

Present : De Sampayo J.

1920.

MOHAMED BHAI v. NEWMAN *et al.*

1—*C. R. Kandy, 27,024.*

Inducing wife or child to contract debt—Money Lending Ordinance, No. 2 of 1918, s. 16—Written consent of husband or father.

The lending of money by a money lender to a wife or child without the written consent of the husband or father is not illegal under section 16 of Ordinance No. 2 of 1918. The words of this section contemplate a visit of the residence by the money lender in the absence and without the knowledge of the person who is the natural protector of a wife or child, and the whole provision is intended to prevent a wife or child from being tempted to contract a debt.

THE facts appear from the judgment.

Arulanandan, for plaintiff, appellant.

C. H. Z. Fernando, for defendants, respondents.

June 30, 1920. DE SAMPAYO J.—

The plaintiff is an Afghan money lender, and he sues the defendants, who are husband and wife, to recover a sum of Rs. 65 and interest on an allegation that at the request of the husband, the second defendant, he lent to the first defendant a sum of Rs. 75, and that they paid him a sum of Rs. 10, leaving unpaid the balance sum of Rs. 65. The defence was that the plaintiff lent only the sum of Rs. 25, and that there was only a balance of Rs. 15 due.

¹ (1893) 3 S. C. R. 1.

² (1919) 7 C. W. R. 12.

³ S. C. Mins., Dec. 1, 1909.

1920.

DE SAMPAYO
J.*Mohamed
Bhai v.
Newman*

Relevant issues were stated at the trial on the pleadings. The plaintiff gave evidence and closed his case, and then the second defendant was examined in chief. At this stage a point of law appears to have been started, and was stated as the third issue. The Commissioner decided the last issue in favour of the defendants, and dismissed plaintiff's action, excepting as to the sum of Rs. 15. The point of law taken is based on section 16 of the Money Lending Ordinances, No. 2 of 1918, which enacts as follows: "Any person carrying on business of money lending who by visiting the residence of any person induces the wife or child of any such person to contract a loan without his written consent shall be guilty of an offence."

The Commissioner discusses the meaning of this provision, and thinks that the word "induce" as used here has not its ordinary force, and that the section is merely intended to provide that if a person lends money to a wife or child without a written consent from the husband or father the transaction is illegal. It appears to me that the word "induce" in this section has greater force than the Commissioner attributes to it, and should be construed in the light of the preceding words; "by visiting the residence of the person." These words contemplate a visit in the absence and without the knowledge of the person who is the natural protector of a wife or child, and the whole provision is evidently intended to prevent a wife or child from being tempted to contract a debt. The second defendant admits having authorized the plaintiff to lend Rs. 25 to his wife, and made an entry to that effect in the plaintiff's book. Thus, the Ordinance was not contravened so far as loan of Rs. 25 was concerned, and the Commissioner was right in disallowing the claim in excess of that sum. Apart from the law, it is quite clear that the plaintiff lent only Rs. 25. It is pointed out, however, that the second defendant was not cross-examined, as the proceedings were interrupted at this stage by the framing of the issue of law, but in a case like this I am not disposed to make parties incur the expenses of a further trial, unless I am convinced that the result would be different.

In view of the entry in the plaintiff's own book and the unsatisfactory nature of his evidence, and in view of the second defendant's evidence as to the amount he asked the plaintiff to lend, it would be idle to inquire further whether the plaintiff was authorized to advance, or did in fact advance, more than Rs. 25. In the result the Commissioner's decree in favour of plaintiff for Rs. 15 only is, I think, right.

The appeal is dismissed. There will be no order as to costs of appeal.

Appeal dismissed.