Present: Pereira J. and De Sampayo A.J. **1913.**

JORONIS APPU *v*. PERIS.

178—D. C. Negombo, 9,049.

Bill of exchange—Assignment otherwise than by endorsement—Rights of assignee.

The interest in a bill of exchange or promissory note may be assigned otherwise than by endorsement. In case of such an assignment, however, the assignee is not entitled to all the rights and privileges of a holder in due course.

THIS was an action on a promissory note which was made in favour of the plaintiff and another. The second payee transferred his interest in the note to the plaintiff by a separate writing. The District Judge dismissed the action, holding that the note could only be transferred by endorsement. The plaintiff appealed.

[1] *2 C. A. C. 88.* [2] *1 S. C. D. 67.*

[3] *(1906) 10 N. L. R. 44.*

F. M. de Saram, for the appellant.—The District Judge was clearly wrong in the view he has taken of the law. A promissory note can be transferred otherwise than by mere endorsement. The Bills of Exchange Act, 1882 (section 31), contemplates such a transfer. A promissory note is a chattel and a chose in action, and can be transferred in the same manner as a chattel or chose in action is transferred. The English law applies to bills of exchange and promissory notes, and an assignment of a promissory note by writing is effectual to pass title to it. (*Carpen Chetty v. Sanmugam Tever.*[1])

Arulanandam, for the respondent.—The law with regard to bills of exchange has been codified, and the Bills of Exchange Act of 1882 contains the whole of the law on the subject. The Act nowhere expressly provides for assignments otherwise than by endorsement.

Cur. adv. vult.

July 1, 1913. PEREIRA J.—

I see no reason to disagree with the District Judge in the conclusions he has arrived at on the second, third, and fourth issues. The only question that remains to be considered is that involved in the first issue, namely, whether the assignment referred to is valid in law. The District Judge seems to think that a promissory note cannot be assigned except by endorsement. I do not think he is right here. It is well-established law that although bills and notes partake largely of the nature of money, yet they retain also their innate character of chattels and choses in actions. As chattels they may be bought and sold, and as choses in action they may be assigned. The interest in a bill or note can be assigned otherwise than the endorsement, although, of course, the assignee will not be in the advantageous position of a " holder in due course " as against whom certain defences that the maker may have against the immediate payee may not be available to him. The Bills of Exchange Act, 1882 (45 & 46 Vic. ch. 61), itself recognizes the right to transfer bills and notes without endorsement. In section 31 (4) it enacts that where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee, in addition, acquires the right to have the endorsement of the transferor. The transferee may not exercise this right, but still the rights conveyed to him remain unaffected. It is said that he will be well advised to obtain the indorsement to him of the transferor, because, should the instrument remain in the latter's possession after the sale or assignment, an indorsement by him, though later in date, to a holder who takes it for value and without notice will give such holder a complete title to the instrument. Anyway the assignment

[1] *(1884) 6 S. C. C. 40.*

by itself is operative as such. The terms of the document relied on in this case as an assignment appear to me to be sufficient to give the document the effect of an assignment. The very word "assigned" is used in it.

I would set aside the judgment appealed from and enter judgment for plaintiff as claimed with costs.

DE SAMPAYO A.J.—

I agree. The District Judge was clearly wrong in thinking that a promissory note could not be assigned otherwise than by endorsement. In *Carpen Chetty v. Sanmugam Tever* [1] it was held that the English law applied to the matter, and that since the English Judicature Act, 1873, an assignment of a promissory note by writing was effectual to pass title to it and the legal remedies thereon. The only question in this case appears to me to be whether the writing granted to the plaintiff by the other payee is sufficient as an assignment. The District Judge regarded it as nothing more than a mere receipt. I think there he was wrong. The document in question is not a deed or a notarial instrument, but is a more or less formal writing, and contains sufficient words of assignment. The Judicature Act only required a writing. In *Marchant v. Morton, Down & Co.*[2] the document was a deed signed only by one member of a partnership, and therefore did not bind the firm as a deed, but it was upheld as a good assignment in writing, Channell J. observing that a deed was not necessary. No other objection being raised to the form of the assignment, I think the plaintiff is entitled to judgment.

Set aside.

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[1] *(1884) 6 S. C. C. 40.*

[2] *(1901) 2 K. B. 829.*