

1919.

Present : De Sampayo J.

## KARUNAWATTY v. DINESHAMY.

140—C. R. Gampola, 4,048.

*Promissory note—Part payment—Subsequent endorsement to holder in due course—Part payment does not bind endorsee in due course—Note payable on demand overdue.*

In July, 1917, the defendant made a note for Rs. 122 payable on demand in favour of A. In April, 1918, the defendant paid Rs. 100 to A. Thereafter A endorsed the note to the plaintiff.

*Held*, that if the plaintiff was an endorsee in due course the payment did not bind him, and that he could recover the full amount of the note.

A promissory note payable on demand as distinguished from a bill of exchange is not overdue by reason only that it had been outstanding for an unreasonable time.

Payment of the full amount due on the note renders the note incapable of further negotiation, but a part payment does not have that effect.

THE facts are set out in the judgment of the Commissioner of Requests (R. B. Naish, Esq.):—

In this case plaintiff sues defendant on a promissory note produced and filed in the case for Rs. 122 dated July 27, 1917. Defendant admits having made the note, but avers payment of Rs. 100 principal and costs Rs. 15.56, interest on the whole amount up to that time, on April 6, 1918, to one Gomas, the agent of the plaintiff's endorser. He, therefore, pays Rs. 22, the balance of the principal, and Rs. 3.63, the interest due thereon from April 7, 1918, to January 27, 1919, into Court, and prays that plaintiff's claim in excess of this amount be dismissed.

There is only one issue, viz., whether defendant did, in point of fact, make the payment of Rs. 100 and interest as alleged.

On the issue of fact I accordingly find for the defendant.

It remains to consider the question whether the plaintiff, if he took the note without notice of this part payment, is bound thereby. In connection with the question, plaintiff's proctor referred me to D. C. Anuradhapura, 203, *Sana Sathaswam v. Ena Vawaweepillai*, reported in *Tamb. Rep. VII*. On reading the judgment in that case I am, however, unable to discover anything directly bearing in the point at issue in this case; and even if it was decided in that case that part payment does not bind a subsequent endorsee without notice, that case must be considered to have been over-ruled by *Tenna v. Balaya*,<sup>1</sup> in which it was held that when payment is made the note is discharged and ceases to be negotiable, and the endorsement and the delivery of the

<sup>1</sup> (1908) 11 N. L. R. 27.

note after such payment to a third party gives such third party no right to sue on it. In this latter case of *Tenna v. Balaya*<sup>1</sup> the following words from *Chalmers on Bills of Exchange* were quoted with approval: "Payment and other discharges are sometimes spoken of as equities attaching to a bill, but this seems incorrect—they are rather grounds of nullity. That which purports to a bill is no longer such, it is more waste paper." From this finding the legal inference is that where a bill has been partially paid, it is *pro tanto* waste paper, i.e., that an endorsee, even without notice, cannot recover more than the balance actually due on the bill. To hold otherwise would be to perpetrate the absurdity of saying that where Rs. 99.99 out of Rs. 100 due on a note has been paid, an endorsee without notice can recover Rs. 100, but that where the whole amount of the bill, i.e., one cent more, has been paid, he can recover nothing.

There is, however, another ground on which the plaintiff is bound by the part payment. It is unquestionable law that an endorsee of a promissory note, who becomes such after the note is overdue, holds it subject to equities, whether he had notice of the equities attaching to the note or not. Now, a demand note, on which even a part payment is made, must be due, and any subsequent transaction in respect of that note must take place when it is overdue. In this case it appears that the note was endorsed to the plaintiff after a part payment had been made on it. Therefore, the plaintiff holds it subject to equities.

The decree will accordingly be that the defendant do pay to the plaintiff Rs. 22, together with interest at the rate agreed upon on Rs. 22, &c.

*Bartholomeusz* (with him *Keuneman*), for plaintiff, appellant.

*Canakaratna*, for defendant, respondent.

October 23, 1919. DE SAMPAYO J.—

This is an action on a promissory note for Rs. 122 with certain interest dated July 27, 1917, made by the defendant in favour of Messrs. Abeysinghe & Son, and endorsed by the latter to the plaintiff. The defendant pleaded that while Abeysinghe & Son were still the holders, namely, on April 6, 1918, he paid them Rs. 100 on account of principal and all interest due up to that date. The issues framed at the trial were whether the defendant paid the sum alleged, and if so, whether that payment bound the plaintiff if he had no notice thereof. The Commissioner was satisfied that the payment was made by the defendant to Abeysinghe & Son. He also thought that the promissory note, even in the hands of the plaintiff, was discharged to that extent, and he gave judgment for the plaintiff for the balance. The Commissioner in deciding that point relied on *Tenna v. Balaya*.<sup>1</sup> The Commissioner, however, misunderstood the effect of that decision. What was held there was that payment of the note by the maker, that is to say, the full amount of the note,

<sup>1</sup> (1908) 11 N. L. R. 27.

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rendered the note incapable of further negotiation, and any endorsee thereafter had no remedy against the maker. The very authorities cited in that case and other references, which may easily be made, show that a part payment is quite different from payment of the note. A part payment constitutes what is called an equity attaching to the note, and operates against a subsequent endorsee if he was not an endorsee in due course. In this case there is nothing to prove that the plaintiff did not give good consideration for the endorsement to him, or that he had notice of the prior payment. The Commissioner further supported himself by saying that the promissory note was overdue at the time when the plaintiff took it, and therefore the part payment bound him, as he then must be taken to have had notice of the equity attaching to the note. The note having been made in July, 1917, and the endorsement being some time in 1918, I cannot say there was such unreasonable delay as to make the note overdue if the law is to that effect; but the law on this subject is that a promissory note payable on demand as distinguished from a bill of exchange is not overdue by reason only that it had been outstanding for an unreasonable time. I think the judgment is erroneous on the ground on which the Commissioner based it. But I see that the defendant in his answer pleaded, as a matter of fact, that the plaintiff took the note with full knowledge of the payment by the defendant to the payees. No issue was stated on this point, nor has the matter been considered by the Commissioner. It is possible, as urged on behalf of the plaintiff-respondent, that the issue was overlooked, as the main question put before the Court was as to the effect of part payment if the plaintiff had no notice. It was for the defendant to have seen such an issue stated and decided, but in the circumstances I think it is not unfair to have a further inquiry on that point. The judgment appealed from is set aside. The defendant must pay the costs of the Court of Requests and also of this appeal. The case is sent back for further inquiry on the point indicated.

*Set aside.*