1937 *Present* : **Moseley J. and Fernando A.J.**

SINNAPILLAI *v.* VEERAGATHY *et al.*

101—D. C. Jaffna, 9,078.

Money Lending Ordinance—Failure to keep books of account—Ignorance of the law—Meaning of "inadvertence"—Ordinance No. 2 of 1918, s. 8 (2) (a).

The proviso to section 8 (2) of the Money Lending Ordinance is intended to give relief not to a person who fails to keep books of account but to one who does keep such books but on a particular occasion, through an oversight, omits to record therein the details of a particular loan.

Semble, failure to keep accounts through ignorance of the provisions of the law does not amount to a default due to inadvertence within the meaning of section 8 (2) of the Ordinance.

Fernando v. Fernando (*36 N. L. R. 77*) and *Dewasurendra v. de Silva* (*34 N. L. R. 313*) referred to.

APPEAL from a judgment of the District Judge of Jaffna.

L. A. Rajapakse (with him *Soorasangaram*), for plaintiff, appellant.

N. Nadarajah, for defendants, respondents.

November 12, 1937. MOSELEY J.—

This was an action on a mortgage bond, and as the trial was nearing conclusion the following additional issues were framed :—

(4) On plaintiff's evidence is he a person who carries on the business of money lending within the meaning of section 8 (1) of the Money Lending Ordinance ?

(5) If so, can he maintain the action ?

It must be conceded that the phraseology leaves something to be desired, and it would have been better if issue No. 5 had referred to the plaintiff's admitted failure to comply with the requirements of the said sub-section. Counsel for the plaintiff objected to the addition of these issues, but his objection was overruled and I do not think that the plaintiff was unduly prejudiced either by the belated introduction of the issues or by the omission to which I have referred.

The learned District Judge found against the defendants upon the other issues but held that the plaintiff was a person carrying on the business of money lending within the meaning of section 8 (1), and found further that his omission to keep books was not due to inadvertence and that he was not therefore entitled to relief against his default. He accordingly answered issue No. 5 in the negative and dismissed the plaintiff's action. Against that order the plaintiff has appealed.

As to whether or not he is a person who carries on the business of money lending, the only evidence is that of the plaintiff himself. He is a school teacher, and said "I lend money also". In cross-examination he added "I do a small business in money lending. I lend money on mortgage bonds and promissory notes. I have no account books . . . . I have invested Rs. 6,000 to Rs. 7,000 on nearly fifteen bonds. I have ten or twelve promissory notes for an aggregate amount of about Rs. 1,500 . . . . I have been doing this for the last twenty or fifteen years. I did not know it was necessary to keep account books". On that evidence I do not know how the District Judge could have come to any other conclusion than that the plaintiff was a person carrying on the business of money lending within the meaning of the sub-section. Admittedly he keeps no books. It follows that he has failed to comply with the requirements of the sub-section.

For the sake of convenience I will set out section 8, which is as follows:—

"8 (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall keep or cause to be kept a regular account of each loan, clearly stating in plain words and numerals the items and transactions incidental to the account, and entered in a book paged and bound in such a manner as not to facilitate the elimination of pages or the interpolation or substitution of new pages.

(2) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall not be entitled to enforce any claim in respect of any transaction in relation to which the default shall have been made.

Provided that in any case in which the Court is satisfied—

(*a*) That the default was due to inadvertence and not to any intention to evade the provisions of this section; and

(*b*) That the receipt of the loan, the amount thereof, the amount of the payments on account, and the other material transactions relating thereto satisfactorily appear by other evidence—

the Court may give relief against such default on such terms as it may deem just".

The only point for determination is whether or not the plaintiff, by virtue of the proviso, may be given relief against his default. He claims relief on the ground that his ignorance of the legal requirement to keep books amounts to inadvertence, and that he had no intention to evade the provisions of the section. The point is a nice one and has occupied the attention of this Court for many years, not only in connection with this section but as regards section 10, which contains a similar provision for relief in cases where the particulars required to be set out in promissory notes have been omitted.

The most recent authority to which we have been referred is the case of *Fernando v. Fernando* [1]. In that case the promissory note the subject of the action did not comply with the requirements of section 10 (1). The plaintiff said he had accepted the note in the belief that it was in proper form and in ignorance of the provisions of section 10, and Garvin J. said, "it is impossible to say that he took it with any intention to evade the provisions of that section. The word 'inadvertence' has the following meanings attached to it: 'inattention', 'oversight', 'mistake', 'forgetfulness which proceeds from negligence of thought' . . . . But the word must be given an interpretation with reference to the context". The learned Judge was disposed to give the word the widest possible meaning. He continued "To hold that the word 'inadvertence' is used in a sense which completely excludes ignorance of the requirements of section 10 is to hold that the legislature, while intending to give relief to a person who with knowledge of the law accepted a promissory note which did not comply with the requirements of that section through oversight, mistake, or negligence of thought, did not mean to extend the relief to a person who did so in complete ignorance of that provision of the law. This in my judgment is too narrow a view of the section". He claimed support for his conclusion from the judgment of Shaw J. in the case of *Bhai v. John* [2], in the course of which the learned Judge thought that if the money lender was unaware of the provisions of the Ordinance, it might reasonably be found that his default was due to inadvertence.

In *Dewasurendra v. de Silva* [3], Macdonell C.J. did not think that a plea of ignorance of the requirements of the law could be accepted.

In the case of *In re Jackson & Company, Limited* [4], where there had been a failure to comply with the provisions of section 25 of the Companies Act, 1867, Kekewich J. thought that, having positive evidence that the parties were ignorant of the provisions of the Act, he might fairly say that the omission was due to inadvertence. It should be noted, however, that the application for relief was made *ex parte* and such argument as is reported does not appear to have been directed to this point at all.

In *Ramen Chetty v. Renganathan Pillai* [5], Dalton J. in the course of a judgment, with which Lyall Grant J. agreed, described inadvertence, in connection with section 10, as "the effect of inattention, an oversight, mistake, or fault which proceeds from negligence of thought".

In *Wickremesuriya v. Silva* [6], Poyser J. sitting with Koch J., who agreed, in holding that certain notes did not comply with the requirements

[1] *36 N. L. R. 77.*
[2] *22 N. L. R. 341.*
[3] *34 N. L. R. 313.*
[4] *79 Law Times Rep. 662.*
[5] *28 N. L. R. 339.*
[6] *4 C. L. W. 89.*

of section 10 of the Ordinance, had no doubt that relief should have been granted inasmuch as the plaintiff did not appear to have intended to evade the provisions of the section. The question of inadvertence and of the meaning to be attached to the word does not appear to have been considered.

In *Pathmanathan v. Chawla* [1] Dalton A.C.J.., with whom Koch J. agreed, said that the plaintiff having admitted that books were not kept regularly, had not shown that the default was due to inadvertence and was not therefore entitled to relief.

In *Nichol v. Fearby* and *Nichol v. Robinson* [2], McCardie J. said, "the question is whether or not ignorance of the law may fall within the word 'inadvertence'". He referred to the decisions in the *Walsall Case* (*1892*) *4 O'M. & H. 129*), "where both Pollock B. and Hawkins J. seem to have taken the view that ignorance of the law was not 'inadvertence'". Pollock B. said "If it were once allowed that a breach of the law, in the sense that there was a misconception of the law, is to be treated as an inadvertence, I do not know where there is to be any limit". In the *West Bromwich Case, (1911) 6 O'M. & H. 256, 289,* Bucknill J. said, "I am not going to attempt a definition of 'inadvertence', but it certainly does not include ignorance of the law".

After consideration of these and other authorities McCardie J. arrived at the conclusion that ignorance of the law may fall within the word "inadvertence". He thought, moreover, that the word in different Acts of Parliament should, if possible, be construed in the same way. "But", said he, "it does not follow that relief should be granted for acts or omissions due to ignorance of the law. Inadvertence may be light and excusable. On the other hand, it may be grave and seriously culpable". In *ex parte Walker* (*22 Q. B. D. 384*) a Divisional Court (Coleridge C.J. and Hawkins J.) had refused to grant a candidate at an election relief from penalties incurred by him through inadvertence on the ground that he did not know the provisions of the Act. The case went to the Court of Appeal, when Lord Esher M.R. consulted the Lord Chief Justice and Hawkins J., who adhered to their opinion, but assented to their decision being altered by the Court of Appeal, because it came to their knowledge that relief had been granted by another Divisional Court in similar cases. It was observed by Lord Esher M.R. that "if the present applicant had carefully read section 75 (the relevant section) of . . . . it is drawn in such a way that ordinary skill on the part of such a person could not readily have mastered the fact that sections . . . . were made to apply to him".

It is not suggested that there is any vagueness in the terms of section 8 of the Money Lending Ordinance. One would, however, be more readily inclined to grant relief to one who did not realize that he was a money lender within the meaning of the section and therefore under certain obligations than to one who knowing his status did not trouble to ascertain what those obligations are.

The general trend of the English decisions seems to be that ignorance of the law may constitute inadvertence, but the nature, quality, extent and consequences of the inadvertence must be weighed by the Court in each case.

[1] *13 C. L. R. 89.*

[2] *(1923) 1 K. B. 496.*

For myself I find great difficulty in reconciling inadvertence with the notion of ignorance. The word seems to me to presuppose knowledge. If, however, I were in any doubt as to the circumstances in which a plaintiff may be given relief by the proviso to section 8 (2), irrespective of any meaning which may be applied to the word "inadvertence" where it occurs in section 10 or generally, it seems to me that the matter is clinched by the very wording of section 8. The first requirement is that a money lender shall keep an account of each loan in a prescribed book. Sub-section (2) goes on to say that if he fails to comply with the requirements of the section, he shall not be entitled to enforce any claim in respect of *any transaction in relation to which default shall have been made*. Then the proviso provides relief against *such default* if the Court is satisfied that *the default* was due to inadvertence and not to any intention to evade the provisions of the section.

It seems to me quite clear that the only default in respect of which the proviso contemplates the granting of relief is one in relation to the particular transaction in respect of which it is sought to enforce a claim. That is to say, the default contemplated is the failure to keep an account of that transaction, not the failure to keep books generally. Now, the failure to keep books may be due to ignorance of the requirements of the law, but it is scarcely possible that a person who, in accordance with law, keeps books of account would omit to enter a particular transaction therein through ignorance, though he might well do so through an oversight.

In my view, therefore, the proviso is clearly intended to give relief, not to a person who does not keep books of account, but to one who does keep such books but on a particular occasion through an oversight omits to record therein the details of a particular loan. In the circumstances, I do not think that the English authorities to which I have referred are applicable, and, in my opinion, whatever one may think of the merits of the case, the plaintiff cannot be given the relief he seeks.

I would dismiss the appeal with costs.

FERNANDO A.J.—I agree.

Appeal dismissed.