1934 *Present :* **Garvin S.P.J. and Akbar J.**

KANNIAH *v.* MANICAM

120—D. C. Kandy, 42,815.

Promissory note—Rate of interest left blank—Insertion of rate without authority—Material alteration—Ordinance No. 25 of 1927, s. 20 (2).

The insertion of a rate of interest in a promissory note without authority is a material alteration of the note.

APPEAL from a judgment of the District Judge of Kandy.

H. V. Perera (with him *E. F. N. Gratiaen*), for the defendant, appellant.

Rajapakse (with him *J. R. Jayawardene*), for the plaintiff, respondent.

February 21, 1934. GARVIN S.P.J.—

This was an action by the payee against the maker of a promissory note. He sought to recover a sum of Rs. 300, being the principal sum due on the note, and a sum of Rs. 193.50, being the interest which he said was payable in terms of the note. The defendant filed an answer in which he took various defences, among them one being that there had been a failure of consideration. The case proceeded to trial upon the single issue: "Was there a failure of consideration on the promissory note 'A' dated January 15, 1929, for Rs. 300". Now this promissory note is in the ordinary form. The maker promises to pay to the payee or order the sum of Rs. 300 with interest at 18 per cent. per annum. When giving evidence at the trial the plaintiff who began admitted in cross-examination that when the promissory note was given to him no rate of interest had been filled in. He added "I put in the interest rate in note 'A' on the day I gave it to the Proctor to bring this action. When note 'A' was

signed there was no interest rate inserted. No rate was agreed upon then". In view of this evidence the defence proposed two further issues, (2) In view of this evidence has the note 'A' been materially altered, and (3) if so, is this action maintainable. The case was then adjourned and the plaintiff was given permission to file a replication. In the replication the plaintiff further pleaded as follows:—"Pleading to the issue of law raised by defendant at the trial, plaintiff says that the fact of defendant giving a note to plaintiff for Rs. 300 agreeing to pay interest and leaving the interest column blank constitutes an implied authority to plaintiff to insert any reasonable interest recoverable in law". The case was then once again set down for trial. No further evidence was adduced, the plaintiff's Counsel expressly stating: "I leave it to Court on the evidence led as regards issue (1) of fact". On the two issues of law which were framed on the first day of trial Counsel proceeded to address the learned District Judge without further evidence.

The facts, therefore, which are material to the question of law which has been raised by Counsel for the appellant are these. There is here a promissory note which was complete in all respects save one. The rate of interest was left blank. The plaintiff before bringing this action inserted in the blank space the figure 18, so that, as the promissory note now stands, it is a note to pay a specified sum with interest at 18 per cent. The evidence is clear and it all proceeds from the plaintiff that the note was in this respect blank when it was handed to him and that no rate of interest was greed upon. It has been urged that in these circumstances the plaintiff's action must be dismissed upon the ground that this note has been materially altered.

No attempt has been made to prove any express or other authority to fill in and complete the note in the manner in which it has been completed. In the absence of such an authority one is driven to the conclusion that a rate of interest inserted without authority is a material alteration which vitiates the note. For this proposition there is ample authority to be found in our reports. There is first the case of *Raman Chetty v. Ramanathan*[1] where Grenier J. went the length of holding that there was a material alteration of a note where the figures 30 were inserted in the space left blank so that the note read as one in which the principal sum was payable with interest at 30 per cent. This conclusion was reached notwithstanding that, though there was no authority given by the maker to the payee to fill the note in the manner in which it was filled in, there was evidence of an agreement to pay interest at that rate. In the case of *Abdul Majeed v. Yasaya Nadan*,[2] which was also a judgment of Grenier J. we have authority for the proposition that an agreement to pay interest does not amount to an agreement to alter a promissory note by inserting the rate of interest so promised in a space left blank and that such an insertion is a material alteration which vitiates the note. In the case of *Swaminadan v. Kannan*[3], Middleton J. has held that in the special circumstances of that case where notwithstanding that a space was left blank and no rate of interest was inserted there was evidence of an agreement to pay interest at the rate subsequently inserted in that space

[1] *1 Bals. Rep. 182.* [2] *4 Leader Law Reports 1.*

[3] *14 N. L. R. 106.*

an authority to fill in that rate might be presumed. The two judgments of Grenier J. above cited are referred to, but it can hardly be gathered that Middleton J. dissented from the law as stated by Grenier J. in all respects. The utmost I think that can fairly be gathered from perusal of this judgment is that it was the opinion of Middleton J. that in an appropriate case an authority to fill in the rate of interest may be gathered from the surrounding facts and circumstances.

It seems to me however that this matter is concluded by the privisions of section 20. The authority which by the provisions of that section is deemed to arise in the circumstances specified therein is only *primâ facie*. Sub-section (2) states specially that "in order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given".

Throughout this case there is not even a suggestion that there was an authority to fill in 18 per cent. as the rate of interest agreed upon. Indeed, we are definitely told that no rate of interest was agreed upon. As to the suggestion in the replication, no evidence has been adduced in support of it nor has any authority been cited for the proposition that where in a promissory note the space provided for the insertion of the rate of interest is left blank that is an ample authority to the payee to insert "any reasonable interest recoverable in law".

The appeal is allowed, the judgment of the Court below is set aside and the plaintiff's action dismissed with costs both here and below.

AKBAR J.—I agree.

Appeal allowed.