Sept. 2, 1910

Present : Middleton J.

SWAMINADAN CHETTY *v.* KANNAN *et al.*

71 *and* 71A—*C. R. Colombo,* 16,942.

Blank promissory note—Insertion of rate of interest agreed upon—No express authority—Material alteration—Bills of Exchange Act, ss. 20 and 64.

Where the defendant borrowed from plaintiff money on a blank promissory note and agreed to pay interest at a certain rate on the amount borrowed by him, the insertion by the payee of the said rate of interest in the note without express authority is not a material alteration.

MIDDLETON J.—If the note was given in blank, the payee was entitled to fill it up, as the Commissioner has found, to the amount covered by the stamp, and in my opinion he would have implied authority to insert the interest agreed on between the parties. It is not suggested here that the note was filled up first without mentioning the interest, and then that the interest was added by the payee, although as between payee and maker, where the rate of interest so inserted was the rate of interest agreed on between them, I am by no means confident that this should be deemed a material alteration so as to vitiate the note between payee and maker.

Raman Chetty v. Ramanathan[1] and *Abdul Majeed v. Yasaya Nadan*[2] distinguished.

IN this case the plaintiff sued the defendants on a promissory note for the recovery of the balance sum of Rs. 230 due on it. The issues agreed on were :—

(1) Was the note signed in blank ?
(2) Was the amount of the note filled in contrary to authority ?
(3) Was the rate of interest filled in with the authority of the defendants ?

The learned Commissioner (M. S. Pinto, Esq.) delivered the following judgment :—

It is quite clear that the first defendant did not fill in the rate of interest. The figures " 30 per cent." are in the same hand as the rest of the words in the body of the note : not only is the handwriting the same, but the pen and ink used appear to be the same.

The handwriting of the first defendant is particularly bold and firm. The words in the body of the note, including " 30 per cent.", are written lightly over the paper.

[1] *(1905) 1 Bal. 182.*

[2] *(1909) 4 Leader L. R. 1.*

It is hardly necessary to enlarge on this point ; the conclusion I have arrived at is supported by a comparison of the figures " 30 per cent." with the figures " 30 " on D 1. The latter figures " 30 " are of the same type as the signature of the first defendant.

I, therefore, readily believe the first defendant's statement that the figures " 30 per cent." were not inserted by him. Even as regards the figures " 200," I am of the opinion that they were not filled in by the first defendant. But there is the implied authority to fill in any amount covered by the stamp.

But as regards the rate of interest, there was no authority to fill in the rate of interest. My finding is that this rate was filled in after the defendants signed the note. But there is no proof that the plaintiff was authorized to fill in the rate of interest. He was asked, " Did you agree that the rate of interest was to be inserted on the note ?" He said " Yes." But he apparently did not understand the question, for he repeatedly said immediately afterwards that there was no authority to fill in the rate of interest. What he meant was that it was agreed upon to pay 30 per cent. interest.

I am satisfied that the evidence given by the defendant is true in every respect. Now, in view of the Supreme Court decision in *Raman Chetty v. Ramanathan*[1] followed in the Supreme Court decision in another case of this Court, I am bound to hold that the note was materially altered by the insertion of the rate of interest, without the authority of the defendants to such insertion. The authority cannot be implied from the agreement to pay interest. The learned counsel for the plaintiff argued that there was a ratification of the alteration ; but there was no ratification of the alteration. The defendants never said that they ratified the alteration of the document ; and even if they so ratified it, the alteration could not cease to be a material alteration, and a material alteration vitiates a note, irrespective of the attitude of the person affected by the alteration towards the alteration.

The plaintiff lied when he said that the first defendant filled in the figures " 200 " and the rate of interest. He had no doubt about this ; it was clearly an intentional lie, for he says the body of the note was filled in by another man. He knew the importance of saying that the figures " 200 " and the rate of interest were filled in by the first defendant ; he knew that if the first defendant had filled in these figures, the question of material alteration could not come in.

I decide the issues as follows :—

(1) Yes.

(2) No, for there was implied authority to fill in the note for the amount covered by the stamp.

(3) No.

I dismiss the case with costs, and I have no regret in giving effect to the decision in *Raman Chetty v. Ramanathan*, for the defendant's version is true.

The plaintiff appealed.

Van Langenberg (with him *Tissaverasinghe*), for the appellant.

Tambyah, for the respondent.

Cur. adv. vult.

[1] *(1905) 1 Bal. 182.*

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Swaminadan Chetty v. Kannan

September 2, 1910. MIDDLETON J.—

This was an action for the recovery of a balance of Rs. 230 due on a promissory note for Rs. 200 dated February 11, 1908, given by the defendants to the plaintiff, with interest at the rate of 30 per cent. per annum. A sum of Rs. 175 was admitted by the plaintiff to have been paid on account of the note, and the balance claimed was for principal and interest up to date of action. The defendants admitted the making of the note, but pleaded that they signed and delivered it as security for the payment of Rs. 150, of which they alleged they had paid Rs. 75—not Rs. 175 as averred in the plaint. They averred that the plaintiff fraudulently and dishonestly filled up the note for Rs. 200, while the second and third defendants pleaded that they signed the note merely for the accommodation of the first defendant. Nothing was pleaded as to the rate of interest or its insertion in the note.

The issues agreed on were :—

(1) Was the note signed in blank ?
(2) Was the amount of the note filled in contrary to authority ?
(3) Was the rate of interest filled in with the authority of the defendants ?

At the settlement of issues plaintiff's counsel admitted that Rs. 175 in the plaint was a mistake for Rs. 75, and the Commissioner of Requests deemed it right under section 809A of the Civil Procedure Code to examine the plaintiff, who thereupon affirmed that the amount Rs. 200 and the rate of interest were inserted by the first defendant personally in the note. After hearing evidence for the defence, in which the first defendant denied the plaintiff's assertion, and further evidence of the plaintiff, the Commissioner decided the first issue in the affirmative, and the second and third in the negative and, being of opinion that authority to insert the rate of interest could not be implied, dismissed the plaintiff's action with costs.

The Commissioner of Requests further charged the plaintiff under section 12 (1) of Ordinance No. 9 of 1895 for making a false statement, and fined him Rs. 50. The plaintiff appealed both against this order and on the law, and obtained leave to appeal on the facts ; and it was contended for him, on the basis of the Commissioner's finding on the first and second issues, and on the evidence given for the defence, that the rate of interest agreed upon before the note was written was 30 per cent., and that it was either expressly or impliedly agreed between the parties that the rate should be inserted in the note, and that it was so inserted accordingly.

For the respondent it was admitted that it had been proved that the defendant's agreement was to pay 30 per cent. interest, but it was contended that there was no agreement, expressed or implied, to insert that rate of interest in the note, and *Raman Chetty v.*

Ramanathan,[1] *Abdul Majeed v. Yasaya Nadan*,[2] and *Warrington v. Early*[3] were cited as indicating that the note would be void for a material alteration if the rate of interest were inserted in it without an express agreement to do so. In *Raman Chetty v. Ramanathan, ubi supra*, the evidence proved that though the rate of interest inserted in the note was the rate agreed upon to be paid by the maker to the payee, no rate was inserted when the note was made, and it was held by my brother Grenier in an action by the payee against the maker that the subsequent insertion of the rate of interest agreed upon by the payee was a material alteration which vitiated the note under section 64 of the Bills of Exchange Act. In *Abdul Majeed v. Yasaya Nadan, ubi supra*, the same learned Judge followed his ruling in the former case.

I have sent for the record in 168 (Inty.)—D. C. Puttalam, 1,455, referred to by Mr. Justice Grenier in *Raman Chetty v. Ramanathan*, and in that case there was allegation and proof of the fradulent addition of interest after the making of the note. Here it is admitted the interest on the note was the interest agreed on, and no fraud is alleged, but the case is complicated by the Commissioner's finding that the note was not filled in as regards the amount and interest by the first defendant, as plaintiff alleges. My experience of promissory notes in Ceylon leads me to think that the usual practice is to use a printed form embodying an agreement to pay interest, as in this case, and if interest was agreed on, the payee of the note would, under section 20 (1) of the Bills of Exchange Act, have authority to insert it.

Taking the Commissioner's finding to be correct as to the note being signed in blank, and that it was agreed upon to pay 30 per cent. interest, the presumption is the note was filled in by the payee or by his authority when the note was completed with the rate of interest agreed between the parties, when it was given to the payee. There is no evidence to the contrary, and this inference is strongly fortified by the fact that the defendants took no objection to the rate of interest charged in the note in their answer. The first defendant also says in his evidence he has no complaint about the rate of interest. If it was given in blank, the payee was entitled to fill it up, as the Commissioner has found, to the amount covered by the stamp, and in my opinion he would have implied authority to insert the rate of interest agreed on between the parties. It is not suggested here that the note was filled up first without mentioning the interest, and then that the interest was added by the payee, although as between payee and maker, where the rate of interest so inserted was the rate of interest agreed on between them, I am by no means confident that this should be deemed a material alteration so as to vitiate the note between payee and maker.

[1] *(1905) 1 Bal. 182.* [2] *(1909) 4 Leader L. R. 1.*
[3] *23 L. J. Q. B. 47.*

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In my view of the case there is here no material alteration of the note either in *facie* or by implication to vitiate the note under section 64, and I think the judgment of the Commissioner should be set aside and the appeal allowed, and judgment entered for the plaintiff as prayed for, with costs in both Courts.

I was inclined to think my judgment would conflict to some extent with the judgments in *Raman Chetty v. Ramanathan* and *Abdul Majeed v. Yasaya Nadan*, and therefore to send the case to be argued before two Judges. Mr. Justice Grenier appears to think, as I read his judgment, that unless there is proof of express agreement to insert the rate of interest in the note, or an express assent by the payee to its being done, the note would be void under section 64.

On reconsideration, however, I think on the facts this case is different.

Set aside.