1938 *Present :* **Soertsz and Hearne JJ.**

SILVA *v.* JAYAWEERA.

288—D. C. Chilaw, 10,884.

Promissory note—Payable to any one presenting on payee's behalf—Payee indicated with reasonable certainty—Validity of note.

Where a promissory note was written in the Sinhalese language " promising to pay on demand by the said K. M. S. or any one presenting on his behalf, the said sum of money ".

Held, that the payee was indicated with reasonable certainty and that the document was a valid promissory note.

The words " anyone presenting on his behalf " can be reasonably construed as meaning " duly presenting on his behalf " or " at his instance, presenting it in a manner recognised by the Bills of Exchange Act, *e.g.,* duly endorsed ".

Weerasinghe Hamine v. Dias (37 N. L. R. 27) followed ; Peter v. Suriapperuma (20 N. L. R. 318) distinguished.

THIS was an action on a promissory note written in Sinhalese in the following terms : —

" I the undersigned A. P. Jayaweera owe K. P. Martin Silva the sum of Rs. 320.53 being balance due for the value of fish received from him up to 1st of January, 1931. Wherefore promising to pay on demand by the aforesaid K. Martin Silva or any one presenting on his behalf the said sum of money . . . .

The learned District Judge, following the ruling in *Peter v. Suriapperuma* [1] held that the payee was not indicated with reasonable certainty in the note and dismissed the action.

L. A. Rajapakse, for plaintiff, appellant.—The District Judge is wrong in holding that the payee is not clearly indicated. It is only necessary that the sum should be payable to a specified person or to his order. The words here are " to Martin Silva or anyone presenting on his behalf ". The payee therefore is a specified person, namely, Martin Silva. The words " to anyone presenting on his behalf " are equivalent to " to his agent " or " or order ". No particular form of words is necessary as long as the meaning is clear. The document is in Sinhalese.

Peter v. Suriapperuma (supra) on which the District Judge relied is distinguishable. The words there are " the heirs of the payee ".

In any case it is submitted that that case has been wrongly decided. The heirs in English law may not be capable of being ascertained, but so far as the Ceylon law is concerned they can always be ascertained.

Moreover *Yates v. Nash* [2], which was followed in that case, was a decision based on the *old English Statute 3 and 4 Anne, Ch. 9.* That followed the decision in *Cowie v. Stirling.* [3]

The Bill of Exchange Act of 1882 *expressly altered* the law laid down in these two decisions. See section 7 (2) of Bill of Exchange Act of 1882 and the Ceylon Ordinance No. 25 of 1925 has adopted the change. See also *Chalmers (9th ed.) p. 24* and *Byles (17th ed.) p. 95.*

[1] *20 N. L. R. 318.*

[2] *(1860) 29 L. R., L. J. C. P 306.*

[3] *(1856) 6 E. and B. 333 Ex. Ch.*

Apparently this has been overlooked by the Judges in *Peter v. Suriapperuma* (*supra*).

It has been held that a note payable to the trustees of a chapel or their treasurer, is good : the treasurer being held to be an agent of the trustee. See *Holmes v. Jacques*[1].

Counsel also referred to *Doak v. Robinson*[2]; and *Watson v. Evans*[3].

The decisions in 124 C. R. Gampola, 5,329[4], and *Weerasinghe Hamine v. Dias*[5] apply in this case.

N. E. Weerasooria, for the defendant, respondent.—The words " to any one presenting on his behalf ", make the payee *anyone* at all in the world. The payee may be described in any way, but he must be capable of being ascertained *at the time* the note is made. Here, a holder of this note will not know to whom he is to make the payment.

The *ratio decidendi* in *Cowie v. Stirling*[6] applies in this case. *Peter v. Suriapperuma* (*supra*) has been decided correctly.

The two cases *Weerasinghe Hamine v. Dias* (*supra*) and *C. R. Gampola* are single Judge decisions and should not be followed. This case is on all fours with *Peter v. Suriapperuma* (*supra*).

Cur. adv. vult.

March 3, 1938. SOERTSZ J.—

When we are dealing with a promissory note made in the Sinhalese language, due allowance must, I think be made for the fact that words like " bearer ", " holder in due course ", " order " in the technical sense they bear in English Bills of Exchange Acts, are really foreign to that language. A draftsman well acquainted with the meanings that these words have in English legal phraseology is, therefore under the necessity to employ what he considers are adequate equivalents in the Sinhalese language to give expression to those meanings. There are no conventional words available to him for that purpose.

In the case before us, the promissory note according to the translation furnished to us, runs as follows :—" I the undersigned A. P. Jayaweera . . . owe K. P. Martin Silva . . . . the sum of Rs. 320.53, being balance due for the value of fish received from him up to January 1, 1931. Wherefore promising to pay on demand by the aforesaid K. Martin Silva or any one presenting on his behalf the said sum of money, together with interest thereon at the rate of 12 per cent. per annum from this day until the date of payment, have set my usual signature hereunto in the presence of the witnesses signing below ". In the court below it was contended with success that this is not a promissory note because the payee is not indicated with reasonable certainty. For this contention the case of *Peter v. Suriapperuma*[7] was relied upon. In that case it was held that a promissory note made payable on demand " by the said creditor or his heirs " was bad because the payee was not a " specified person " nor was he indicated therein with reasonable certainty ". It was said that the " heirs " of the creditor were not

[1] (1866) 14 L. T. 252.
[2] 6 Emp. Digest s. 219, Note 1. p. 32.
[3] (1863) 1 H. and C. 662.
[4] 37 N. L. R. 28.
[5] 37 N. L. R. 27.
[6] (1856) 6 E. and B. 333.
[7] (1918) 20 N. L. R. 318.

"capable of being ascertained *at the time the document was signed*". I do not think that that case has any direct bearing on the present case. It is sufficient to say that the word that created the difficulty in that case—"heirs"—is quite different from the phrase with which we are concerned in this—"any one presenting on his behalf". But Mr. Weerasooria founded himself strongly on the passage cited and relied on by Shaw J. from the case *Yates v. Nash*[1] where it was stated "though the payee may be described in any way, yet in order that the bill should be valid, he must be a person capable of being ascertained *at the time the bill is drawn!* It must be remembered however that the case of *Cowie v. Stirling*[2] was decided in 1856, and that of *Yates v. Nash* in 1860, that is to say, long before it was made possible for a promissory note to be made payable "to the holder of an office for the time being". That became possible on the enactment of the 1882 Act. In *Yates v. Nash* the bill was made payable to the treasurer, for the time being of a society and it was held that the appeal was bad because it was not clear whether the payee contemplated was the treasurer functioning at the time the bill was drawn or the treasurer who might be functioning at the maturity of the bill. That decision ceased to be of much consequence after the 1882 Act came into force and I fear that the quotation made from it in 1918 was not very apposite. In my opinion therefore no assistance can be derived from *Peter v. Suriapperuma (supra)*. The case that seems to me helpful is case *No. 124 S. C.—C. R. Gampola, 5,359* reported at the foot of page 28 of *37 N. L. R.*[3] In that case Ennis J. who took part in the decision of *Peter v. Suriapperuma* held that where a note was made payable to A or his "Barakaradee" and where "Barakaradee" was translated as meaning "the person who comes into possession of the note in the proper manner" was a valid note inasmuch as "it complies sufficiently with the requirements of the Bills of Exchange Act as indicating the person who could recover on the note". Koch J. followed this ruling in *Weerasinghe Hamine v. Dias*[4]. Mr. Weerasooria seemed to question these rulings. He asked what does "in the proper manner" mean? Does it mean "politely" or "in a mood of humility?" The answer to that question as it seems to me is that "in the proper manner" in that context means in any way required by the Act.

Likewise in this case the words "or any one presenting on his behalf" can I think be reasonably construed as meaning "duly presenting on his behalf" or "at his instance presenting it in a manner recognised by the Bills of Exchange Act, *e.g.*, duly endorsed". The Interpreter Mudaliyar of this Court who at my request examined the language of this document said that the Sinhalese words used meant "any one presenting on his behalf or on his authority or at his instance" and were a sufficient equivalent of the English words "to the order of".

To adopt the words of Cockburn C.J. in *Holmes and others v. Jacques*[5], "if we are to construe this note differently we should be introducing unnecessary strictness and be defeating justice". In the present case, the learned trial Judge disbelieved the defence and found that the money

[1] *(1860) 29 L. J. C. P. 306.*
[2] *(1856) 6 E. and B. 333.*
[3] *S. C. Min. dated Sept. 1, 1922.*
[4] *(1935) 37 N. L. R. 27.*
[5] *(1866) 14 L. T. 252.*

was due but he felt constrained by the ruling in *Peter v. Suriapperuma*[1] to dismiss the plaintiff's action because the payee was not indicated with reasonable certainty in the note sued upon.

I would, therefore, allow the appeal and enter judgment for the plaintiff as prayed for with costs in both Courts.

HEARNE J.—I agree.

Appeal allowed.