1952 *Present:* **Rose C.J., Gratiaen J. and Choksy A.J.**

DAVID, Appellant, *and* MENDIS *et al.*, Respondents

S.C. 339—D. C. Tangalla, 5,691

Registration of Documents Ordinance (Cap. 101)—Sections 17 and 18, as amended by Ordinance No. 13 of 1947—Scope of—Bill of Sale—Meaning of term.

In a contract of sale of movable property, a written acknowledgment given by the seller to the purchaser after title to the goods had already passed to the purchaser on payment of the price and delivery of the goods is not a " bill of sale " within the meaning of section 17 of the Registration of Documents Ordinance. A bill of sale is necessary only where possession of the goods intended to be sold is not given and the object is to pass the property in the goods without possession of them being given.

Sections 17 and 18 of the Registration of Documents Ordinance do not apply to verbal contracts of purchase and sale.

APPEAL from a judgment of the District Court, Tangalla. This case was reserved for the decision of a Bench of three Judges under section 38 of the Courts Ordinance.

N. E. Weerasooria, K.C., with *H. W. Jayewardene* and *W. D. Gunasekera*, for the plaintiff appellant.—The document 2D6 is a " bill of sale " and comes within the provisions of the Registration of Documents Ordinance (Cap. 101). This is a transfer of movable property. There must be either delivery or registration. An unregistered bill of sale is not sufficient. On the facts of this case ostensible possession was with the first defendant. Therefore 2D6 was void as against the plaintiff.

H. W. Jayewardene continued.—In the present case 2D6 was put forward as the document intended to pass title. It is therefore a bill of sale which has not been registered—*French v. Gething* [1]. Even apart from 2D6 the transaction itself was void for non-compliance with the provisions of the Registration of Documents Ordinance. The definition of " bill of sale " included transactions that were not in writing. The earlier cases took this view. See section 18 (*b*) and *Indian Bank v. Chartered Bank* [2]; *Appuhamy v. Appuhamy* [3]; *Mohamed v. Eastern Bank* [4].

H. V. Perera, K.C., with *Christie Seneviratne*, for the second defendant respondent.—What was sold was the business. 2D6 is only evidence of a transaction and of the fact that the articles were handed over. It is not a document which creates rights. Therefore it is not a " bill of sale ". The Registration of Documents Ordinance (Cap. 101) as amended by Ordinance No. 13 of 1947 deals only with documents. Inventories and

[1] *(1922) 1 K. B. 236.*
[2] *(1941) 43 N. L. R. 49.*
[3] *(1932) 35 N. L. R. 329.*
[4] *(1931) 33 N. L. R. 73.*

receipts are not bills of sale unless they are given as an " assurance "—*Haydon v. Brown* [1]. With regard to the meaning of " ostensible possession ", see *Frenoh v. Gething* [2].

G. C. Niles, for the first defendant respondent.

N. E. Weerasooria, K.C., in reply.—The document, 2D6, is something more than a receipt. It is a document of sale. One must consider the transaction and not the mere form of the document. See *Ramsay v. Margrett* [3] and *Charlesworth v. Mills* [4].

Cur. adv. vult.

January 16, 1952. GRATIAEN J.—

This appeal was reserved for the decision of a Bench of three Judges under Section 38 of the Courts Ordinance.

On July 21, 1947, the plaintiff obtained a decree against the first defendant for the payment of a sum of Rs. 4,000 and interest due to him on a promissory note dated March 6, 1946. In execution of this decree the plaintiff caused certain furniture and fittings lying at Galiton Hotel in Hambantota to be seized by the Fiscal on July 22 and 23, 1947. The second defendant, however, claimed the goods as his property, and his claim was upheld. The plaintiff thereupon instituted the present action under Section 247 of the Civil Procedure Code to have the property declared liable to be sold in execution against the first defendant on the grounds, *inter alia*, (*a*) that the furniture and fittings in fact belonged to the first defendant at the date of seizure, and (*b*) that, in the alternative, their alleged sale to the second defendant was liable to be set aside as a transaction entered into between the defendants colusively and in fraud of the first defendant's creditors.

The position taken up by the second defendant was that he had in good faith purchased the property for valuable consideration from the first defendant 2½ months before the date of the plaintiff's decree. The plaintiff strenuously attacked the genuineness of this transaction, and alleged that the defendants, acting in collusion, had, with the assistance of certain other persons and in order to bolster up a fictitious sale, fabricated a document 2D6 bearing the date May 6, 1947, but in fact executed *after* the property had been seized by the Fiscal. The plaintiff also contended that in any event this document (or, in the alternative, the transaction of which it purported to be a record) was a void or voidable " bill of sale " by reason of non-compliance with the provisions of either Section 18 (*a*) or 18 (*b*) of the Registration of Documents Ordinance as amended by Ordinance No. 13 of 1947 which had come into operation on May 1, 1947.

The main points of contest between the parties in the Court below involved decisions on questions of fact. The learned District Judge, who had the inestimable advantage of seeing and hearing the witnesses, was satisfied that the 2nd defendant had purchased the furniture and

[1] *(1888) 59 L. T. (N. S.) 810 at p. 811.*
[2] *(1922) 1 K. B. 236 at p. 247.*
[3] *(1894) 2 Q. B. 18.*
[4] *(1892) A. C. 231.*

fittings from the first defendant *bona fide* for valuable consideration on May 6, 1947. He accordingly dismissed the plaintiff's action with costs. We are now concerned with the appeal against this decision.

There were no doubt certain aspects of the transaction which were *prima facie* sufficiently suspicious to call for an explanation from the defendants, but each of these circumstances was explained by the second defendant and his witnesses to the satisfaction of the learned trial Judge. In my opinion, the judgment under appeal was free from misdirection in regard to any controversial issue of fact. The decision that the transaction which took place between the defendants on May 6, 1947, was a genuine sale of movable property, contemporaneously implemented by delivery of the goods, must therefore be regarded as unassailable. Mr. Weerasuriya very frankly conceded that in this view of the matter, he could not press the alternative argument that the transaction was voidable as having been executed in fraud of creditors.

There remains for consideration the final submission urged on behalf of the plaintiff—namely, that the second defendant's claim to protect his goods from seizure was vitiated for non-compliance with the provisions of Section 18 (in its amended form) of the Registration of Documents Ordinance.

It is convenient in the first instance to set out in some detail the facts and circumstances relating to the sale which took place on May 6, 1947. The first defendant was at that date the sole proprietor of a hotel business carried on by him at Galiton Hotel in which a number of Government clerks (some of whom gave evidence at the trial) were accommodated as permanent lodgers. He had got into financial difficulties through having undertaken, with insufficient funds at his immediate disposal, a building contract for a Government Department. On April 2, 1947, he prevailed upon the witness Sivapraksam, a Government clerk residing at the hotel, to purchase a part of the hotel furniture and fittings for Rs. 1,000. Sivapraksam's primary motive was to prevent a situation whereby a sale to an outsider might result in the hotel being closed down to the inconvenience of himself and the other lodgers. Shortly afterwards the first defendant was again in difficulties, and he was obliged to advertise the rest of his furniture for sale. It was at this stage that the second defendant, who was a comparatively wealthy stranger from the Madampe District, arrived in Hambantota for a period of convalescence after a serious illness. He obtained a room at the Galiton Hotel owing to the scarcity of accommodation at the local Resthouse, and was on that occasion induced by some of the Government clerks to purchase the hotel business from the first defendant as a going concern. He agreed to do so for a consideration of Rs. 2,000, which sum represented the agreed value of the first defendant's remaining furniture as well as that which Sivapraksam had previously purchased. Sivapraksam very willingly released his furniture for Rs. 1,000 which was paid back to him out of the total consideration.

The second defendant, though somewhat illiterate, was apparently a shrewd man of business. At an early stage of the negotiations he secured the tenancy rights of Galiton Hotel from the first defendant's

landlord, and arranged that the first defendant should run the hotel in future as his manager for a monthly salary. The transaction was finally completed on May 6, 1947, on which date he took delivery of the furniture which he had purchased, but here again he took the additional precaution of leaving it at the hotel premises in the charge of his friend Wickremaratne who was one of the Government clerks residing at the hotel. Shortly afterwards, the second defendant left Hambantota.

As from May 6, 1947, the first defendant ran the hotel on the second defendant's account, and the furniture and fittings remained on the premises for the benefit of the business. So matters stood until the plaintiff, who was unaware of the true position, caused the Fiscal to seize the furniture and fittings in July, 1947, in execution of his decree against the first defendant.

It is now convenient to consider the terms of the document 2D6 which the second defendant had obtained from the fist defendant contemporaneously with the purchase which was concluded on May 6, 1947. The second defendant, not unnaturally, required a document signed by the first defendant acknowledging that he had now become the owner of the hotel business and of the furniture. The document 2D6, *which was stamped as a receipt and not as a "bill of sale"*, was drafted by some Government clerks who had interested themselves in the completion of the transaction and who seem to have regarded themselves as possessing some degree of skill as amateur conveyancers. The document drafted by them and signed by the first defendant is in the following form:—

> "I, M. M. Galapathy of Galiton Hotel, Hambantota, do hereby sell the under-mentioned furniture to Mr. S. D. Peter Appuhamy of Madampe, Kahawatte, for the sum of rupees two thousand only and having received the said amount do hereby hand over the furniture to the said buyer". (A catalogue of the furniture purchased is then enumerated.)

Mr. Weerasuriya contends that this document is a "bill of sale" within the meaning of Section 17 of the Registration of Documents Ordinance (Cap. 101) and that it is void as against the plaintiff inasmuch as it had not been duly registered in terms of Section 18 (*b*) and because the furniture had not, since the date on which the second defendant purported to purchase it, remained "ostensibly" in his custody and possession within the meaning of Section 18 (*a*).

In the circumstances of the present case, the document 2D6 cannot, in my opinion, legitimately be regarded as a "bill of sale" within the meaning of the Ordinance. This term has a well-recognised connotation in commercial law and practice, and its definition in Section 17 (as amended by Ordinance No. 13 of 1947) is now substantially the same as that appearing in the Bills of Sale Acts, 1854 and 1878, of England.

As Lord Esher has pointed out in *Johnson v. Diprose* [1], a "bill of sale", in the sense in which that term is commonly understood, is "a document given in respect of a sale of chattels, *which is necessary in cases where possession of the chattels intended to be sold is not given, and the object is to*

[1] *(1893) 1 Q. B. 512.*

pass the property in the goods without possession of them being given ". I can find no words in Section 17 of the Ordinance—either in its original or in its amended form—from which a wider meaning can be imputed to the term *in so far as it applies to contracts for the sale of goods*. If therefore 2D6 be examined in relation to the transaction now under consideration, one is driven to the conclusion that it was clearly not intended by either party to the contract that the title to the furniture should pass to the second defendant *by virtue of the document*. On the contrary, he became the lawful owner under the transaction *on payment and delivery of the goods*. It must be remembered that the second defendant was a person unable to read the English language and he did not claim to share the amateur draftsmen's pretentions to understand the mysteries of conveyancing. He had merely stipulated, at the time when the transaction went through, that he should be given for his future protection a written acknowledgment confirming that he had become the owner of the goods. In the course of his evidence he consistently described 2D6 as a " receipt " ; it was stamped as a receipt ; and no questions were put to him in cross-examination to suggest that the document was intended to have any other significance. It would therefore be introducing a sense of unreality into the transaction, and giving it a significance and purpose not even remotely intended or contemplated by the parties to it, to take the view that the inclusion in the document of certain words, which are doubtless appropriate to a " bill of sale ", had necessarily converted it into a " bill of sale ". As I have already pointed out, the true position was that the title to the goods *had passed and was intended to pass* to the second defendant under the transaction, implemented as it was by payment and delivery, and not under the document itself. This result was achieved as an incident to a normal contract for the sale and purchase of goods. *Charlesworth v. Mills* [1]. The position would have been very different in a case where " if the document falls, the transaction falls with it ". On the contrary, the validity of the transaction was entirely unaffected by the validity or otherwise of the document 2D6. *In re Hardwick ; ex parte Hubbard* [2]. The observations of Cockburn L.C.J. in *Woodgate v. Godfrey* [3] in construing the English Act of 1854 seem to be equally apposite to the local Ordinance which was " not intended to apply to an out and out sale, whereby it was never contemplated that the possession should remain in the grantor ". In my opinion the document 2D6 was not a " bill of sale " within the meaning of the Registration of Documents Ordinance, as amended by Ordinance No. 13 of 1947.

It was finally submitted on behalf of the plaintiff-appellant that, apart from the document 2D6, the verbal transaction, however genuine, was itself a " bill of sale ", and was therefore vitiated because Sections 17 and 18 of the Local Ordinance, unlike the corresponding English Acts, aim *not only at documents of title but also at transactions*. This proposition seeks to extend the doctrine laid down by a Bench of two Judges in *Indian Bank v. Chartered Bank et al.* [4] to verbal contracts of purchase and sale. To my mind the proposition is unsound.

[1] *(1892) A. C. 231.*
[2] *(1886) 55 L. J. Q. B. 490.*
[3] *(1879) 48 L. J. Exch. 271.*
[4] *(1941) 43 N. L. R. 49.*

Indian Bank v. Chartered Bank (supra) was decided before the Ordinance was amended, and at a time when the term " bill of sale " was defined so as to " include . . . . pledges and conventional mortgages ". It is not necessary for the purpose of this appeal to consider whether that decision was right or not at the time of its pronouncement, but it certainly has no application to contracts of sale, still less to contracts of sale transacted after the amending Ordinance of 1947 came into operation. Section 17 now excludes pledges and conventional mortgages from the statutory meaning ascribed to the term " bill of sale ", and the local definition is now substantially the same as that which had been adopted in the corresponding English Acts. Having regard not only to the meaning generally ascribed to the word " bill of sale " but also to the circumstance that this term appears in an Ordinance designed to provide for the registration of documents, it seems to me that very compelling words indeed would be required to justify the view that a *verbal* transaction was intended by the legislature to be regarded as a " bill of sale " whose validity would in certain circumstances depend on its registration. I am content to say, without expressing any view as to whether *Indian Bank v. Chartered Bank, Ltd.* (supra) was correctly decided, that—as far as verbal contracts of sale are concerned—I can find no such compelling words in the language of Sections 17 or 18 of the Ordinance in their present amended form.

To summarise my conclusions, I would hold that neither the document 2D6 nor the *bona fide* transaction which took place between the defendants on May 6, 1947, was a " bill of sale " within the meaning of the Registration of Documents Ordinance. Sections 18 (*a*) and 18 (*b*) do not therefore apply to the present case, and the question whether the goods remained " ostensibly " in the second defendant's possession up to the date of seizure does not arise for consideration. The ownership of the goods seized at the instance of the plaintiff had passed absolutely to the second defendant at the moment when he paid for and took delivery of them in terms of a verbal contract whose validity was unassailable as from the moment of delivery. The contemporaneous execution of the document 2D6 did not and was not intended to affect the legal rights of the parties. In the result, the goods were not liable to seizure in execution of the plaintiff's decree against the first defendant. The true principle of law which applies to the case is " the ordinary rule by which a creditor is not entitled to seize the goods of one person for the debt of another ". *Ramsay v. Margarett* [1]. In my opinion therefore the plaintiff's appeal should be dismissed with costs in favour of both defendants.

ROSE C.J.—I agree.

CHOKSY A.J.—I agree.

Appeal dismissed.

[1] *(1894) 2 Q. B. 18.*