1929.

Present: Dalton J. and Maartensz A.J.

SILVA *v.* SOMAWATHIE.

77—D. C. Badulla, 4,524.

Money Lending Ordinance—Promissory note—Money due on account stated—Partnership business—Ordinance No. 8 of 1918, s. 2.

Where a promissory note was given on an account stated between parties who had been carrying on business together,—

Held, that the provisions of section 10 of the Money Lending Ordinance have no application to the note.

APPEAL from a judgment of the District Judge of Badulla.

Plaintiff sued to recover a sum of Rs. 1,922.85 with interest due on a promissory note from the defendant, who was the widow and administratrix of the estate of the maker of the note. It was stated that the note was given by the defendant's husband after accounts had been gone into between him and the plaintiff, who carried on a business together. It was alleged that the sum was found to be due to the plaintiff when the accounts were settled. The learned District Judge gave judgment for the plaintiff.

N. K. Choksy, for defendant, appellant.—The note is unenforceable as the marginal particulars are not set forth separately and distinctly, apart from the particulars in the body of the document itself. (*Vadivelu v. Velupillai*,[1] *Kadirsan Chetty v. Arnolis*.[2])

[1] *4 Law Recorder 143.*

[2] *23 N. L. R. 162.*

They must be stated apart from the particulars set out in the body of the note because the amount mentioned in the body of the note is not necessarily the amount actually borrowed. Nor would the body of the note state what amount was deducted in advance.

Even though the point was not taken in the Court below, this Court will give effect to the objection, considering the scope and object of the provisions of the Ordinance. An analogous case is that of objections under the Business Names Ordinance—see *Karuppen Chetty v. Harrisons & Crosfield, Ltd.*[1]

Counsel also referred to *Sannitamby v. Nogan*,[2] *Wijeysinghe v. Don Girigoris*,[3] and *Raman Chetty v. Renganathan Pillai*.[4]

N. E. Weerasooria, for defendant, respondent.—The Money Lending Ordinance does not apply to the facts of this case as it is not a money lending transaction.

The Money Lending Ordinance is based on the Usury Act of the Cape Colony, No. 23 of 1908. Section 5 corresponds to section 10 of our Ordinance. *Vide* statement of objects and reasons of the Ordinance (*Gazette* of October 12, 1917, Part II., page 123).

In the case of *Rex v. Goedhals and de Wet*[5] it was held that the analogous provisions of the Cape Act did not apply to facts similar to those in this case.

Counsel also cited Vol. VI., *Bissett & Smith's Digest*, pages 401 and 402.

August 9, 1929. DALTON J.—

This is an action on a promissory note to recover the sum of Rs. 1,922.85 with interest thereon, in all the sum of Rs. 2,508.85. The defendant is the widow and administratrix of the estate of the alleged maker of the note.

The defence to the action in the lower Court was based upon the plea that the note was a forgery, but the trial Judge has come to the conclusion that this plea cannot succeed. The plea seems to be based upon the defendant's evidence that the signature to the note is not like her husband's signature and that he told her nothing of the debt. I see no reason to differ from the finding of the lower Court on this question of fact.

It has further been urged in appeal that the promissory note does not comply with the provisions of the Money Lending Ordinance, 1918, section 10 of which requires certain particulars in every promissory note to be set forth upon the document, otherwise it shall not be enforceable.

[1] *24 N. L. R. 317.*
[2] *26 N. L. R. 217.*
[3] *27 N. L. R. 342.*
[4] *28 N. L. R., at 344.*
[5] *26 S. C. 545.*

1929.

DALTON J.

Silva v. Somawathie

This point was not raised in the answer or in the issues, although plaintiff did plead in his plaint (paragraph 4) that he accepted the promissory note "without the marginal notes," *bona fide* and inadvertently, and without any intention to evade the provisions of the Money Lending Ordinance. This was apparently done to obtain the benefit of the proviso to section 10, in case the note should be held to come within the provisions of the Ordinance. Defendant, however, as the point was not taken in the answer, was probably advised, and if so, in my opinion advised correctly, that it would be useless for her on the facts here to raise the plea in her answer.

The note is stated to have been given by defendant's husband after accounts had been gone into between him and plaintiff. Plaintiff and deceased had carried on a lorry business together, and when accounts were gone into on May 23, 1926, it is alleged that the sum of Rs. 1,922.85 was found to be due to plaintiff. He thereupon obtained this note from deceased on account of his indebtedness to him, according to plaintiff on deceased's own suggestion, the latter taking the lorry away. Deceased died on December 30, 1926.

The note is on a printed form such as is in common use in Ceylon, in the form given in the schedule to the Money Lending Ordinance, but with no marginal notes. The form has been torn down the left-hand side where the marginal notes as a rule appear. It was urged that as the note has no marginal particulars it is unenforceable. In support of this *Vadivelu v. Velupillai et al.*[1] was cited. I must admit, if it were necessary to come to a conclusion on this point, I should have considerable difficulty in interpreting the words "separately and distinctly" as used in section 10 in the sense adopted by the learned Judges in that case. Marginal notes do appear in the form provided in the schedule, but it is nowhere enacted that that form is the only form that can be followed. De Sampayo J. was of opinion that section 10 required a separate statement of the particulars mentioned in the section. *i.e.*, separated from the note itself. With all respect to this learned Judge and his wide experience, I am inclined to think that what section 10 means is that the three particulars (*a*), (*b*), and (*c*) must be set out distinctly and separately in the note, that is, separately and distinctly from one another, whether by use of marginal notes or otherwise, and that what sub-section (4) provides is that if that is done substantially in accordance with the form in the schedule, no question can arise that it does not comply with the provisions of section 10 in this respect. I can find nowhere any provision that the particulars must be set out in a separate statement if they are already set out in the body of the note itself. The section does not enact

[1] *4 C. L. R. 143.*

that the particulars must be set out in two places: for example, in the body of the note and in marginal notes as well. I examined the statement of objects and reasons published with the bill after I had formed a definite opinion upon this question and it seems to me to confirm my view. This section is stated to deal with blank and fictitious notes and to require a clear statement of the various particulars on the face of the note. However, it is not necessary to decide the case on this point, as it must fail on other grounds.

Section 10 was taken over from the Cape Colony Act, No. 23 of 1908, as appears from the explanatory statement of objects and reasons above referred to, published with the bill in the official *Gazette* of October 12, 1917, Part II., page 123.

Mr. Weerasooria has cited a South African case, *Rex v. Goedhals and de Wet* [1] in support of his argument. The defendants there were charged with contravening the provisions of Act 23 of 1908 by charging a greater rate of interest than that allowed by the Act. The note was given with the exception of an amount of £7, for the balance of indebtedness of one Moolman to the defendants for work done and money paid. The defendants were convicted, but on appeal the conviction was quashed, Maasdorp J. holding that the Act did not apply to promissory notes given for money due for work done and in agency transactions. It was not a transaction that could be described as substantially one of money lending under the Act. The same conclusion was reached in an unreported case (*S. C. No. 411—D. C. Galle, No. 23,581*, S. C. Minutes of February 15, 1929) where Fisher C.J. and Garvin J. held that a promissory note, given as security for an existing debt that was not based upon a loan, was not a note to which the provisions of the Money Lending Ordinance applied. The note with which we have to deal was given on an account stated between parties who had been carrying on business together. Following the decisions referred to above, one has no difficulty in reaching the conclusion that it is not one to which the provisions of the Ordinance apply, since there is no evidence to show that it was given as security in any money lending transaction.

For these reasons the appeal must be dismissed with costs.

MAARTENSZ A.J.—I agree.

Appeal dismissed.

[1] *26 S. C. 545.*