Present : Dalton J. and Maartensz A.J. 1929

PALANIAPPA CHETTY *v.* AZEEZ *et al.*

207—D. C. Colombo, 26,364.

Money Lending Ordinance—Note endorsed in blank—Unenforceable—Not a fictitious note—Ordinance No. 2 of 1918, s. 10 (1).

Where a blank promissory note was endorsed to the plaintiff who subsequently filled it up,—

Held, that the note was unenforceable by the plaintiff.

APPEAL from a judgment of the District Judge of Colombo.

Garvin, for plaintiff, appellant.

Choksy, for defendant, respondent.

November 12, 1929. DALTON J.—

This action was to recover the sum of Rs. 1,000 alleged to be due on a promissory note. The first defendant, to whom the loan is said to have been made, had been declared insolvent, and the second defendant, the endorser of the note, set up in his defence, among other things, that the note had been given in blank by the first defendant to the plaintiff and that the latter had subsequently filled up the note. When the issues were framed it seems to have been assumed that under the Money Lending Ordinance, 1918, a blank note is a " fictitious " note within the meaning of the Ordinance, and the learned District Judge having found that the second defendant's contention was satisfactorily proved, held that the note was " fictitious " within the meaning of section 14 of the Ordinance and that the action could not be maintained.

Accepting his finding as to the note having been given in blank—for with that finding I am not prepared to disagree—the note clearly does not come within any of the cases provided for by section 14. The Ordinance in more than one section distinguishes between blank notes and " fictitious " notes, *vide* section 2 (1) (*c*) and section 13. The note sued on here is not then a " fictitious " note within the meaning of section 14, but nevertheless it is not enforceable on the facts here owing to the fact that the provisions of section 10 have not been complied with. The necessary particulars have not beeen set out in the note. I state " on the facts here " because if the plaintiff were the *bona fide* holder for value of the note without notice of any matter affecting the enforceability of the note, he would not be debarred by anything in section 10 from recovering what is due on the note. But the finding of the learned Judge is to the effect that he took

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the note in blank and subsequently filled it in. He cannot, therefore, say he was not aware of the fact that the note was not enforceable under the Money Lending Ordinance. The judgment of the trial Judge must therefore be affirmed, but for the reason now given.

A request was then made to the Court by the appellant for relief, on the ground of inadvertence, but there is nothing before us to justify such an application.

The appeal must be dismissed with costs.

MAARTENSZ J.—I agree.

Appeal dismissed.