1934 *Present :* **Garvin S.P.J.**

FERNANDO *v.* FERNANDO *et al.*

86—C. R. Chilaw, 26,551.

Money Lending Ordinance—Failure to state particulars in promissory note—Ignorance of provisions of section 10—Inadvertence—Ordinance No. 2 of 1918, s. 10.

Failure to set forth in a promissory note the particulars required by sub-section (1) of section 10 of the Money Lending Ordinance, through ignorance of its provisions and not with any intention to evade them, would entitle a person to the relief provided by sub-section (2) of section 10.

A promissory note, on which the particulars required by section 10, sub-section (1), are not specified, is admissible in evidence in an alternative cause of action on the money count.

THIS was an action on a promissory note. The defendants admitted the receipt of the capital sum, denied the agreement to pay interest and pleaded that they had repaid the capital sum. They further pleaded that the note did not comply with the requirements of section 10 (1) of the Money Lending Ordinance.

It was contended on behalf of the plaintiff that he accepted the note which was filled in by the makers in ignorance of the provisions of section 10 of the Ordinance.

The learned Commissioner of Requests held that the plaintiff was not entitled to relief under section 10 (2) of the Ordinance.

H. V. Perera (with him *H. N. G. Fernando*), for plaintiff, appellant.—The case of *Sockalingam Chetty v. Ramanayake*[1] has no application; in that case the note was "fictitious" within the meaning of sections 13 and 14 of Ordinance No. 2 of 1918. Section 10 contains no penal provisions as does section 13. The only effect of section 10 is to make the note itself unenforceable, and section 10 (2) makes provision for relief where the

[1] *35 N. L. R. 33*

omission of particulars was due to "inadvertence". The meaning of the word "inadvertence" has received judicial interpretation in the case of *In re Piers, (1 Q. B. D. 6, at p. 61)* where Smith L.J. described it as denoting the "opposite of conscious deliberation". Section 10 (2) makes a similar distinction by the use of the words "and not to any intention to evade the provisions of this section". The intention of the proviso was in fact to contrast an intentional with an accidental failure to comply with section 10 (1). In *Bhai v. John* [1], Shaw J. was of opinion that ignorance of the provisions of the Ordinance might induce "inadvertence" within the meaning of the proviso to section 10. In the present case the inadvertence was proved by the fact that the amount was actually filled up by the defendant. Counsel also cited *Ramen Chetty v. Renganathan Pillai* [2].

L. A. Rajapakse, for defendant, respondent.—The word "inadvertence" conveys the meaning that there was some fact within the knowledge of the person to which he omitted to turn his mind. There can be no "inadvertence" where, as the present plaintiff pleads, he was ignorant of the provisions of the Ordinance. In the alternative, the plaintiff cannot be heard to plead ignorance or mistake in view of the evidence that he has frequently entered into transactions of this sort. Counsel referred to *Dewasurendara v. de Silva* [3], and to *Saminathan Chetty v. Widiyaratne* [4].

Cur. adv. vult.

September 6, 1934. GARVIN S.P.J.—

This was an action on a promissory note. There was an alternative cause of action on the money count. The defendants admitted the receipt of the capital sum, denied that they agreed to pay interest and pleaded that they had repaid the capital sum borrowed. They further took exception to the action on the promissory note upon the ground that the note did not comply with the requirements of section 10 (1) of the Money Lending Ordinance.

At the trial the following issues were framed:—(1) Is the promissory note sued upon enforceable in law inasmuch as it does not comply with the provisions of section 10 of the Money Lending Ordinance? (2) Is the promissory note in question admissible in evidence? (3) If not, is the plaintiff's claim prescribed? (4) Was the amount due on the promissory note paid by the defendants? It was agreed that the first, second, and third issues should be tried first. The learned Commissioner has answered those issues in favour of the defendants. The plaintiff now appeals.

It is to be noted that before the trial commenced a further issue was framed in the following terms:—"Was the omission to comply with the provisions of section 10 of the Money Lending Ordinance due to inadvertence and not to any intention to evade the provisions of that section?

In regard to the first issue, it is admitted that the note does not comply with the provisions of section 10 (1), in that the particulars specified therein were not separately and distinctly set forth upon the document.

[1] C. W. R. *50 at p. 52.*
[2] *28 N. L. R. 339*
[3] *34 N. L. R. 313.*
[4] *34 N. L. R. 315.*

As regards the second issue, I cannot agree with the Commissioner that the promissory note is inadmissible in evidence on the money count. The Commissioner thought that this case came within the ruling in *Sockalingam Chettiar v. Ramanayake*[1]. That case, however, deals with a totally different set of facts and proceeds largely upon the circumstance that in that case the plaintiff had incurred the penalty prescribed in section 13 of the Ordinance. This is clearly not such a case. This is not a fictitious note within the meaning of sections 13 or 14.

In support of his plea for relief under the proviso to section 10, the plaintiff gave evidence. He said that the promissory note in question was brought to him already filled up by the makers. The first defendant was married to his niece. He said he accepted it and advanced the money inadvertently and in ignorance of the provisions of section 10. This prayer for relief was refused in the Commissioner's view that inasmuch as the plaintiff states he took it in ignorance of the law he could not be said to have acted through inadvertence.

Now the proviso to section 10 is in the following terms:—" In any case in which the Court shall be satisfied that the default was due to inadvertence and not to any intention to evade the provisions of this section it (the Court) may give relief against the effect of this sub-section on such terms as it may deem just ".

Inasmuch as the plaintiff accepted the note in the belief that it was in proper form and in ignorance of the provisions of section 10, it is impossible to say that he took it with any intention to evade the provisions of that section. The word " inadvertence " has the following meaning attached to it:—" Inattention ", " oversight ", " mistake ", " forgetfulnesss which proceeds from negligence of thought ". In *In re Piers* (*1 Q. B. D. 1, 61*), Smith L.J. attached to the word the meaning " the opposite of deliberate election ". But the word must be given an interpretation with reference to the context.

This Ordinance was enacted for the purpose of the better regulation of money lending transactions and to that end various provisions were enacted which had for its object such regulation. These provisions are there to be complied with, but with reference to section 10 and certain other sections the legislature has also disclosed its intention to give relief in certain cases. In every such case relief is to be given where " the default was due to inadvertence and not to any intention to evade the provisions of this section ". The word " inadvertence ", it will be noticed, is sharply contrasted with the words " and not to any intention to evade the provisions of this section ". The words appear to indicate strongly that the act which the law intended to penalize was the intentional evasion of the provisions of the section. In this view I am disposed to give to the word " inadvertence " the widest possible meaning. It has, as I have said earlier, been interpreted to include acts done without deliberate election. A person, who like the plaintiff, accepts a promissory note upon which the particulars specified in section 10 have not been separately and distinctly set forth as required by that section in ignorance

[1] *35 N. L. R. 33.*

of that provision of the law cannot be said to have acted by deliberate election. To hold that the word " inadvertence " is used in a sense which completely excludes ignorance of the requirements of section 10 is to hold that the legislature, while intending to give relief to a person who with knowledge of the law accepted a promissory note which did not comply with the requirements of that section through oversight, mistake, or negligence of thought, did not mean to extend the relief to a person who did so in complete ignorance of that provision of the law. This in my judgment is too narrow a view of the section. The conclusion at which I have arrived derives support from the judgment of Shaw J., in the case of *Bhai v. John*[1] where there are strong indications that in his judgment a failure to fully comply with the provisions of section 10 through ignorance of the law and not with any intention to evade its provisions would entitle a person to the relief which the law permits a Court to grant where " the default was due to inadvertence and not to any intention to evade the provisions of this section ".

The judgment of the Commissioner will therefore be set aside, and the case remitted for trial of all the remaining issues, upon condition that the plaintiff before the next date of trial pays into Court for the use of the defendants an amount equivalent to the costs of this abortive trial to be ascertained by the Commissioner before the next date of trial. It is hardly necessary to add that in fixing the next date of trial, the learned Commissioner will have due regard to the circumstance that the plaintiff must be given a reasonable time from the date when the costs payable by him are ascertained for the payment thereof. Under the circumstances I make no order as to the costs of the appeal.

Sent back.