which expresses that it is a

[1] *4 B. & Cr. 235.* [2] *15 M. & W. 23.*

[3] *(1816) 2 Stark 29.*

mere authority to deal with the bill as directed, *e.g.*, for collection. Sub-section (2) states that a restrictive endorsement gives the endorsee the right to receive payment on the bill and to sue any party that the endorser could have sued.

I therefore hold that the bill has been duly endorsed by the payee as a restrictive endorsement and that the endorsee for collection is Rawanna Mana Nana Rawanna Mana Adaikappa Chettiar, who can rightly sue. He is the plaintiff in the case. I wish to point out that in this endorsement Letchuman Chetty, the maker, is referred to only by his initials, once again showing the Chetty practice of referring to a member of the community by his initials.

The appeal is dismissed with costs.

MAARTENSZ J.—I agree.

Appeal dismissed.