1937 *Present :* **Soertsz J.**

SAMSUDEEN *v.* ABDUL WAHIB.

174—C. R. Panwila, 8,937.

Promissory note—Payee filling up a blank note—Rate of interest inserted without authority—Holder in due course.

The payee of a promissory note cannot be regarded as a holder in due course.

Charles Appu v. Fernando (17 N. L. R. 23) referred to.

APPEAL from a judgment of the Commissioner of Requests, Panwila.

C. E. S. Perera (with him *D. Goonewardene*) for plaintiff, appellant.

No appearance for defendant, respondent.

Cur. adv. vult.

June 4, 1937. SOERTSZ J.—

This was an action on a promissory note. The defence *inter alia* was that the note had been given to the plaintiff in blank and that he, in filling the note, inserted a rate of interest without authority and has thereby materially altered the note.

Mr. Perera relied strongly on the judgment of Pereira J. in *Charles Appu v. Fernando*[1]. In that case it was held that "where a simple signature on a blank stamped paper is delivered, and after completion, it is negotiated to a *holder in due course*, it shall be valid and effectual for all purposes in his hands and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given". Up to that point, if I may respectfully say so, I am in complete agreement. But Pereira J. went further and relying on the ruling by Moulton L.J. in *Lloyds Bank and Co. v. Cooke*[2], held that 'holder in due course would include a *payee who has given value in good faith*'. It will be noticed that Moulton L.J. emphasizes the condition that the payee to be a 'holder in due course' should have given value in good faith. In the present case, the commissioner has found that the plaintiff was not acting in good faith in this matter and even if Lord Moulton's ruling stood, this case is easily differentiated. But the ruling of Lord Moulton in *Cook's case* has been disapproved by the House of Lords in the case of *R. E. Jones, Ltd. v. Waring and Gillow, Ltd.*[3]. The Lord Chancellor Viscount Cave said, "I do not think a holder in due course includes the original payee of a cheque . . . . The decision of Lord Russell in *Lewis v. Clay*[4] was to the effect that the expression does not include a payee; and the opinion to the contrary expressed by Fletcher Moulton L.J., in *Lloyds Bank v. Cooke* does not appear to have been accepted by the other members of the Court of appeal". Lord Shaw of Dunferline said, "I too venture to disagree with the view . . . . expressed by Fletcher Moulton L.J. in *Lloyds Bank v. Cooke*", and Lord Sumner remarked " as at present advised I do not think Fletcher Moulton L.J.'s observations in *Lloyd's Bank v. Cooke* are correct".

The view taken by Pereira J. in the case I have referred to cannot, therefore, be regarded as correct, namely, that the payee of a promissory note is a holder in due course.

In my opinion, this appeal fails and must be dismissed.

Dismissed.

[1] *17 N. L. R. 23.*
[2] *(1907) 1 K. B. 794.*
[3] *(1926) A. C. 670.*
[4] *14 Times L. R. 149.*