1938 *Present :* **Maartensz J.**

PALANIAPPA CHETTIAR *v.* WEERASINGHE *et al.*

78—C. R. Matara, 22,097.

Promissory note—Note not given as security for a loan—Action by endorsee—Failure to give particulars—Money Lending Ordinance, No. 2 of 1918, s. 10 (1).

Where an action was brought by the endorsee of a promissory note which was not given by the maker as security for a loan,—

Held, that the failure to indicate the particulars required by section 10 (1) of the Money Lending Ordinance did not render the note unenforceable even though the endorsement was made as security for a loan.

Sanithamby v. Nogan (*26 N. L. R. 217*) followed.

APPEAL from a judgment of the Commissioner of Requests, Matara.

C. V. Ranawaka (with him *Koattegoda*), for plaintiff, appellant.

No appearance for defendant, respondent.

August 2, 1938. MAARTENSZ J.—

Plaintiff appeals from a dismissal of his action for the recovery of a sum due on a promissory note dated December 19, 1931, made by the first defendant in favour of the second defendant and endorsed by the latter to the plaintiff.

The first defendant contested the claim and the action was tried on the following issues:—

(1) What amount, if any, is due to the plaintiff by way of principal and interest?
(2) Is the writing sued upon valid as a promissory note?
(3) If not, is the assignment regular?
(4) Is the cause of action prescribed?

The action was brought just within 6 years and the claim was, therefore, not prescribed.

The learned Commissioner dismissed the action because the note did not comply with the provisions of section 10 (1) of the Money Lending Ordinance of 1918, in that it did not separately and distinctly set forth on the document the capital sum actually borrowed, and the amount if any, deducted as interest, premium, charges or advance, and the rate of interest payable in respect of the loan.

Now, section 10 is applicable to a promissory note given as security for the loan of money. It is clear, however, from the evidence of the second defendant in this case, that the note was given to the second defendant not as security for the loan but because the first defendant owed him about Rs. 55.50 on account of survey fees.

The learned Commissioner therefore held, and I entirely agree with him, that the absence of marginal particulars did not invalidate the note as between the two defendants. He, however, further held that the note

was endorsed by the second defendant as security for a loan already advanced and that the particulars required by section 10 should have been separately endorsed on the note, and therefore dismissed the plaintiff's action. I am not inclined to agree with that view of the learned Commissioner. It is clear that the particulars required by section 10 should be set forth on the note when it is made as security for a loan. But, if it was not given as security for a loan, section 10 does not apply and it will not apply even when the note is endorsed over, although the endorsement had been made as security for a loan, from the endorsee to the payee. The reason is this: that the endorsee of a note is entitled to recover from the maker the amount payable on the note regardless of the amount which he gave to the endorser—see the case of *Sanithamby v. Nogan*[1]. In that case, the note was made for a sum of Rs. 400 in consideration of paddy supplied to the value of Rs. 210. The payee endorsed the note to the plaintiff. It was held that the Money Lending Ordinance did not apply to this transaction, and that the Court could not inquire into the question of the adequacy of consideration and grant relief under the Ordinance, and that the plaintiff was entitled to judgment for the full amount of the note.

The judgment appealed from is, therefore, set aside and judgment entered for plaintiff against the first defendant, as prayed for, with costs.

Appeal allowed.

[1] *(1924) 26 N. L. R. 217.*