

1921.

Present : Bertram C.J. and Ennis J.KADIRASAN CHETTY *v.* ARNOLIS.

53—D. C. (Inty.) Galle, 18,521.

Stamp—Promissory note payable on demand—Memorandum in margin showing deduction of interest for one month—Must note be stamped ad valorem?—Money Lending Ordinance, s. 10.

A promissory note was expressed on the face of it to be payable on demand, and stamped with a six-cent stamp. In pursuance of section 10 of the Money Lending Ordinance an endorsement was made declaring that Rs. 12 had been “deducted or paid in advance as interest, premium, or charges.” The deduction represented a month’s interest. The District Judge held that the note was not payable on demand, as an action could not have been brought on the note within the month, and that consequently the note was not properly stamped.

Held, that the note was payable on demand, and was properly stamped.

By declaring that certain particulars should be entered in the margin of certain notes, the Legislature did not intend in any way to affect the liabilities on such notes. Its object was to assist Courts of law in discharging the equitable jurisdiction conferred upon them by the Ordinance.

THE facts appear from the judgment.

Keuneman, for appellant.

Elliott, K.C. (with him *R. C. Fonseka*), for respondent.

Cur. adv. vult

July 21, 1921. BERTRAM C.J.—

1921.

*Kadirasan
Chetty v.
Arnolis*

This is an appeal from an order giving leave to appear and defend an action brought under chapter LIII. of the Civil Procedure Code. The order was based on a finding that a promissory note sued on was not sufficiently stamped. The note was expressed to be payable on demand. As it was given as security for the loan of money, there was an endorsement in the margin, in pursuance of section 10 of the Money Lending Ordinance (No. 2 of 1918), declaring that the sum of Rs. 12 had been "deducted or paid in advance as interest, premium, or charges." The learned Judge, acting apparently on an admission made by the plaintiff, found that this deduction represented a month's interest paid in advance. He held, therefore, that no action would have lain on the note during the month in respect of which interest was so paid; that it was not therefore a note payable on demand, and should have been stamped *ad valorem*. I think that the decision of the learned Judge is erroneous.

By declaring that certain particulars should be entered in the margin of such notes, the Legislature did not intend in any way to affect the liabilities on such notes. Its object was to assist Courts of law in discharging the equitable jurisdiction conferred upon them by the Ordinance.

Mr. Elliott, K.C., who appears in support of the order, contends that an endorsement showing that interest was paid in advance in the margin of the note of itself imports a condition that the note should not be put in suit during the period for which interest is so paid, and that this affects not only the payee, but also any holder of that note, inasmuch as any such holder has express notice of what appears on the face of the note.

There is a simple answer to this contention with regard to the present note, namely, that the endorsement in the margin merely states that Rs. 12 had been "deducted or paid in advance as interest, premium, or charges." There is no specific statement that this Rs. 12 represented a month's interest, and no agreement therefore could be implied therefrom. In order to raise such a point on this note, it would be necessary to set up an oral agreement. Even if evidence of this oral agreement could be given under proviso 3 to section 92 of the Evidence Ordinance, such an agreement could not effect a holder in due course; and as my brother Ennis has observed, it would be impossible to hold that a note must bear one stamp in the hands of a promisee and another in the hands of a holder in due course.

But even if the endorsement in the margin were treated as a memorandum of the payment of a month's interest in advance, I do not think the argument is sound. The term "promissory note payable on demand" in section 3, sub-section (4), of the Stamp Ordinance, 1909, must be interpreted with reference to the same expression in the Bills of Exchange Act (1882). A promissory note

1921.

BERTHAM
C.J.Kadirasan
Chetty v.
Arnolis

payable on demand by the combined effect of section 10 and section 89 of that Act means, among other things, a promissory note which is "expressed to be payable on demand." The fact that, in accordance with the provisions of an Ordinance, it is endorsed with a memorandum which may give rise to an equity, as between the maker and the promisee or between the maker and a holder in due course, does not affect the character of the instrument. Whether the effect of that equity is to restrain a suit pending the period for which interest was paid, or to require the return of a proportionate part of the interest so paid, it is not necessary to decide. In either case, on the principles above explained, a promissory note is a note payable on demand within the meaning of the section, and is rightly stamped accordingly.

I agree with the order proposed by my brother Ennis.

ENNIS J.—

This is an appeal from an order giving leave to appear and defend, which was based on a finding that a promissory note sued upon in the action was not sufficiently stamped.

The note was stamped as a promissory note payable on demand, and the learned Judge held that, inasmuch as Rs. 12 interest had been paid in advance, the note was not one payable on demand.

The note is expressed to be one payable on demand, and therefore comes within the definition of such a note given in the Bills of Exchange Act and the Stamp Ordinance, No. 22 of 1909, as amended by No. 16 of 1919. But, in pursuance of the Money Lending Ordinance, No. 2 of 1918, there is a marginal note to the effect that Rs. 12 had been "deducted or paid in advance as interest, premium, or charges." In my opinion the marginal note does not affect this note for the purpose of calculating the amount of stamp duty to be paid on it. It was conceded that in the hands of a *bona fide* holder for value the note would be properly stamped as a note payable on demand, i.e., according to the express terms of the note, and I am unable to come to the conclusion that it should bear a different stamp duty when in the hands of the promisee.

While setting aside the finding that the note has not been properly stamped, I would allow the order to stand on other grounds, and as the finding was one which practically barred the plaintiff's action, I would allow him the costs of the appeal.

Appeal allowed.