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Present: Lascelles C.J. and Pereira J.

LATCHIME *v.* JAMISON.

88—D. C. Kegalla, 3,507.

Action on promissory note—Consideration for note—English law.

The English law is to be applied in respect of all contracts and questions arising upon or relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments.

Plaintiff was defendant's brother's mistress and had two children by him. When defendant's brother was leaving Ceylon the defendant, as a favour, gave a note to the plaintiff to maintain the children. The defendant did not receive any consideration from his brother for making this arrangement, and gave the note of his own accord and not at his brother's request.

Held, that in the circumstances of this case plaintiff could not sue the defendant on the note, as the note was given without valuable consideration.

LASCELLES C.J.—If the note was given by the defendant merely in discharge of his brother's moral obligation to provide for his illegitimate children, it would be quite immaterial whether or not the note was given at the defendant's brother's request, inasmuch as mere motive such as a moral obligation is not valuable consideration. If, however, it be the case that the note was given in consideration of the plaintiff's forbearance to sue the defendant's brother for maintenance, then such forbearance would be sufficient consideration for this note.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for the defendant, appellant.—There was no consideration for the note sued upon. The evidence shows that the note was given voluntarily by the defendant. There is

no evidence whatever to show that the note was given for the purpose of compounding defendant's brother's liability. Counsel cited *Chitty on Contracts 24 and 25.*

Arulanandam, for the plaintiff, respondent.—The evidence shows clearly that the note was given to save defendant's brother from an action. Though the plaintiff does not expressly say so, that is the irresistible conclusion to be drawn from the evidence.

There is sufficient consideration for the note even under the English law. Counsel cited Bills of Exchange Act, section 27.

Cur. adv. vult.

May 7, 1913. LASCELLES C.J.—

This is an appeal from a judgment of the District Judge of Kegalla giving judgment in favour of the plaintiff on a promissory note dated June 26, 1909, given by the defendant to the plaintiff.

The defence is that the note was given without consideration; and the question for determination in this appeal is whether the District Judge was right in holding that the note was given for valuable consideration.

The note was given in the following circumstances. The defendant's brother, J. G. Jamison, had for some years prior to the giving of the note kept the plaintiff as his mistress and had two children by her. About the time when the note was given, J. G. Jamison, who was then entirely without means, was leaving Ceylon for Canada at his father's expense. The defendant then, as he says, gave the note, as a favour, to the plaintiff to maintain the children. The intention appears to have been that the plaintiff should support herself and her children out of the interest on the note. The defendant denies that he received any consideration from his brother for making this arrangement, or that he gave the note at his brother's request. Interest was duly paid up to January, 1912, when the plaintiff, hearing that the defendant was about to leave for Australia, very ill-advisedly brought the present action to recover principal and interest on the note. It is quite clear in the first place that, under section 2 of Ordinance No. 5 of 1852, the validity of the note now in suit must be determined by English law, for that section provides that the law to be administered "in respect of all contracts and questions arising upon or relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England." This point is important, as different considerations would have arisen if the defendant's liability had been determinable by the Roman-Dutch law. The grounds on

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which the learned District Judge has held that the note was given for valuable consideration may be stated in his own language. "There is no need to quote passages at length from the letters. A perusal of the letters is sufficient to come to the conclusion that the defendant, at the request of his brother, undertook to pay Rs. 3,000 to the plaintiff."

The reason given by the learned District Judge does not support his conclusion. If the note was given by the defendant merely in discharge of his brother's moral obligation to provide for his illegitimate children, it would be quite immaterial whether or not the note was given at the defendant's brother's request, inasmuch as mere motive such as a moral obligation is not valuable consideration.

If, however, it be the case that the note was given in consideration of the plaintiff's forbearance to sue the defendant's brother for maintenance, then such forbearance would be sufficient consideration for the note (*Crowhurst v. Lavenach* [1]).

It was on this footing that the only serious attempt was made to support the judgment. But so far from there being any evidence that the note was given for this consideration, the plaintiff herself stated that she had no intention of suing the defendant's brother, and would not have done so if the note had not been given. Her attitude in that respect is that which is usual with women of her class when in her situation.

Evidence was given as to certain transactions between the defendant and his brother with regard to the Arangalle estate. The defendant transferred two-thirds of the estate to his brother, and, by way of consideration, took a mortgage on the property. Shortly before the defendant's brother left Ceylon the share was re-transferred to the defendant and the mortgage bond was cancelled. I cannot see that either this transaction or the circumstance that the defendant paid his brother's debts to the extent of Rs. 4,000 or Rs. 5,000 goes to prove consideration for the note sued upon. The note is, in my opinion, clearly bad for want of consideration. I would set aside the judgment, but in the circumstances of the case I would make no order as regards the costs of the appeal or as regards the costs in the District Court.

PEREIRA J.—I agree.

Set aside.

[1] (1852) 8 *Ex.* 208.