1914.

Present: Wood Renton C.J. and De Sampayo A.J.

MOHAMADU *v.* AHAMADALI *et al.*

292—D. C. Badulla, 2,761.

Promissory note——Assignment—Notice of assignment in writing necessary to enable assignee to sue.

The validity of the assignment of a promissory note depends on the giving express notice in writing, and the legal right to the instrument passes only from the date of such notice. The assignee of a note cannot sue the maker without such notice.

THE facts are set out in the judgment of Wood-Renton C.J.

A. St. V. Jayewardene, for appellant.

J. W. de Silva, for respondent.

Cur. adv. vult.

October 14, 1914. WOOD RENTON C.J.—

The plaintiff sues the defendant cn a promissory note made by the defendant in favour of Palaniappa Chetty, and assigned by Palaniappa Chetty to the plaintiff. The learned District Judge has come, though with some hesitation, to a conclusion favourable to the plaintiff on the evidence, but, on the authority of the decision of this Court in *Carpen Chetty v. Sammugan Tewer*,[1] has dismissed the action on the ground that no written notice of the assignment had been given by the plaintiff to the defendant. The plaintiff appeals.

Carpen Chetty v. Sammugan Tewer [1] is a decision by the Full Court. It is directly in point, and is therefore binding upon us. I desire to add that it is, in my opinion, sound, as well as authoritative. Section 2 of Ordinance No. 5 of 1852 provides that—

> "The law to be hereafter administered in this Colony in respect of all contracts and questions arising within the same upon or relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period, if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted."

[1] *(1883-84) 6 S. C. C. 40.*

The language of this section is of the most comprehensive character. In particular, the words "all contracts and questions arising within the same relating to bills of exchange, promissory notes, and cheques," and "all matters connected with any such instruments," must include an assignment of a negotiable instrument if they are to receive a natural interpretation. The only point to be determined then is, What is the law of England as to the assignment of such instruments? The answer is supplied by section 25 (6) of the Judicature Act, 1873,[1] which provides that—

> "Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor."

The words of this section are wide enough to embrace negotiable instruments, just as those of section 2 of Ordinance No. 5 of 1852 are sufficiently comprehensive to include assignments of such instruments, and Chalmers [2] places the matter beyond doubt—

> "A bill may be transferred by assignment or sale, subject to the same conditions that would be requisite in the case of an ordinary chose in action."

Now it is well-settled law that the requirement as to express notice in writing is a condition precedent to the assignee's right to sue. In the present case the learned District Judge finds that not even verbal notice was given to the debtor, and he has therefore rightly held that the action fails. There is nothing in conflict with the *ratio decidendi* in *Carpen Chetty v. Sammugan Tewer* [3] in later decisions. My brother De Sampayo refers to it as an authority in *Joronis Appu v. Peiris*,[4] in which it was held that the interest in a bill or note may be transferred otherwise than by endorsement, and Pereira J. cited section 31 (4) of the Bills of Exchange Act, 1882, [5] as itself involving a recognition of this right. I do not think that the decision of Sir Alfred Lascelles C.J. in *Mudalihamy v. Punchi Banda*, [6] that section 2 of Ordinance No. 5 of 1852 does not introduce

[1] *36 and 37 Vict. c. 66.*
[2] *Bills of Exchange, 6th ed., p. 131.*
[3] *(1883-84) 6 S. C. C. 40.*
[4] *(1913) 16 N. L. R. 431.*
[5] *45 and 46 Vict. c. 61.*
[6] *(1912) 15 N. L. R. 350.*

1914.

WOOD RENTON C.J.

Mohamadu v. Ahamadali

any part of the English procedure into actions on bills of exchange and promissory notes in any way weakens the authority of *Carpen Chetty v. Sammugan Tewer.*[1] The point of procedure involved in the former case was one of mere procedure dealt with by the Civil Procedure Code. The provisions of section 25 (6) of the Judicature Act, 1873, are much more closely akin to substantive law.

I would dismiss this appeal with costs.

DE SAMPAYO A.J.—

The plaintiff sues the defendant on a promissory note made by him in favour of one Palaniappa Chetty, and assigned by Palaniappa Chetty to the plaintiff by deed. The plaintiff has not given to the defendant any notice of this assignment, and the only point submitted for consideration on this appeal is whether the plaintiff, as assignee of the promissory note, can sue in his own name without such notice. This point is covered by the authority of the Full Bench decision in *Carpen Chetty v. Sammugan Tewer,* [1] which is not only binding upon us, but in my judgment is in accordance with the law applicable in Ceylon. The provisions of section 2 of the Ordinance No. 5 of 1852, which introduces the English law, is very wide. It enacts that the English law shall govern, not only in respect of bills of exchange, promissory notes, and cheques, but " in respect of all contracts and questions arising within (this Colony) upon or relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments. " The assignment of a promissory note is certainly a contract " relating " to a promissory note, and is a matter " connected with " such an instrument, and must therefore be regulated by the English law. Section 45, sub-section (6), of the Judicature Act, 1873, which requires written notice of an assignment, applies not merely to negotiable instruments, but to all choses in action, and Chalmers' *Bills of Exchange (7th ed.), p. 143,* puts it thus: " A bill may be transferred by assignment or sale subject to the same conditions as would be requisite in the case of an ordinary chose in action. " Since then, in England, negotiable instruments cannot be validly assigned, except in the manner provided, the same law must necessarily prevail here in regard to assignments of such instruments. The case of *Joronis Appu v. Peiris,*[2] which was cited on behalf of the appellant, has no bearing on this point, because all that the Court had to consider there was whether a promissory note could not be transferred otherwise than by endorsement. It was also argued that this was a matter of procedure, and that the English law did not therefore apply. It is clear, however, that the provision in the Judicature Act as to assignments is not a mere matter of procedure, but enacts substantive law. The validity of the assignment is

[1] *(1883–84) 6 S. C. C. 40.* [2] *(1913) 16 N. L. R. 431.*

made to depend on the giving of express notice in writing as a condition precedent, and the legal right to the instrument is to pass only from the date of such notice. This being so, *Andris v. Sutiya* [1] and *Mudalihamy v. Punchi Banda*, [2] which were cited in this connection, are not in point. The section of the Judicature Act in question proceeds to enact that an assignment in the manner provided shall be effectual to pass and transfer to the assignees "all legal or other remedies for the same without the concurrence of the assignor." An assignee may under the general English law sue in the name of the assignor, and how the matter might stand if Palaniappa Chetty had been joined as a plaintiff in this case it is not necessary to consider, because Palaniappa Chetty is not a party to the action at all.

In my opinion the judgment appealed against is right, and this appeal should be dismissed with costs.

Appeal dismissed.