1915.

Present : Wood Renton C.J. and Shaw J.

WIJEWARDENE *v.* APPU *et al.*

126—D. C. Galle, 12,595.

Blank promissory note—Insertion of rate of interest without authority—Material alteration.

Defendants gave plaintiff a blank promissory note as security for purchases and authorized him to fill it up for the amount of the purchase. The plaintiff in filling up the note inserted interest at 18 per cent., for which he had no authority.

Held, that the note was materially altered by the insertion of the rate of interest, and that plaintiff could not maintain an action on the note.

THE facts are set out in the judgment.

J. S. Jayewardene, for the appellants.—The plaintiff was not authorized to insert interest at 18 per cent. There was no agreement, express or implied, as to interest, nor is it customary to charge interest for purchases. The insertion of interest without authority amounts to a material alteration of the note. Counsel relied on *1 Balasingham 182.*

A. St. V. Jayewardene, for the respondent.—The judgment is right, as it is only for the admitted indebtedness of the defendants. The evidence of the plaintiff shows that the defendants agreed to pay interest, and the insertion of interest does not therefore vitiate the note. Counsel relied on *14 N. L. R. 106.*

June 7, 1915. WOOD RENTON C.J.—

This is an action on a promissory note for Rs. 500 and interest at 18 per cent. The plaintiff alleged that the promissory note was one of the ordinary character, and that he had in fact lent the defendants the amount which it covered. The defendants pleaded that the note was in security of purchases which they had made or were to make from the plaintiff, and that after taking account of certain payments in respect of these purchases there was only a sum of Rs. 275.46 due upon the note. The defendants in their answer said nothing expressly about the claim for interest at 18 per cent. But the third issue on which the parties went to trial raised

the question whether there was an agreement that interest at 18 per cent. should be payable on the note; and the fourth issue was in these terms: "If not, is the plaintiff entitled to sue on the note at all?" The learned District Judge heard evidence on both sides, and came to the conclusion that the defendants' version of the circumstances in which the note came to be granted was the true one. He, therefore, gave the plaintiff judgment only for the amount which the defendants themselves had admitted to be due, namely, Rs. 275.46, and directed that the plaintiff should pay all the defendants' costs of action. The defendants appeal. The only serious point that we have to consider is the effect of the findings of the District Judge on the question of interest. He answered the third issue above referred to in the defendants' favour, and said that it had been admitted that on notes made to cover purchases no interest was charged. That statement on the part of the District Judge is supported by the evidence both of the first defendant and of the plaintiff himself. The point, therefore, arises whether, as there had been no express agreement on the part of the defendants to pay interest, and as the evidence on the record shows that no such agreement can be implied, the fourth issue, namely, whether the plaintiff can sue on this note—which had been issued in blank and filled up both with the amount alleged by the plaintiff to be due and with the rate of interest thereafter—should not have been answered in the negative. The point is purely a technical one, and I think that it would have been better if the defendants had been willing to allow the judgment in the plaintiff's favour for the amount of their admitted indebtedness to him to stand. But they insist upon their legal rights, and that being so, I feel constrained to hold that the alteration of the note was a material one, and that the plaintiff had no cause of action upon it. I would set aside the decree under appeal, and direct that decree should be entered dismissing the plaintiff's action with the costs of the action—the order as to the costs already made by the District Judge. But in all the circumstances I would make no order as to the costs of the appeal.

SHAW J.—

I agree. The plaintiff was authorized to fill up this note for the amount of the purchase. He was not authorized to insert the interest at 18 per cent. He admitted himself in his evidence that it was not customary to charge interest on a transaction of this kind. Under these circumstances, by inserting interest at 18 per cent. in the note he had made a material alteration in the note, and the note is therefor bad, and the plaintiff cannot recover in an action brought upon it. Throughout the case it was admitted by

1915.

SHAW J.

Wijewardene v. Appu

the defendants, and it has been found by the Judge, that the amount of Rs. 275.46 is due from the defendants to the plaintiff. Had the plaintiff claimed in the alternative for goods sold and delivered, he could have recovered this amount. But he has not done so, and, therefore, he cannot recover in the present action. The Judge has given judgment for this amount on the promissory note, and I think his judgment cannot be supported. The appeal has really no merits in it, because it is admitted that the amount is due, and that the plaintiff can recover it from the defendants if he brings an action in the right form. I agree with my Lord's decision as to the costs of the appeal and to the order that he has made.

Set aside.