

1918.

Present : Ennis J. and Shaw J.

PETER v. SURIAPPERUMA.

453—D. C. Colombo, 46,566.

Promissory note—Payee not clearly indicated.

A document purporting to be a promissory note ran as follows:—

Promissory Note, Rs. 1,500.

I, S, have this day borrowed and received a sum of Rs. 1,500 from K. Therefore I, the said debtor S, do promise to repay the said sum on demand being made therefor by the said creditor or his heirs, &c.

Held, that the note was not a promissory note, as the payee was not indicated with reasonable certainty.

THE facts are set out in the judgment.

A. St. V. Jayawardene, for the appellant.

Drieberg (with him *F. H. B. Koch*), for the respondent.

March 4, 1918. SHAW J.—

The plaintiff sues as indorsee of an instrument said to be a promissory note. The document is in the following terms:—

Promissory Note, Rs. 1,500.

On this 1st day of April 1914, at Wattala.

I, Simon Peris Suriapperuma, of Mulleriyawa, in the Adikari pattu of Hevagam korale, have this day borrowed and counted and received in full a sum of Rs. 1,500 of lawful money of Ceylon from P. S. Karunaratne, native doctor, of Warapalana, in the Meda pattu of Siyane korale.

Therefore, hereby renouncing the benefit of saying that the money was not counted and received, I, the said debtor, Simon Peris Suriapperuma, do hereby promise and bind myself to repay the principal sum of Rs. 1,500, and interest thereon at the rate of 16 per centum per annum from this date till payment at any time on demand being made therefor by the said creditor or by his heirs, &c.

(Signed) S. P. SUBIAPPERUMA.

Witnesses: (Signed) D. P. WIJESINGHE.

(Signed) D. L. JAYATILLEKE.

The Judge has held the instrument to be a valid promissory note, and has given judgment for the plaintiff as indorsee. The defendant appeals. In my opinion the appeal must succeed.

A promissory note is defined by section 83 of the Bills of Exchange Act, 1882, as "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer." Section 7 (1) of the Act, which applies to promissory notes as well as to bills of exchange, provides as follows: "Where a bill is not payable to bearer, the payee must be named, or otherwise indicated therein with reasonable certainty." The document under consideration is not in accordance with these provisions, the payee not being a "specified person," nor is he "indicated therein with reasonable certainty."

Payment is expressed to be made on demand being made therefor "by the said creditor or by his heirs," &c. It is suggested, on behalf of the respondent, that the words "his heirs," &c., should be read as "his heirs, executors, administrators, or assigns." Even supposing that the words can be so read, it only makes the matter worse, and adds another undetermined class of persons, namely, assigns, in addition to heirs, who cannot in the ordinary way recover on a bill or note. The only person who can recover on a bill or note is a "holder," who is defined as the payee or endorsee of a bill or note who is in possession of it; and in the case of a bill payable to bearer, the bearer. Besides these, only persons to whom the holder's interests have been transmitted by operation of law can recover. An ordinary assignee is not a holder within the meaning of the Act.

A bill or note ought to specify to whom the same is payable, for in no other way can the person who is liable on it know to whom he may properly pay it, so as to discharge himself from further liability. The rule is clearly laid down in the judgment of the Court of Common Pleas in *Yates v. Nash*:¹ "Though the payee may be described in any way, yet, in order that the bill should be valid, he must be a

1918.

SHAW J.

*Peter v.
Suriapperuma*

1918.

SEAW, J.

*Peter v.
Suriapperuma*

person capable of being ascertained at the time the bill is drawn. That doctrine was laid down in distinct terms as to promissory notes in *Cowie v. Stirling*. ”¹ Neither the “ heirs ” nor “ assigns ” of P. S. Karunaratne were capable of being ascertained at the time the document was signed; it follows that it is not a valid promissory note, and no action can be maintained on it as such.

An issue was settled in the case raising the question whether Karunaratne had assigned the debt in respect of which the document was given to the plaintiff, and whether the defendant had due notice therefor. There was, however, no finding on the issue, nor was any evidence given on it, and, in respect of a cause of action based on such an assignment, the burden of proof would be different, and quite different defence might arise to those available in an action by a holder of a negotiable instrument.

I would allow the appeal, with costs, and enter judgment for the defendant, with costs, reserving, however, any rights the respondent or Karunaratne may have to sue in respect of the original debt.

ENNIS J.—I agree.

Appeal allowed.