1948 *Present :* **Canekeratne and Nagalingam JJ.**

JAYASINGHE, Appellant, *and* RAMANATHAN CHETTIAR, Respondent

S. C. 351—D. C. Colombo, 910

Money Lending Ordinance—Books of account—Loan of 1,500 rupees—Entry showing debt by defendant for 750 rupees—Non-compliance with Ordinance—Inadvertence—Section 8.

Plaintiff, a money lender, lent to the defendant a sum of Rs. 1,500. In the book of account, however, the entry made by the plaintiff showed only a debit of Rs. 750 against the defendant, his case being that the other Rs. 750 had been contributed by some other firm although the bond was in his name.

Held, that the plaintiff had not kept proper books of account and that the facts disclosed no inadvertence within the meaning of section 8 of the Money Lending Ordinance.

APPEAL from a judgment of the District Judge, Colombo.

N. E. Weerasooria, K.C., with *S. W. Jayasuriya*, for defendant appellant.

F. A. Hayley, K.C., with *C. Renganathan*, for plaintiff respondent.

Cur. adv. vult.

September 3, 1948. NAGALINGAM J.—

This appeal involves a short point of law under the Money Lending Ordinance. The plaintiff who is admittedly a money lender and has been carrying on the business of money lending for a number of years sues the defendants for the recovery of a sum of Rs. 2,485·88, being the principal and interest alleged to be due upon a mortgage bond dated August 10, 1939, and executed by the defendants in favour of the plaintiff.

The plaintiff's case is that he lent a sum of Rs. 1,500 upon the mortgage bond sued upon, while the defendants' case is that only a sum of Rs. 750 was received by them. The learned Judge has rejected the defence on this point and has held with the plaintiff that a sum of Rs. 1,500 was in fact lent to the defendants. The defendants, however, take the plea that the plaintiff being a money lender and being under an obligation by virtue of section 8 of the Money Lending Ordinance to keep a regular account of the loan in a proper book of account, has failed to do so, and that he is thereby incapacitated from maintaining an action in respect of the loan.

The plaintiff in fact has kept proper books of account which fully comply with the requirements of the Ordinance. In the books of account,

however, the entry made by the plaintiff shows only a debit of Rs. 750 against the defendants and the extract from his books of account shows that the account of the plaintiff with the defendants is in regard to the sum of Rs. 750 and not in respect of a sum of Rs. 1,500 alleged to have been lent as set out in the mortgage bond.

Mr. Hayley on behalf of the plaintiff contended that the loan of Rs. 1,500 need not necessarily appear under any particular column but that it would be a sufficient compliance with the requirements of the Ordinance if the sum lent is written down on some page in the book of account. I do not think anybody would quarrel with this contention. There is certainly no magic in writing the particulars of a loan under a special heading and under a particular column, for one can well conceive of a Chinaman who carries on the business of money lending in Ceylon and who is obliged by the provisions of the Ordinance to keep books of account and to keep regular accounts therein entering his accounts from right to left and from bottom to top. But the essence of the requirement consists in having a proper record entered in plain words and numerals of the items relating both to the loan and the repayments made in reduction of the loan.

It is true that in the account kept by the plaintiff of his transaction with the defendants there is a reference to the bond having been executed for a sum of Rs. 1,500 but this appears in the description given by the plaintiff of the transaction that was entered into by him with the defendants. While he says, no doubt, that a sum of Rs. 1,500 was the amount of the mortgage bond he distinctly and clearly sets forth in the selfsame description that a half share has been deducted for the firm of M. S. P., namely a sum of Rs. 750, and that for " our half ", meaning thereby the plaintiff's own half, he shows a debit against the defendants of only Rs. 750.

The entry itself in the plaintiff's books therefore establishes beyond any doubt that the only amount lent by the plaintiff at the date of the execution of the mortgage bond and in respect thereof was a sum of Rs. 750 and not a sum of Rs. 1,500. The plaintiff, however, refers to the description of the transaction in his books of account and has also given oral testimony to the effect that in fact a sum of Rs. 1,500 was lent, of which only a half was contributed by him while the other half was contributed by another firm by the name of M. S. P. Supramaniampulle but that the mortgage bond was taken " in his own name and not in the joint name of M. S. P. and himself because the original bond was in his favour ". But this is only an attempt to explain one unknown by another unknown.

The plaintiff's account, however, shows that he had lent a sum of Rs. 2,250 on the " original mortgage bond " to the defendants on July 19, but one fails to understand why, if the original bond was in favour of the plaintiff, the subsequent mortgage bond should not have been taken in favour of the persons actually lending the money. The entry may have value as showing that the plaintiff is only a trustee for the firm of M. S. P. in regard to a sum of Rs. 750 out of the sum of Rs. 1,500 alleged to have been lent to the defendants but as between the plaintiff and the defendants

the entry is capable of no other interpretation but that the plaintiff himself lent only a sum of Rs. 750 on the transaction entered into by him with the defendants on that date and evidenced by the mortgage bond. At one stage the plaintiff in the course of his evidence suggested that the defendants were aware at the date of the execution of the mortgage bond of the fact of the loan having been made to him by the plaintiff and the firm of M. S. P. Under cross-examination on an earlier date of these proceedings he admitted that the letter written by his Proctor on May 22, 1945, to the defendants' Proctor was the first intimation that the defendants had that the account was not with the plaintiff alone but with also another firm. In view of this admission by the plaintiff it is unnecessary to consider the legal question as to whether the plaintiff could be permitted to vary the terms of the mortgage bond under which the contracting parties are set out as the plaintiff and the defendants only and to show that the contracting parties were not merely these but that there was in addition a third party, viz., the firm of M. S. P. Suffice it to say on the facts admitted by the plaintiff that the transaction was entered into as a case of lending by the plaintiff alone to the defendants and a borrowing by the defendants solely from the plaintiff.

On these facts it is manifest that the plaintiff's books of account do not contain a regular account of the loan alleged to have been made by the plaintiff of the sum of Rs. 1,500 to the defendants. On the basis of the facts deposed to by the plaintiff he should have opened an account showing the loan of Rs. 1,500 to the defendants and at the same time opened another account with the firm of M.S.P. showing that he had received from M.S.P. on that date a sum of Rs. 750 which he advanced to the defendants. The first account would then have correctly embodied the transaction between the plaintiff and the defendants and would have been a proper and sufficient compliance with the requirements of section 8 of the Money Lending Ordinance.

In this view of the matter, no other conclusion is possible but that the plaintiff has failed to keep a regular account in respect of the loan alleged to have been made by him upon the mortgage bond and under section 8 (2) of the Money Lending Ordinance he is not entitled to enforce *any claim* in respect of this transaction in relation to which he has made default, unless of course, it could be shown that the plaintiff comes within the terms of the proviso which enables the Court to give a money lender who has made default relief in certain circumstances.

Mr. Hayley did in fact make application on behalf of the plaintiff that the Court should grant him relief under the proviso. To avail himself of this proviso, the plaintiff must make out firstly that the default in regard to the transaction was due to inadvertence and not to any intention to evade the provisions of the section, and secondly, that the receipt of the loan, the amount thereof and the payments made in respect thereof and other material transactions relating thereto appear by other satisfactory evidence. It may be that the plaintiff can make out the second requirement although it must be borne in mind that it was an integral part of the lending by the plaintiff that the defendants should permit the plaintiff to receive rubber coupons belonging to them and to

sell and appropriate the proceeds thereof in reduction of the debt, and there is some dispute between the parties arising out of these transactions. But in regard to the first requirement the question is whether it could be said that the default was due to inadvertence. It is unnecessary for the purpose of this case to determine precisely the meaning that should be attached to the term inadvertence. The term has been the subject of conflict of judicial opinion. Whether the term "inadvertence" be limited to mean the opposite of deliberation or whether it be regarded as including a case of ignorance of the law, in neither event can the plaintiff in this case be said to have committed default by reason of inadvertence. He has kept what purports to be a regular account.

This is not a case, therefore, of omission to enter up an account and there is no room for ignorance of the provision of the law requiring that an account should be kept. But it has been said that the plaintiff, though he may not have been in ignorance of the requirement of the law that a regular account of the loan should be kept, nevertheless misapprehended the legal application of it because of the fact that another firm contributed part of the money which made up the total amount of the loan.

The provision of the law is simple and quite clear. I can only repeat, in the words of Macdonell C.J. in the case of *Devasurendra v. de Silva*[1]; that "if a person carries on the business of money lending, it is his clear duty to find out what the law says as to that business." In my opinion, the plaintiff appears to have been quite alive to the exact requirement of the law and to have been in no doubt in regard to it. When the defendants applied to the plaintiff for a copy of their accounts as appearing in his books, as they were entitled to do under section 9 of the Ordinance, the plaintiff issued a copy but without it being authenticated by anyone and without it bearing any reference to any particular books of account, *vide* D5 of May 15, 1945, addressed by the defendants' Proctor to the plaintiff's Proctor. This account was produced and shown to the plaintiff in the course of the earlier proceedings. The plaintiff admitted that it was a copy that was sent by him and had to admit that that copy of the account made no mention of the fact that a half share had been lent by any other firm. In fact that was an account showing directly and simply the loan of Rs. 1,500 by the plaintiff to the defendants.

Now, if the plaintiff was under the impression that he had duly complied with the law by writing the account in respect of a half share in his books, and allowing the firm of M. S. P. to write the account in respect of the other half, why did he concoct—for that is the only term that can be used—an account which was intended to put the defendants off the scent or at least would have had that effect? It was only when the defendants insisted upon a duly authenticated copy of the account and intimated further that they should be also afforded facilities to compare the copies that may be issued with the original, that the plaintiff for the first time intimated to the defendants that the transaction was not only with him but with a third party.

The facts, therefore, disclose that there has been no inadvertence within the meaning in which that term is used in section 8 of the Money

[1] *(1933) 34 N. L. R. 313.*

Lending Ordinance to entitle the plaintiff to relief. Furthermore, this particular point was raised in the trial Court but the plaintiff did neither frame an issue suggesting that he was entitled to relief nor did he in fact claim relief before the learned trial Judge. Having regard to the conduct of the plaintiff it must also be said that the application for relief comes too late.

As the plaintiff has failed to keep a regular account of the loan and has not made out a case for relief, I would allow the appeal, set aside the judgment of the learned District Judge and dismiss the plaintiff's action with costs in both Courts.

CANEKERATNE J.—I agree.

Appeal allowed.