

1938

*Present : Poyser and de Kretser JJ.*

*KANDIAH v. SOLOMONS et al.*

*125—D. C. Jaffna, 10,886.*

*Promissory note—Instrument in form of pro-note—Agreement annexed—  
Action by endorsee—Bills of Exchange Ordinance, No. 25 of 1927,  
s. 84 (1).*

Where the plaintiff as endorsee sued on an instrument, which was in the form of a promissory note but which contained the following words in addition : "Whereas this amount has been taken out on account of cheetu and whereas deposit has been made for 37 months at the rate of Rs. 25 once in a month, the amount will be paid off. This cheetu is in the name of the first named, and the second and third named are sureties",—

*Held*, that the document was not a promissory note.

**T**HIS was an action brought by the plaintiff as the endorsee of an alleged promissory note executed by the defendants in favour of one Sivaguru and endorsed by the latter to the plaintiff. The learned District Judge held that the promissory note was not negotiable and dismissed the plaintiff's action.

*N. Nadarajah* (with him *H. W. Thambiah*), for plaintiff, appellant.—The document complies with all the requirements of section 84 of the Bills of Exchange Ordinance, No. 25 of 1927, and is therefore a promissory note. The District Judge is wrong in concluding it is not negotiable. The additional memorandum does not impair the validity of the promissory note. See *Meera Saibo v. Uduma Lebbe*,<sup>1</sup> *Caldera v. Zainudeen*.<sup>2</sup> The plaintiff is a holder in due course. The District Judge has misdirected himself and gone wrong on the question of fact.

*L. A. Rajapakse* (with him *M. M. I. Kariapper* and *Sabapathipillai*), for defendants, respondents.—The document must be construed as a whole. There is here a contemporaneous written agreement which controls the operation of the note. Such agreement is made before the bill is completed and must be considered as part of the instrument. *Byles on Bills* (17th ed.), p. 120. It is, therefore, not a promissory note as defined in the Ordinance. *Chalmers on Bills* calls them ambiguous instruments. See 9th ed., p. 337. See also *Leeds v. Lancashire*<sup>3</sup>; *Bell v. Ingestre*<sup>4</sup>; *Richards v. Frankin*<sup>5</sup>; and *Fernando v. Silva*.<sup>6</sup>

*Cur. adv. vult.*

October 19, 1938. POYSER S.P.J.—

In this case, the plaintiff sued the defendants on an alleged promissory note (P 1). The plaintiff is the endorsee of P 1 which was executed by the defendants, in favour of one Sivaguru, under the following circumstances. Sivaguru instituted a *cheetu*. The first defendant became a member and subscribed to the funds a sum of Rs. 25 a month. After three months, he purchased the *cheetu* at an auction, and on such purchase executed P 1. This document is in the form of an ordinary promissory note signed by the three defendants, but the following has been added—

“whereas this amount has been taken out on account of *cheetu*, and whereas deposit has been made for 37 months at the rate of Rs. 25 once in a month, the amount will be paid off. This *cheetu* is in the name of the first named, and the second and third named are the sureties”.

After the execution of this document, the first defendant continued to pay his monthly instalments. In July, 1936, however, the *cheetu* ceased. Up to and including that month the first defendant had paid all his instalments. On the closing of the *cheetu* the document P 1 was endorsed to the plaintiff who now sues upon it.

The District Judge has dismissed the plaintiff's action. He came to the conclusion that although P 1 was a promissory note it was not negotiable and, on that ground, he dismissed the plaintiff's action.

<sup>1</sup> 22 N. L. R. 508.

<sup>2</sup> 24 N. L. R. 244.

<sup>3</sup> (1809) 2 Camp 205.

<sup>4</sup> (1848) 12 Q. B. 317.

<sup>5</sup> (1840) 9 C. & P. 221.

<sup>6</sup> 7 N. L. R. 1.

I think the District Judge came to a correct conclusion, although I do not agree with the reason he gave. In my opinion, the document P 1 cannot be regarded as a promissory note. It is more in the nature of an agreement. "A promissory note is an unconditional promise in writing made by one person to another and signed by the maker engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer". See section 84 (1) of the Bills of Exchange Ordinance, No. 25 of 1927. The document P 1 is not an unconditional promise to pay. It is more in the nature of an agreement to pay a certain sum on the happening of a certain event, namely, the default in the monthly payments to the cheetu. As the cheetu ceased in July, 1936, and as up to that time the first defendant had paid all the instalments that were due from him, his liability under this document clearly ceased.

For these reasons the appeal will be dismissed with costs.

DE KRETZER J.—I agree.

*Appeal dismissed.*

