1939 *Present :* **Soertsz A. C. J.**

MUTUAL LOAN AGENCY, LTD. *v.* DHARMASENA.

213—C. R. Kandy, 24,156.

Cheetu—Cheetu existing at the time of enactment of Ordinance—Failure to obtain exemption—Ordinance No. 61 of 1935 (Cap. 128), s. 46 (4).

Section 5 (2) of the Cheetus Ordinance bars an action for the recovery of money due on a cheetu which was being conducted when the Ordinance came into operation but which was not exempted under section 46 (4) of the Ordinance.

APPEAL from a judgment of the Commissioner of Requests of Kandy.

J. E. M. Obeyesekere (with him *M. M. Kumarakulasingham*), for the plaintiff, appellant.

E. B. Wikremanayake, for the second defendant, respondent.

Cur. adv. vult.

June 9, 1939. SOERTSZ A.C.J.—

The Cheetus Ordinance is by no means easy to interpret and apply. It has the teasing quality of a cross-word puzzle. It arises for examination in this case in the following circumstances. The plaintiffs who are a duly incorporated company, limited in liability, carried on a business of auctioning cheetu among its subscribers on the condition *inter alia* that each subscriber could buy the cheetu only once. The cheetu was sold to the subscriber who offered the largest discount. The first defendant who was a subscriber bought the cheetu that was auctioned on September 5, 1936, and in respect of the liability she incurred on that occasion, she and the second defendant gave a joint and several promissory note. She made payments amounting to Rs. 117.28, and then defaulted.

The plaintiffs, thereupon, instituted this action against both defendants and claimed the balance sum of Rs. 82.72 and interest. They did not however, proceed with their claim against the first defendant. They did not even take summons on her, and on August 31, 1938, they stated that they were not going on with the case against her.

On April 1, 1937, the Cheetus Ordinance came into operation, and in view of section 5 (2) of that Ordinance, the learned Commissioner dismissed the plaintiffs' case holding the claim unenforceable.

Section 5 (2) enacts that "no right or claim under any scheme or arrangement which only partakes of the nature of a cheetu within the meaning of section 4 shall be enforceable by action in any Court or Village Tribunal in this Island".

On this finding of the Commissioner, two questions were raised on appeal, namely, (1) whether the plaintiffs' scheme or arrangement was within section 4; (2) if so, whether the plaintiffs can enforce their claim on the ground that section 5 (2) did not apply to transactions entered into before the Cheetus Ordinance came into operation in cases in which, the cheetu out of which the transaction arose, was abandoned after the Ordinance was proclaimed. It was said that that was the case here, and that the plaintiffs were doing no more than trying to collect debts that subscribers had incurred prior to April 1, 1937.

In regard to the first of these questions, there does not seem to be room for doubt. The evidence of the plaintiffs' secretary clearly shows that their scheme or arrangement was not a cheetu in the meaning given to that word by section 3 of the Ordinance. It is inconsistent with some, at least, of the essential terms and conditions postulated by section 3. But although the plaintiffs' scheme did not reach the stature of the Legislative cheetu, it did not fall entirely outside the Ordinance. The

Legislature had taken steps to prevent that by providing in section 4 that "every scheme or arrangement which, notwithstanding that it purports to be a cheetu, is not based wholly on the essential terms and conditions set out in section 3 or which is based on terms and conditions inconsistent wholly or in part with those essential terms and conditions, shall for the purpose of this Ordinance be deemed only to partake of the nature of a cheetu". In this way, the Legislature brought within the scope of the Ordinance the cheetus it would allow in order that they might be controlled by the Ordinance, as well as those cheetus which had flourished in the Island but were considered objectionable, in order to suppress them. For section 4 is followed by a section that, read with section 45, enacts that it shall be an offence to promote or conduct a scheme that "only partakes" of the nature of a cheetu, and that no right or claim under such a scheme, shall be enforceable in any Court.

In regard to the second question raised on appeal, I am just as clearly of opinion that section 5 (2) catches up this transaction and renders the claim unenforceable. Section 46 (1) requires that "within one month after the date on which this Ordinance comes into operation, the manager of every cheetu. . . . which is actually being conducted at that date, shall furnish to the Registrar of Lands . . . . a statement verified by affidavit and containing the terms and conditions of, and the following particulars . . . .". In this context, it is obvious that the word cheetu is used to cover not only cheetus as understood in section 3, but all such schemes and arrangements as purported to be cheetus as popularly understood. Section 46 (2) enables the Registrar to call for further information or explanation, and 46 (3) requires the Registrar to register a cheetu in respect of which there was compliance with 46 (1) and 46 (2), as an existing cheetu. Then comes section 46 (4) to enable the Registrar-General to exempt any cheetu registered under 46 (3) from any or all of the other provisions of the Ordinance conditionally or unconditionally. It is manifest that this cheetu was being conducted at the time the Ordinance came into operation. The secretary says that it was discontinued in August, 1937. There is evidence to show that there was partial compliance with section 46 (1), but no evidence to show that it was registered under 46 (3). It is admitted that there has been no exemption obtained under 46 (4). The inevitable result is that section 5 (2) applies and makes this claim unenforceable.

In passing, I wish to comment on the case of *Paramsothy v. Suppramaniam*,[1] which was cited to us in the course of the argument. I cannot quite follow the concluding part of that judgment. Maartensz J. referring to section 46 (4) says: "Now the usual phrase in an exempting clause is that the exempting authority shall have power to exempt from 'all or any of the sections' of a Statute. Is there any significance in the introduction of the word 'other' before the word 'sections' in sub-section 4? Was the word 'other' used to limit the applicability of the Ordinance to existing cheetus to sections which cast a duty upon the manager?" It seems obvious that the word "other" was inevitable where it occurs, for if it was not inserted there, the Registrar-General

[1] *39 N. L. R. 529.*

would have the power to exempt parties from the duties imposed by section 46 itself, and that would have defeated the very object of the Legislature which appears to be to bring existing cheetus in line with the cheetus that the Ordinance creates and to control their future dealings.

Quite apart from sections 46 and 5 (2) of the Ordinance, this claim does not seem to be enforceable because it arises out of a transaction prohibited by section 5 (1) and penalized by section 45. It is true that the transaction was lawful at the time it was entered into and was rendered unlawful only by this Ordinance. But that, I think, does not matter. The law appears to be that if the contract was lawful when it was made, whatever has been done under the contract remains unaffected. But if the Legislature alters the law so that the contract thereafter becomes illegal, no further lawful acts can be done under it, and no action brought on it in the absence of special provision for that purpose.

For these reasons, I am of opinion that this appeal fails and I dismiss it with costs.

Appeal dismissed.