

1942

Present : Wijeyewardene J.

MARIKAR, Appellant, and KAMALLA, Respondent.

150—C. R. Colombo, 68,178

Promissory note—Discharge by payment—Negotiation—Right of endorsee to sue.

Where a promissory note is discharged by payment, it cannot be subsequently endorsed by the payee so as to give the endorsee a right to sue the maker.

Jayawardene v. Rahman Lebbe (21 N. L. R. 178.) followed.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for appellant.

No appearance for respondent.

Cur. adv. vult.

November 10, 1942. WIJEYWARDENE J.—

This appeal has to be decided on a question of law, as there has been no appeal on questions of fact although the plaintiff was granted the necessary leave to appeal on facts.

This is an action by the appellant as a holder in due course. The Commissioner found that the note was made by the first defendant in favour of his sister, the second defendant, to secure a sum of Rs. 210 promised by him as dowry to the second defendant. The first defendant, later, invested the dowry on a usufructuary mortgage bond in March, 1939, for the benefit of the second defendant, and thereby discharged his liability. The note was endorsed for value in August, 1940, to the plaintiff, who took the note without any knowledge of the investment in March, 1939.

In *Jayawardene v. Rahiman Lebbe*¹ it was held by a Bench of three Judges that when a promissory note payable on demand was paid by the maker it could not be subsequently endorsed by the payee so as to give the endorsee a right to sue the maker on the note.

In *Muttu Carupen Chetty v. Samaratunga*² Jayawardene A.J. expressed his doubts as to the correctness of the earlier decisions and referred to the English case of *Glasscock v. Balls*³ in support of his observations.

In *Thamboo v. Phillippu Pillai*⁴ Garvin A.C.J. and Maartensz A.J. distinguished the facts of the case they were considering from the facts in *Jayawardene v. Rahiman Lebbe* (*supra*) and followed *Glasscock v. Balls* (*supra*). In *Vellasamy v. Mohideen*⁵ Dalton A.C.J. (with whom Koch A.J. agreed) reviewed all the earlier decisions of this Court and the case of *Glasscock v. Balls* (*supra*) and distinguished the last case from the case of *Jayawardene v. Rahiman Lebbe* (*supra*). I am able to draw the same distinction between the present case and the English case. I am therefore bound by the decision of this Court in *Jayawardene v. Rahiman Lebbe* (*supra*). I dismiss the appeal.

Appeal dismissed.
