Present : Fisher C.J. and Drieberg J. 1929.

WEERAPAH *v.* WIGGIN *et al.*

28—D. C. Colombo, 27,743.

Promissory note—Sale of car on hire purchase system—Note given to guarantor—Marginal entries—Ordinance No. 2 of 1918, s. 10.

Where A purchased a car from C on the hire purchase system through a motor car agent, B, and B, in order to help A to enter into the hire purchase contract with C, agreed to pay to C, on A's behalf, the initial payment and the first three instalments, and took from A a promissory note for the amount of these payments,—

Held, this was not a transaction to which the Money Lending Ordinance applied.

THE plaintiff sued the defendants, husband and wife, on a promissory note to recover a sum of Rs. 3,332.98. The second defendant entered into a purchase hire agreement for the purchase of a car from the Auto Supply Company according to which the second defendant was to make an initial payment of Rs. 2,283,33 and thereafter eleven payments of Rs. 452.52 each. The second defendant was unable to make the payments and the plaintiff on behalf of the second defendant agreed to pay the Auto Supply Company the initial payment and the first three instalments. The second defendant and his wife gave the promissory note sued upon to cover the amount of the instalments.

The learned District Judge held that the promissory note was not enforceable as it had failed to conform to requirements of section 10 (2) of the Money Lending Ordinance.

H. V. Perera (with him *Choksy*), for plaintiff, appellant.

H. E. Garvin, for first defendant, respondent.

September 5, 1929. DRIEBERG J.—

The position of the parties to this note is clear when the facts concerning the sale of the car are stated.

The car was sold by the appellant, not to the second defendant, but to the Auto Supply Company, who paid him its price, Rs. 6,850. The second defendant entered into a purchase hire agreement with the Auto Supply Company by which the second defendant was to make an initial payment of Rs. 2,283.33 and thereafter eleven payments of Rs. 452.52; if the second defendant made all these

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payments, amounting to Rs. 7,261.05, he would have become entitled to the car. The second defendant was not able to make the initial payment to the Auto Supply Company and the instalments which fell due thereafter; the appellant, who was interested in helping the second defendant to enter into the purchase hire agreement with the Auto Supply Company, for on this depended the company completing the purchase of the car and paying him the price, agreed to pay to the Auto Supply Company on behalf of the second defendant the initial payment of Rs. 2,283.33 and the first three instalments amounting to Rs. 1,357.56. The appellant took over a Buick car of the second defendant for Rs. 1,002.50, and thus the second defendant then had to repay to the appellant a sum of Rs. 2,638.39.

On January 12 the second defendant and his wife, the first defendant, gave the appellant the promissory note sued on, for Rs. 3,332.98 payable on April 12, the difference being made up of Rs. 190.25 insurance of the car, Rs. 10 registration fee paid by the appellant, Rs. 324.34 value of accessories sold to the second defendant, and Rs. 170 for interest and discounting fees. On January 18 the second defendant entered into the purchase hire agreement, D 1, with the Auto Supply Company.

The appellant paid to the Auto Supply Company the initial payment of Rs. 2,283.33 and on February 1 the second defendant gave the appellant in part repayment a cheque for Rs. 300 which was to be presented on February 23; in the meantime, on February 18, the first instalment of Rs. 452.52 fell due and was paid by the appellant, who told the second defendant that unless the cheque was met he would not pay further instalments. The cheque was dishonoured. The appellant says that the second defendant then agreed to pay the further instalments himself.

The appellant has sued for the full amount of the note, but he should have limited his claim to Rs. 2,427.94, for he did not pay the second and third instalments, which amount to Rs. 905.04. At the trial the appellant agreed so to limit his claim.

These are the facts substantially as found by the trial Judge, and on them the appellant is entitled to succeed. His action has, however, been dismissed on the ground that on the margin of the note he entered under the heading " Capital sum borrowed " Rs. 3,332.98. The learned District Judge held that the statement was false, the initial payment and the three instalments not having been paid at that date, and that the promissory note was not enforceable by reason of the provision in section 10 (2) of the Money Lending Ordinance, No. 2 of 1918.

Even if this is a money lending transaction I do not think it is one in which the note was taken for the security of the loan of money. I have doubts whether it falls within section 10, for there

was no sum borrowed which could have been stated on the margin of the note when it was made. The note was taken not as security for money lent but for money to be paid for and on behalf of the second defendant. It has, however, been held in *Ramen Chetty v. Renganathan Pillai* [1] that a note taken to secure future advances is subject to the provisions of section 10; the judgment of the lower Court, which was affirmed in appeal, was that in such a case the statement on the margin should be that no money was lent.

That case however was one of an ordinary transaction of money lending by a Chetty firm, the note having been taken by the plaintiff for money to be lent to the defendant.

The Ordinance applies only to money lending transactions. The preamble states that it was enacted "as it was necessary that provision should be made for the better regulation of money lending transaction." When the note is not given in such a transaction the Ordinance has no application, *Sanitamby v. Nogan.* [2]

Caldera v. Zainudeen [3] was a case of a note given by a member of a cheetu club to the manager of it to secure payment of future contributions. On the margin was entered as borrowed the sums so due and to be paid. De Sampayo J. held that though this entry was fictitious the note was not taken as security for a loan, that section 10 presupposes a "loan" or a "lender," and that as there was no borrowing the note did not fall under section 10.

In the present case, of the amount for which the note was made a sum of Rs. 694 was due by the second defendant for matters such as insurance of the car and price of accessories which were in no sense loans. As regards the amount due to the Auto Supply Company, the agreement by the appellant to pay this was in no sense a money lending transaction, but was purely a business or trade arrangement. The only reason the appellant had for agreeing to pay the initial payment was to enable him to facilitate the sale of the car to the Auto Supply Company and obtain from them its price. The position is almost the same as if the appellant had guaranteed to the Auto Supply Company the payment of the initial sum and the first three instalments. I assume that if the second defendant found himself in a position to make these payments himself and was prepared to do so, the appellant would have been pleased to be relieved of the necessity of making the payments himself.

The appeal is entitled to succeed. Judgment will be entered for the appellant for the sum of Rs. 2,427.94 with interest and noting fee as found to be due by the Judge and for costs. The first defendant will pay to the appellant the costs of this appeal.

[1] *(1927) 28 N. L. R. 339.*

[2] *(1924) 26 N. L. R. 217.*

[3] *24 N. L. R. 244.*

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The second defendant did not contest this action and judgment was entered against him for the full amount claimed. It was admitted that judgment should not have been entered for that sum, but should have been for the lower sum, for which we have allowed judgment against the first defendant. Mr. Perera, however, agreed to restrict the amount he would claim under that judgment to the sum of Rs. 2,427.94 and interest.

FISHER C.J.—I agree.

Appeal allowed.