Present: Lascelles C.J. and Wood Renton J. 1913.

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330—D. C. Nuwara Eliya, 116.

Promissory note—Material alteration—Note signed in blank and issued undated—Insertion of one date by payee—Subsequent insertion of another date.

An alteration in the date of a note is, generally speaking, a material alteration. But the note is not avoided against a party who has himself made or authorized or assented to the alteration.

Where a note is issued in blank and undated, the insertion of one date (April 16, 1909) and the subsequent alteration in the date (April 26, 1909) does not invalidate the note against the maker, inasmuch as he, by issuing the note in blank and undated, must be taken to have authorized the payee to have inserted whatever date he pleased.

THE facts appear sufficiently from the judgment.

H. A. Jayewardene, for the appellant.

Wadsworth, for the respondent.

February 3, 1913. LASCELLES C.J.—

This is an appeal from a judgment of the District Judge of Nuwara Eliya dismissing an action on a promissory note on the ground of material alteration. The alteration in question is with regard to the date on the note. It is apparent from an examination of the note that the date as originally written at the head of the note was April 16, 1909, and that the figure " 16 " has been altered into " 26." There is no question but that an alteration in the date of a note is, generally speaking, a material alteration. This is specially provided by sub-section (2) of section 64 of the Bills of Exchange Act of 1882. But the law with regard to the alteration of bills of exchange or promissory notes is subject to an exception that the bill is not avoided against a party who has himself made or authorized or assented to the alteration—section 64, sub-section (1). The question which arises on this appeal, and has still to be determined, is whether the maker of the note, by issuing the note in blank and undated, did not authorize the insertion of a date on the note. If it be the fact that the alteration in the date was made after the note had been signed and issued, then there can be no question but that the note is invalid. If, on the other hand, the note was issued in blank and undated, then I am of opinion that the alteration in

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the date subsequently inserted would not invalidate the note against the maker, inasmuch as he, by issuing the note in blank and undated, must be taken to have authorized the payee to have inserted whatever date he pleased. According to the evidence of the defendant, the note was in fact issued by him signed and undated. The plaintiff, on the other hand, has given a different account, and it is necessary, before the validity of the note can be determined, to have a definite finding on this point. I would therefore remit the case to the District Judge to adjudicate on the issue which I have indicated, namely, whether the alteration was made to a date which was already on the note at the time when it was signed and issued, or whether the alteration was made to a date inserted after the note had been signed and had left the hands of the maker. If the Court finds that the alteration is not material, it will proceed to ascertain the amount due on the note and give judgment accordingly. All costs, including the costs of the appeal, should be in the discretion of the District Judge.

WOOD RENTON J.—I concur.

Sent back.