Aug. 30, 1910

Present: Mr. Justice Middleton.

MANUEL ISTAKY *v.* SINNATAMBY *et al.*

C. R., Batticaloa, 13,863.

Joint promissory note—Liability of maker for the entire debt.

Each of the makers of a joint promissory note is liable for the whole debt.

The meaning of the word "joint" under the English Law is entirely different from that which the word implies under the Roman-Dutch Law.

The liability of a maker of a joint note is governed by the English Law, and not the Roman-Dutch Law.

"Where several persons make a joint contract, each is liable for the whole, although the contract be joint, and all must be sued together during their joint lives, for a judgment obtained against one, although unsatisfied, is a bar to an action against the others, either in respect of a joint debt or in respect of a joint tort."

IN this case plaintiff sued the two defendants on a joint promissory note granted by them and obtained a joint decree against them, whereby it was "ordered and decreed that the said defendants do pay to the said plaintiff the sum of Rs. 276.82, with legal interest and costs." The first defendant on December 30, 1909, brought into Court his proportionate share of the judgment and all the costs, and moved that the writ of execution against the property of the first defendant be recalled. This motion was allowed. On February 2, 1910, plaintiff's proctor moved for an order of payment in favour of his client to draw the sum deposited in the case in part satisfaction of his claim, and on February 7 order of payment was issued in favour of the plaintiff.

On March 24, 1910, plaintiff's proctor moved for a notice on the first defendant to show cause why the property seized should not be sold for the recovery of the balance amount due on the decree.

On May 12, after hearing the parties, the learned Commissioner decided that the holder of a decree, under which several persons are jointly liable, could proceed against any one of the debtors, and refused to interfere with the seizure and sale of first defendant's property.

The first defendant appealed.

Vernon Grenier, for the appellant.—The decree must be interpreted to be a decree ordering each party to pay his proportionate share. The note sued upon was a joint promissory note. On a

joint contract each co-debtor is liable for his share of debt, and not for the whole. (*Lindsay v. Oriental Bank Corporation et al.*,[1] *Chinnatamby v. Chunmugam et al.*[2]) The cases relied upon by the Commissioner (see *Pereira's Laws of Ceylon, vol. I., pp. 324 and 325*) are beside the point. [MIDDLETON J.—But the English Law applies in this case; and under a joint contract, according to the English Law, each co-debtor is liable to his creditor for the full amount.]

H. A. Jayewardene, for the respondent.—The English Law governs this case, and not the Roman-Dutch Law.

August 30, 1910. MIDDLETON J.—

This is an appeal from an order made by the Commissioner of Requests declining to stay the sale of the first defendant's property upon a writ in a judgment in this action. The action is against two defendants on a promissory note, and judgment was given against them. After judgment on December 30, 1909, the first defendant by his proctor moved to be allowed to pay into Court his proportionate share of the judgment and all the costs, and moved that his property be released from seizure, and that the Fiscal be directed not to sell it. This motion was allowed. Subsequently, on May 12, 1910, it was desired to obtain execution against the further property of the first defendant, and his property was seized; the Judge was applied to, but refused to interfere, and this appeal was made. It is contended for the appellant that under the Bills of Exchange Act, section 85, sub-section (2), that where a note runs " We promise to pay," and is signed by two or more persons, it is deemed to be a joint note only in the sense implied under the Roman-Dutch Law; that is to say, that each party on the note is liable only for his proportionate share of the whole amount. This, however, is not the meaning of the word " joint " under the English Law; and this is the law that is necessary to be applied in actions on Bills of Exchange. In *Richards v. Heather*,[3] Abbott J. says that the Law of England is, " Where several persons make a joint contract, each is liable for the whole, although the contract be joint, and all must be sued together during their joint lives, for a judgment obtained against one, although unsatisfied, is a bar to an action against the others, either in respect of a joint debt or in respect of a joint tort." One joint debtor who has been compelled to pay the whole of the joint debt is entitled to the contribution of the other. So that it will be seen that the meaning of the word " joint " in England is entirely different from that which the word implies under the Roman-Dutch Law. This is not a point which is raised for the first time here;

[1] *Ram. 1860-1862, 54.*

[2] *(1909) 1 Cur. L. R. 134.*

[3] *(1874) Barn. & Ald. 35.*

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within my experience the same question has arisen on other matters in previous cases. There is a contention that the plaintiff by agreeing to what the first defendant proposed on December 30, 1909, and drawing out of Court the proportionate share of the debt which the first defendant paid him, has waived his rights to recover the portion of the debt against the first defendant. In my opinion there is nothing in the record to show that any such waiver as is relied upon has occurred. The appeal must be dismissed with costs, and the first defendant must be left to his remedy of contribution against his co-debtor.

Appeal dismissed.