

1928.

Present : Garvin and Lyall Grant JJ.

MATHERENAYAKAM v. CHELLIAH *et al.*

327—D. C. Colombo, 19,151.

Promissory note—Agreement to pay money on behalf of others—Within one year—Bills of Exchange Act, 1882.

Where the plaintiff sued the defendants upon a writing expressed in the following terms:—

“ We the undersigned agree to pay M. the sum of Rs. 5,000 within one year from this date on account of K. V. M. and K. V. S., the late proprietors of the Pennsylvania Oil Company. This sum is due from them to us after our paying to the said M.”—

Held, that the document is not a promissory note as defined by the Bills of Exchange Act of 1882.

A PPEAL from an order of the District Judge of Colombo. The facts appear from the judgment.

H. V. Perera, for plaintiff, appellant.

Hayley, K.C. (with *Tisseverasinghe*), for defendant, respondent.

February 6, 1928, GARVIN J.—

The plaintiff sued upon a certain writing whereby the defendants undertook to pay him a sum of Rs. 5,000. Answer was filed and the plaintiff then filed a replication. Upon these pleadings several issues were framed. The parties agreed that the first two issues, which were in the nature of issues of law, should be tried first. These issues are as follows: (1) Is the document sued on a promissory note? and (2) Is the document duly stamped? The submission on behalf of the defendants was that the writing was a promissory note within the definition attached to that term in the Stamp Ordinance, and inasmuch as it was not stamped at the time of execution no action could be proceeded on upon it. A “promissory note” is defined in Ordinance No. 22 of 1909 as “a promissory note as defined by the Bill of Exchange Act, 1882¹, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money.” With the latter part of this definition we are not concerned. The question for determination, therefore, is whether the document is a “promissory note” within the meaning of the definition of this term in the Bills of Exchange Act, 1882. The learned District Judge held that it was.

¹ 45 & 46 Vic. c. 61

It is submitted on behalf of the appellant that the document is neither in form nor in substance a promissory note. The writing in question is in the following terms: " We the undersigned agree to pay T. Muttusamypillai Matherenayakam of 40, Brassfounder street, Colombo, the sum of Rupees Five thousand (Rs. 5,000) within one year from this date on account of K. V. Marcandan and K. V. Subramaniam, the late proprietors of the Pennsylvania Oil Company. This sum is due from them to us after our paying to the said Matherenayakam." The first point raised is the absence of the word " promise " and then attention is drawn to the form of the document as a whole. There can be no question that the document is not drawn in the ordinary form in which promissory notes are drawn. There is the absence of the word " promise " and there is not the usual undertaking to pay to payee or order. These matters of detail are of course not decisive in themselves. But it seems to me that the document as a whole was intended to be a memorandum or agreement whereby the signatories undertook to pay a debt of Rs. 5,000 on account of Marcandan and Subramaniam upon the understanding that upon such payment they were to have the right to recover that sum from the persons named. The document clearly gave the signatories the right to make this payment at any time they chose within a period of one year, and, having regard to what I have already observed, it is quite conceivable that it may have proved to be a right of considerable value to them. I have no hesitation in saying that the parties did not intend this to be a promissory note with the negotiability which attaches to these notes, but merely as evidence of the agreement between them. It is urged, nevertheless, that a document in this form comes within the definition attached to the term promissory note in the Bills of Exchange Act. It is said that we have here the sum stated in money and that the obligation to pay the money only arose on the last date of the period of one year from October 24, 1924, which was the date on which the writing was made and it was therefore a promise to pay at a fixed future time. As authority for the proposition that within one year means on the last date of the period of one year from the date of the note the case of *In re Horner*¹ (also reported in (1896) 65 L. J. Chan. 699) was cited. The words which the Court was called upon to interpret in the case were those which appeared in an agreement by which the obligation was undertaken to make a certain payment within six months of a specified date. But the purpose for which it was necessary to interpret the language was to ascertain from what date, if at all, interest became payable under certain provisions of 3 & 4 Will. IV. c. 42. It was held that the obligation to pay arose on the last day of the period of six months, and interest became payable from that date. But I cannot agree

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¹ (1896) 2 Chan. 188.

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that the requirement of section 83 in the Bills of Exchange Act, that the sum certain in money shall be payable "at a fixed or ascertainable future time," is satisfied when it is expressed to be payable at a fixed future time or at any time before that date. The provisions of that Act relating to payment and the right to discharge upon payment indicate that in the interpretation of this section one must have regard, not merely to the liability, but to the rights of the maker of the document under consideration. It is contended that the effect of the words "within a year" gave the signatories an absolute right to a discharge of the note and of all obligations arising thereunder upon payment to the payee at any time within the year. This, I think, is what the document means and what the parties intended thereby. But the maker of a promissory note is under liability to pay the note according to its tenor, i.e., at the time appointed, and in making a payment to the payee before that date he acquires no right to a complete discharge of his liability to a holder in due course into whose hands the note may have passed.

The payment of a promissory note to the payee by the maker may be effective payment as between them. It cannot affect the rights which endorsees obtain and acquire on the representation on the note that it would be paid at a particular date

This is a strong indication that the parties did not think the document should take effect as a negotiable instrument.

In my opinion the document is not a promissory note with the meaning of the Bills of Exchange Act or the Stamp Ordinance, and the plea that the action is not maintainable thereon because it is not stamped as such is unsustainable.

The judgment is set aside, and the case sent back for the determination of the remaining issues. The appellant is entitled to the costs of this appeal and to the taxed costs in the Court below.

LYALL GRANT J.—

I agree. I think the terms of this document preclude the idea that it is a negotiable instrument.

Appeal allowed.

