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Present : Dalton J. and Jayewardene A.J.

UMMA SALOOMAR *v.* HASSIM.

21—D. C. Colombo, 22,866.

Promissory note—Endorsement in blank—Negotiation by delivery—Holder for value.

An endorsement in blank makes a note payable to bearer.

Such a note is negotiated by delivery and when value has been given for it, the holder is a holder for value against all parties except the person from whom he receives it.

The compromise of a claim may be a good consideration for a promissory note.

A PPEAL from a judgment of the District Judge of Colombo. The plaintiff sued the defendant on a promissory note for Rs. 5,000 made by the defendant in favour of one S. L. Naina Marikar Hadjjar and endorsed and delivered by the latter to her. The defendant denied that Naina Marikar had endorsed and delivered the note to the plaintiff for valuable consideration or that the plaintiff was the lawful holder thereof. The defendant further pleaded that he granted the note to Naina Marikar to be held by him as part security for the payment to a brother of the defendant, one Abdul Raheem, of a sum of Rs. 15,000, in consideration of the said Raheem having consented to withdraw his

opposition to an award made in respect of the distribution of the estate of their father. He stated that the notes were not meant to be endorsed and that the liability on it had been discharged to the knowledge of the plaintiff, who was the wife of Raheem. The learned District Judge gave judgment for the plaintiff.

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H. V. Perera, for defendant, appellant.

B. F. de Silva, for plaintiff, respondent.

July 20, 1928. JAYEWARDENE A.J.—

The plaintiff sued the defendant on a promissory note for Rs. 5,000 made by the defendant on March 11, 1921, in favour of one S. L. Naina Marikar Hadjar. The plaintiff alleged that Naina Marikar endorsed and delivered the note to the plaintiff for valuable consideration and that the plaintiff was now the lawful holder thereof. The defendant denied that Naina Marikar had endorsed and delivered the note to the plaintiff for valuable consideration or that the plaintiff was the lawful holder. The defendant further stated in the third paragraph of his answer that he granted the promissory note to Naina Marikar on March 21, 1921, and on the same date the defendant's two brothers Isadeen Hadjar and Haniffa also granted each a promissory note for Rs. 5,000, to the said Naina Marikar, to be held by him as security for the payment by the makers to another brother of the defendant, one A. L. M. Abdul Raheem, of a sum of Rs. 15,000, in addition to the amount payable to the said Abdul Raheem under the award made on or about November 10, 1919, by Naina Marikar in respect of the distribution of the estate of one Alim among his heirs, in consideration of the said Raheem having consented to withdraw his opposition to the said award, and that the said notes were not to be negotiated or endorsed over. The defendant alleged that he and his two brothers had fully paid and discharged their liability to Raheem in the said sum of Rs. 15,000, and that he was still indebted to them. He further stated that the plaintiff is the wife of Raheem and was aware of these facts and that she was suing for and on behalf of her husband. After trial the District Judge entered judgment for the plaintiff as prayed for, and the defendant appeals.

Alim, the father of the defendant and Raheem, died in December 1917, and a last will dated October 22, 1917, was brought to Court, by defendant and Isadeen. The District Judge held against the will and there was an appeal, but the order was affirmed. The defendant appealed to the Privy Council but the parties agreed to refer the matter to the arbitration of Naina Marikar. He made his award on November 20, 1919, which was accepted by Raheem

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himself. The award was brought to Court in a special case, but the District Judge held that it could not be brought to Court in a special case. There was an appeal and an order was made on April 26, 1920, affirming that order, but stating that it could be relied on as an adjustment of the decree in the Testamentary case.

On August 30, 1920, the District Judge refused to accept the award in the Testamentary case. On appeal the Supreme Court set aside the order of the District Judge in September, 1921, and the award was accepted as binding on the heirs. Then Raheem threatened to appeal to the Privy Council. In consideration of Raheem consenting to withdraw his opposition to the award, the notes mentioned in the 3rd paragraph of the answer were given. They were as a matter of fact, handed to Naina Marikar.

The first issue was whether the note now in suit was made under the circumstances set out in the third paragraph of the answer. The learned judge has held that the note was made under those circumstances, except that there was no understanding that the notes were not to be endorsed or negotiated. On December 13, 1926, Raheem, by his Proctor, wrote to Naina Marikar asking for the notes, and on December 18 they were sent to him duly-endorsed *sans recours* with letter P 2 of Mr. Akbar, Naina Marikar's Proctor. The learned Judge is right in thinking that Naina Marikar must have consulted his lawyers before endorsing the notes, and he would not have endorsed if, in fact, they had been given subject to the conditions now sought to be imposed.

If the notes were given to obtain Raheem's consent to withhold his opposition to the award, there was valuable consideration for them. Valuable consideration is defined "as some right, interest, profit, or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other." (*Currie v. Misa*.¹)

The compromise of a claim may be a good consideration for a promissory note. (*Cook v. Wright*.²)

The learned judge has discussed the question of Raheem's indebtedness to Alim's estate and to the defendant. He has carefully considered the terms of the awards D 4 and D 5. He concludes that the question of the debts due by Raheem to Alim's estate could not come into consideration after the award had been accepted, and that the sum of Rs. 15,000 which the defendant and his two brothers agreed to pay was in addition to the amount awarded in P 5 and therefore could not possibly have been subject to any condition as to the payment of debts due to Alim's estate. He thinks that the notes were made out in favour of Naina Marikar, and kept with him, because of an understanding that the sums

¹ (1875) L.R. 10 ex. 153, 1 App. Cases 554.

² (1861) 30 L. J. Q. B. 321.

due on the notes were not to be recovered till all the assets had been realized. The District Judge intimated this opinion to Counsel for the plaintiff after the plaintiff had given evidence. It seems to me that this view is correct.

The plaintiff in her plaint stated that Naina Marikar endorsed and delivered the note to her, but it appears that he really endorsed the note to Raheem, her husband, and not to her. A bill or note is payable to bearer which is expressed to be so payable, or on which only a last endorsement is an endorsement in blank. (*Bills of Exchange Act, s. 8.*)

The endorsement by Naina Marikar specified no indorsee and made the note payable to bearer (section 34).

Such a note is negotiated by delivery, and where value has at any time been given for a bill, the holder is deemed to be a holder for value, against all parties except the person from whom he received it. The plaintiff is thus a holder for value of the note now in question.

The plaintiff is a Muhammadan woman and as such is entitled to her separate property. She says that she sold four lands in Colombo and that her husband Raheem took the money. She says that she spoke to Naina Marikar several times about these notes and that towards the end of 1926 she was pressing him for the notes. She says that her properties were sold to pay her husband's debts and that he promised to endorse the notes to her. As a matter of fact the notes bear her husband Raheem's endorsement. An antecedent debt may constitute valuable consideration for a note. If her evidence is accepted as it has been by the Judge, her husband was indebted to her at the date of the endorsement. She has indeed received very little value for four Colombo houses. In that view the plaintiff is a holder in due course, who has taken the note in good faith and for value, and without notice of any defect in the title. As a matter of fact there was no defect in the title. Even if the defendant had any personal equities against Raheem, of which there is no proof, they are not binding on the plaintiff.

It was contended that the plaintiff could not maintain this action as she averred that Naina Marikar had endorsed and delivered the note to her, but the issues and the evidence show that the case has been fully considered from the standpoint that she was an endorsee from her husband and subject to all his equities. The learned Judge has held in her favour.

I am of opinion that the judgment is right and the appeal should be dismissed with costs.

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DALTON J.—I agree.

Appeal dismissed.