

1921.

Present : Schneider A.J.

MEERA SAIBO v. UDUMA LEBBE.

116—C. R. Dandagamuwa, 4,503.

Promissory note—Interest payable monthly—Principal and interest to be paid if interest is not so paid—Is note payable on demand?—Stamp duty.

A document purporting to be a promissory note set out the reasons why the money was borrowed, and proceeded to state that in failure of so paying the interest every month, the principal and interest so due shall be paid to the creditor, and that the note shall be received back. The note was stamped with a six-cent stamp.

The Commissioner held that the note was not properly stamped, as the note was not payable on demand, but only upon failure to pay interest "every month."

Held, that the note was payable on demand, and that it was properly stamped.

THE facts appear from the judgment.

Arulanandan, for appellant.

July 22, 1921. SCHNEIDER A.J.—

The decision of this appeal turns upon the interpretation to be given to the document marked P 1 which is as follows: "The promissory note, written and granted to Neina Meera Saibu of Elabodagama in Katugampola korale west, in the District of Kurunegala, by Uduma Lebbe, son of Usubu of Elabodagama aforesaid, purports as follows: "To pay the debt of my father who borrowed money from the said creditor Meera Saibu and for the expenses of my family, I, the said Uduma Lebbe, have borrowed in cash a sum of Rs. 200 from the said Meera Lebbe, promising to pay interest thereon at the rate of 12 per centum per annum every month, and, in failure of so paying the interest, the principal and interest so due shall be paid to the said creditor Meera Lebbe or order, and this pro-note will be received back."

It is undoubtedly a promissory note, and as undoubtedly has been drafted by a person not familiar with the precise legal form and language of a pro-note. The plaintiff says that it was written by his Kanakapulle. The earlier and the latter parts of it appear to me to be mere surplusage. It is not necessary to set out why the money was borrowed, nor that the note would be "received back" when payment is made. It bears a six-cent stamp. If it be regarded as a promissory note payable on demand, it is duly

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stamped; if not, it is insufficiently stamped. The only defence raised in the answer is that the document is a forgery. But at the trial the objection was taken that it was not duly stamped. Upholding this objection, the Commissioner dismissed the plaintiff's action. He appeals. The plaintiff is a money lender, and the defendant is a person who has been borrowing money upon promissory notes. It is but fair to assume that they were aware that a six-cent stamp is the appropriate stamp for a promissory note payable on demand. From the fact that the document bears such a stamp, and from the internal evidence of the document itself, I am inclined to think that the parties intended the document to be a note payable on demand. But there is room for the contrary view upon this point. I would therefore decide the appeal upon other grounds which admit of no doubt. I would hold that it is a note payable on demand. The Bills of Exchange Act, 1882, defines a promissory note as "an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer." The learned Commissioner appears to have thought that the note was payable only upon a failure to pay interest "every month," and that, therefore, it was not payable on demand. By virtue of section 89 of the Act, the provisions of sections 10 and 11 are applicable to promissory notes. Section 10 states that promissory note is payable on demand: (a) which is expressed to be payable on demand or (b) in which no time for payment is expressed. This document must be regarded as one coming within the category (b), and, therefore, as a note payable on demand. It cannot be regarded as one payable at a "determinable future time," because the failure to pay interest may never happen. The note would then not be "an unconditional promise to pay," but a promise to pay upon the happening of a condition, namely, the failure to pay interest. I call it a condition because it has both the essentials of a condition as that is understood in the law, viz.: (1) uncertainty, (2) futurity. The failure to pay interest is uncertain for two reasons, because it may never happen and it is not certain when it may happen even if it does happen. But the Act in section 11 puts the matter in express terms. It says that a promissory note is payable "at a determinable future time" within the meaning of the Act, when it is expressed to be payable *inter alia* on the occurrence of a specified event "which is certain to happen, though the time of happening may be uncertain." The failure to pay interest obviously does not come within the description of this event.

I would, therefore, allow the appeal, with costs, and direct that decree be entered for the plaintiff as prayed for, with costs.

Appeal allowed.