1922.

*Present* : De Sampayo J.

CALDERA *v.* ZAINUDEEN.

*61—C. R. Colombo, 83,491.*

*Money Lending Ordinance, 1918, ss. 10 and 13—Promissory note given as security for future payment—Contributions to a cheetu club—Fictitious entry in margin—*

A promissory note was given as security for the future payment of contributions, which might become due by the maker who was a member of a cheetu club. In the margin there was an entry that the capital sum borrowed was Rs. 100. The Commissioner dismissed the action, as the entry was fictitious.

*Held*, that as the note was not given as security for a loan, sections 10 and 13 of the Money Lending Ordinance did not apply.

"No doubt the entry in the margin is false, but that is not what is penalized by the Ordinance."

THE facts appear from the judgment.

*J. S. Jayawardene*, for plaintiff, appellant.

*E. G. P. Jayetileke*, for defendant, respondent.

July 19, 1922. DE SAMPAYO J.—

The plaintiff, who is the executor of the last will of one H. S. Caldera, sues the defendant on two promissory notes for Rs. 100 each, made by the defendant in favour of H. S. Caldera. Admittedly, the promissory notes were not given as security for any loan, but only as security for the future payment of contributions which might become due by the defendant who was member of a "cheetu club" managed by the deceased H. S. Caldera. In the margin of each of these documents is a memorandum stating that "the capital sum borrowed was Rs. 100." The Commissioner considered that this was a fictitious entry which is penalized by section 13 of the Money Lending Ordinance, No. 2 of 1918, and that he had no power to give judgment for the plaintiff. Section 13 makes it an offence to take "as security for any loan a promissory note or other obligation, in which the amount stated as due is to the knowledge of the lender fictitious." It is section 10 of the Ordinance which is more relevant to this case, for that section requires that in every promissory note given as security for the loan of money there shall be separately set forth upon the document, *inter alia*, the capital sum actually borrowed, and provides that any promissory note not complying with the provisions of the section shall not be enforceable. Both these sections presuppose a "loan" and a "lender," but as the case of both sides is that there was no borrowing at all, I do not think that the Commissioner's reason for his judgment is right. No doubt

the entry in the margin is false, but that is not what is penalized by the Ordinance.

The plaintiff, however, is bound to fail on the facts. He was not able to prove how much was due by the defendant. He did not even know how many contributors there were in this cheetu club. The amount payable by the defendant could, I suppose, be determined by the number of contributors and the duration of the club. The plaintiff appears to be quite inaccurately informed as to many things. He had, for instance, given credit to the defendant for Rs. 50 only, but when the defendant's pass book was produced, he had to admit that the defendant had to get credit for Rs. 70. Again, he claims Rs. 196.21, whereas his proctor's letter of demand was for Rs. 144. The only evidence upon which the Court could base any safe conclusion was that of the defendant. He admits that he has to pay Rs. 80, for which, therefore, the Commissioner has given judgment for the plaintiff. I think that the dismissal of the claim in excess of that sum is right.

The appeal is dismissed with costs.

*Appeal dismissed.*