Present: Bertram C.J. and Garvin J. 1924.

SANITAMBY *v.* NOGAN.

451—D. C. Batticaloa, 5,450.

Money Lending Ordinance, 1917—Note given for value of paddy supplied—Court cannot inquire into the question of adequacy of consideration and grant relief under the Ordinance.

A gave B a promissory note for Rs. 400 in consideration of paddy supplied to the value of Rs. 210.

Held that the Money Lending Ordinance did not apply to the transaction, and that the Court could not inquire into the question of adequacy of consideration and grant relief under the Ordinance, and that plaintiff was entitled to judgment for the full amount of the note.

N. K. Choksy, for plaintiff, appellant.—The mere fact that the plaintiff knew the circumstances under which the note was granted by the defendant to the maker cannot disentitle him, as endorsee, from recovering the full face-value of the note. The evidence shows that the payee refused to give the defendant the paddy he wanted unless he signed a note for more than its value, and the defendant agreed to it. The defendant's evidence shows that he wanted the paddy urgently, and it must have been worth his while to promise to pay more than its value. *Muttu Ramen Chetty v. Piper* [1] was a case where the payee himself was held entitled to recover the full face-value of the note under similar circumstances.

James Joseph, for defendant, respondent.—Plaintiff is an endorsee with full notice of the true consideration, and he cannot, therefore, recover more than the actual amount due. The District Judge has disbelieved the plaintiff's evidence that he paid the payee the full amount of the note.

The note was merely given as security for the return of the paddy. The evidence is that subsequent to the institution of the action, the plaintiff himself was willing to accept from the defendant the quantity of paddy he had received from the payee, and interest. He cannot therefore recover the full amount of the note.

June 23, 1924. BERTRAM C.J.—

This is an action brought upon a promissory note. The amount stated to be due on the face of the note is Rs. 400, with interest at 9 per cent. per annum. The plaintiff is the endorsee of the note, and he comes forward and says that he paid value for the endorsement ; that Rs. 300 was already due to him by the payee, and that he had advanced a further Rs. 100 for the note. The learned Judge, however, disbelieved that story, and I think with very good

[1] *(1906) 2 Bal. 174*

1924.

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ground. The plaintiff, so he finds, was aware of the actual nature of the transaction under which this note was granted, and he is not entitled, therefore, to be in a better position than the original payee. This we may assume to be the case. We will look at the transaction, therefore, as though it were between the defendant and the original payee, and the defendant gives what he states to be the real story of the transaction. That story is that he was indebted to the payee on a mortgage bond; that he obtained a further advance of six amunams of paddy from the mortgagee, and that, in consideration of this further advance and the cancellation of the mortgage bond at the request and on the insistence of the mortgagee, who was making a further advance, he gave a promissory note for the amount of Rs. 400; that the further advance of this paddy would not have been made, unless he has granted a note for this amount, and that it was the intention of the parties that, unless the amount of seed paddy due was paid in due course, the whole value of the note should be insisted upon.

Now, unfortunately in the Court below, the legal position was not properly realized. The issues were: What was the consideration on the note; and was the plaintiff aware of this consideration? The learned Judge found that the consideration was only fourteen amunams of paddy, and that the plaintiff was aware of this fact, and gave judgment for the value of fourteen amunams of paddy, which came to Rs. 210, with interest.

In this Court Mr. Choksy has drawn attention to the true legal position, and has insisted that his client is entitled to the full value of the note. It seems to me that he is clearly so entitled. If persons, in pursuance of transactions between them, choose to become parties to a promissory note which states a certain sum to be due from one to the other, they must in ordinary circumstances be bound by that promissory note. The person who makes that promise must pay, unless he can show us equitable grounds for relief. It is a very common practice in this Colony for a person to whom money is due to take a promissory note for a sum in excess of the amount really due, and, until the Money Lender's Ordinance of 1918 was passed, in the event of default, the full amount stated in the note could be recovered. This was settled by the case of *Muttu Ramen Chetty v. Piper* (*supra*).

If this was a money lending transaction, the defendant in the Court below, and I think even in this Court, when a new legal point was taken, might have claimed relief under that Ordinance. But I cannot at present see that this is a money lending transaction. It was a transaction arising out of advances of seed paddy. No specific provision was made with regard to interest on the paddy advanced. The terms on which seed paddy is advanced are generally very onerous, and I cannot help thinking that the person who advanced the paddy insisted on a note for Rs. 400 in order to

secure himself the necessary interest. I cannot at present see that there is anything in the Money Lending Ordinance to put advances of seed paddy on the same footing as advances for cash. I am not at present convinced that sub-section (4) of section 2 of that Ordinance, which declares that the section shall apply to any transaction which, whatever its form may be, is substantially one of money lending, does in all cases put advances of seed paddy on the same footing as advances of money, though this may have been the intention of the promoters. It seems to me that, on the facts of the present case, the defendant must be bound by the amount stated in the note, and I feel compelled, therefore, to hold that the appeal must be allowed with costs, both in this Court and in the Court below.

GARVIN J.—

I agree. The District Judge has clearly indicated his preference for the evidence of the defendant. The case must, therefore, be decided on the facts as disclosed in the evidence of the defendant. What are those facts ? The defendant stood in need of fourteen amunams of seed paddy. He wanted eight amunams of paddy to discharge an old obligation which would have the effect of releasing his land from the burden of a mortgage. The remaining six amunams of seed paddy were presumably required for the purpose of sowing his land against the next harvest.

Now the defendent was not in a position to pay cash for the seed paddy he required. The plaintiff's brother, Kasupathy, to whom the defendant applied for this paddy, agreed to give him the paddy, but upon his own terms. The consideration he demanded was Rs. 400, for which he undertook to accept a promissory note. The defendant accepted these terms and granted the promissory note on which this action is founded.

Evidence has been led to show that the market value of fourteen amunams seed paddy was Rs. 210 and not Rs. 400. Whatever the market value to a person able to purchase the paddy for cash in the market may have been, there is ample evidence that the defendant found it worth his while to agree to the price of Rs. 400 demanded by Kasupathy, and gave his promissory note for the amount.

There is consideration for the promissory note, and the plaintiff is entitled to recover the full amount of the note.

Even were it open to us to investigate the question of the adequacy of consideration, I should not myself be prepared to say, having regard to the circumstances disclosed in the defendant's own evidence, that this is an unconscionable transaction.

But as it is not a money lending transaction to which the provisions of the Money Lender's Ordinance may be applied, such a course is not open to us.

Appeal allowed.