1936 *Present :* **Abrahams C.J. and Soertsz J.**

ABEYDEERA *v.* RAMANATHAN CHETTIAR.

139—D. C. Galle, 33,428.

Money Lending Ordinance—Promissory note given after account stated—Money lending transaction—Compound interest—When chargeable—Ordinance No. 2 of 1918, ss. 10, 13 and 14.

The defendant gave three cheques to the plaintiff at various times to cover the value of goods sold and certain advances made to him.

Thereafter the cheques were returned and the promissory note which was the subject matter of the action was given representing the amount due upon an account stated between the parties at that date.

Held, that the note was given for a money lending transaction although no money actually passed between the parties at the time the note was given.

In Ceylon compound interest may be recovered where the party charged has agreed to pay it.

APPEAL from a judgment of the District Judge of Galle.

N. E. Weerasooria (with him *J. R. Jayawardana*), for defendant appellant.

H. V. Perera (with him *E. B. Wickramanayake*), for plaintiff, respondent.

October 30, 1936. ABRAHAMS C.J.—

This is an action for the recovery of a sum of Rs. 22,099.97 alleged to be due on a promissory note dated July 19, 1932, made out for Rs. 20,000 with interest thereon at the rate of 14 per cent. per annum. The plaint states that this sum was "the amount found to be due from defendant to plaintiff upon an account stated between them on the said date in respect of their prior dealings". The plaintiff is a money lender, and he also appears to be a dealer in rice. On May 15, 1931, the defendant gave the plaintiff a cheque for Rs. 4,000 in payment for rice purchased from him, with interest on the amount owed. There had also been money lending transactions between the parties, and on February 6, 1932, the defendant gave the plaintiff two cheques for Rs. 14,000 and Rs. 1,000 respectively to cover certain advances made and interest charged on the amounts due. On July 19, 1932, the promissory note, which is the subject matter of the action, was given by the defendant to the plaintiff, and the three cheques previously mentioned were returned.

It was objected at the trial, on behalf of the defendant, that the capital sum actually borrowed did not appear on the face of the note as required by the provisions of section 10 of the Money Lending Ordinance, No. 2 of

1918, and therefore the note was not enforceable. It was further objected by him that the capital sum of Rs. 20,000 appearing on the note included compound interest, and that therefore the note was void, and also that it was a fictitious note within the meaning of section 14 of the Money Lending Ordinance and that it came under the provisions of section 13 of the Ordinance. At the trial it was admitted by Counsel for the plaintiff that in arriving at the sum of Rs. 20,000 compound interest was charged.

The following were the issues at the trial :—

1. Does the capital sum of twenty thousand rupees, appearing on the note include interest on interest on previous transactions ?
2. If so, is the note void ?
3. Does the capital sum appearing on the note represent the actual sum due to plaintiff at the date of the note ?
4. If not, is the note enforceable.?
5. What amount if any is due on the note ?
6. Was the default if any, incorrectly setting out the capital sum borrowed due to inadvertence and not due to an intention to evade the provisions of the Money Lending Ordinance ?

In view of what I am about to find in this appeal, there will be no reason to discuss the learned Judge's finding on the 6th issue. He answered the other five as follows :—The first in the affirmative, the third in the negative, the second and fourth in favour of the plaintiff, and on the fifth he held that the plaintiff was not entitled to recover the full amount claimed on the note, as compound interest was not permissible, and that the claim must be deleted. The decree was formulated accordingly.

I am of the opinion that the first issue was properly answered in the affirmative on the admission of the plaintiff's Counsel " that in the note is included the interest on a sum of Rs. 284 which was itself interest ". Then comes the question as to whether the note was void on that account as issue 2 suggests it might be. The learned District Judge, so far as I can gather from the judgment, has held that compound interest is not legally chargeable, but he appears to consider that the note is not avoided thereby because it was not given on a purely money lending transaction, amounting as it did to an account stated which incorporated loans of money, sales of rice, and a few rupees representing plaintiff's travelling expenses. I propose to say something presently on what I take to be the true nature of the transaction for which the promissory note was given, but for the moment, dealing with the question of compound interest I am of the opinion that compound interest may be lawfully charged. The Money Lending Ordinance does not say that compound interest may not be charged. The only section in that Ordinance which has any reference to interest is section 4 which provides that rates above the rates mentioned in it are matters to be considered when a transaction is under review for the purpose of ascertaining whether it is harsh and unconscionable. Under the Roman-Dutch law, although it is not legal to charge compound interest, the South African Courts have allowed compound interest when there has been an undertaking to pay such interest or where there is a recognized custom to charge compound interest, or where the contract between the parties sanctions it, unless the amount charged can be said to be usurious. (See *Manfred Nathan, Common Law of South Africa,*

vol. II., pp. 667-670). In *Ramasamy Pulle v. Thamby Candoe*[1], it was held that the Dutch usury laws were purely local enactments and were not introduced into Ceylon. Section 3 of Ordinance 5 of 1852, as amended by section 97 of the Bills of Exchange Ordinance, No. 25 of 1927, enacts "that no person shall be prevented from recovering on any contract or engagement any amount of interest expressly reserved thereby, or from recovering interest at the rate of nine per cent. per annum on any contract or engagement, in any case in which interest is payable by law and no different rate of interest has been specially agreed upon between the parties, but the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal". In *National Bank v. Stevenson*[2], compound interest was allowed by reason of the custom of the banks and the acquiescence of the defendant. In the present case there is no doubt that the defendant did agree to pay interest upon interest. He says in his answer that he was compelled to grant the note because he was hard pressed, and was afraid that the plaintiff would put him in Court.

It follows then from the foregoing view that the third issue ought to have been answered in favour of the plaintiff, and that the appeal ought to be dismissed at this stage, although as the plaintiff has not appealed against the finding that he is not entitled to recover the full amount claimed on the note he cannot, of course, claim any further benefit from this finding than the mere dismissal of the appeal.

As I said earlier in the judgment, I propose to say something about the true nature of the transaction for which the note was given, because both at the trial and at the appeal it was contended by the defendant that as the actual amount due did not appear on the note, the note did not comply with the provisions of section 10 of the Money Lending Ordinance and was not enforceable, and that for the same reason the note was a fictitious note within the meaning of section 14 of the Money Lending Ordinance and was not enforceable. The plaintiff on the other hand contended that the Money Lending Ordinance did not apply as the transaction was not a purely money lending transaction, involving as it did a multiplicity of dealings between the parties only some of which were concerned with the lending of money. The learned District Judge said, "The note was not given on a purely money lending transaction. It includes a large sum on account of the sale of rice. Also a few rupees representing plaintiff's travelling expenses in connection with the transactions. The accounts were looked into between the parties and it was agreed that the sum of Rs. 20,000 was due. There was in fact no loan of money on the note. It created a novation of a pre-existing debt".

I am of the opinion that the note was given for a purely money lending transaction although no money actually passed between the parties at the time the note was given. The plaintiff's manager, giving evidence, said that no money was lent on the note itself. The learned Judge accepting this, which, meaning as it did, that no money actually passed between the parties physically, came to the conclusion that no money was actually lent and he thereby overlooked the implications which arose from the return of the three cheques and the consequential giving of the promissory note. The obligation to pay the sums of money represented

[1] *(1872–1875) Ramanathan 189.*

[2] *16 N. L. R. 496.*

by the cheques was extinguished when the promissory note was given for value received. What is the actual analysis of that transaction? The cheques. by being returned, were deemed to have been paid. The defendant had no money to pay them, and the payment was therefore made by the plaintiff notionally lending the defendant the money to pay the sums due and the defendant notionally handing back the money to the plaintiff and securing the repayment of the loan by the promissory note, the value received being the money which was notionally received by the defendant and notionally returned to the plaintiff. The fact that the plaintiff did not physically hand the Rs. 20,000 to the defendant and the defendant hand it back to him does not make any difference to the substance of the transaction. The facts of *Lyle v. Chappell*[1], bear a substantial resemblance to the facts in this case. In that case a loan secured by a promissory note was extinguished, and a fresh promissory note given for a larger amount, the lender handing to the borrower a cheque for the amount due which the borrower endorsed and handed back to the lender who treated it as settling the first transaction. Greer L.J. said, "In my view, the document signed by the defendant . . . . is an agreement by him to discharge whatever was due on the promissory note of April 25 by borrowing from the plaintiffs a sum of £200 and authorizing them, instead of physically handing over the money to the defendant to pay themselves the £200. The money-lenders seem to have thought it necessary or desirable that they should physically hand over a cheque for £200 to the defendant and get it back again, but there is nothing in the agreement to the effect that this should be done, and, in my judgment, it was not essential that the agreement should be carried out in that way. If the money to be borrowed was intended to be used for the extinction of the debt agreed by the parties at £200 it seems to me unnecessary that the parties should go through the idle form of passing the cheque backwards and forwards".

With regard to the alleged fictitiousness of the note, that contention also fails. "Section 14 of the Money Lending Ordinance defines fictitious promissory notes as one given in respect of a loan in regard to which a deduction was made or a sum paid at or about the time of the loan in respect of interest, premium or charges payable in advance, without such deduction or paying being set forth upon the document in accordance with section 10 . . . . and any promissory note in respect of a loan, with regard to which at or about the time of the loan any payment was made, or any collateral transaction entered into with a view to disguising the actual amount". In this case it was stated that a sum of Rs. 233.37 was paid in advance as one month's interest on the sum of Rs. 20,000. That sum was set forth upon the document in accordance with section 10, therefore the note is not fictitious with the meaning given in the first part of section 14 of the word "fictitious", nor is it fictitious within the meaning of that word in the second part of section 14, because neither party has submitted that any payment was made, or any collateral transaction entered into to disguise the actual amount advanced.

In my opinion this appeal fails and should be dismissed with costs.

SOERTSZ J.—I agree.

Appeal dismissed.

[1] *48 T. L. R. 119.*