1945 *Present:* **Soertsz A.C.J. and Canekeratne J.**

EDWARD, Appellant, *and* DE SILVA, Respondent.

142—D. C. Matara, 15,119.

*Contract—Consideration—*Justa causa*—Money-lending transaction—Undue influence—Burden of proof—Money Lending Ordinance (Cap. 67), ss. 2, 6.*

Where the defendant, who was administering his deceased father's estate and had benefited from it, promised to pay the plaintiff a due proportion of a statute-barred debt which the defendant's father had owed the plaintiff,—

Held, that there was *justa causa* for the promise and it was, therefore, enforceable.

Where the plaintiff exercised the dominating power he had over the defendant's will, at the time the defendant came to him in urgent need of a loan, to compel him to promise to pay a sum which was excessive—

Held, that section 6 of the Money Lending Ordinance was applicable and the burden was upon the plaintiff to prove that the promise was not induced by undue influence.

Held, further, that relief should be granted under section 2 of the Money Lending Ordinance.

APPEAL from a judgment of the District Judge of Matara.

H. V. Perera, K.C. (with him *Vernon Wijetunge*), for the defendant, appellant.

N. E. Weerasooria, K.C. (with him *H. W. Jayewardene*), for the plaintiff, respondent.

Cur. adv. vult.

November 14, 1945. SOERTSZ A.C.J.—

The plaintiff sued the defendant to recover a sum of Rs. 2,800 which he said was due to him on a written promise given to him by the defendant on February 3, 1938. That promise was in these terms, according to the translation adopted by the trial Judge:—

> " Whereas D. C., Galle, Case No. 36,083, in which Mr. K. H. Andris Silva of Talaramba has claimed a sum of Rs. 2,800 from the estate of my deceased father, is now gone up in appeal, I, Galapatti Guruge Charles Edward of Ahangama, having hereby promised to pay to the aforesaid plaintiff in the said case the said sum of Rs. 2,800 within four complete years from the date of the decision of the said appeal, in the event of the said appeal being decided against the said Mr. K. H. Andris Silva of Talaramba, have hereunto set my hand on a five cent stamp at Talaramba on February 3, 1938 ".

The circumstances in which this promise was made are briefly as follows:—The plaintiff and the defendant are brothers-in-law. The plaintiff alleging that he had given his father-in-law, that is the defendant's father, this sum of money to be invested in his name and on his account sued his father-in-law's estate which the defendant was administering to recover that amount. The defendant did all he could to help the plaintiff in that case, but the action was held to be statute-barred and was dismissed. The plaintiff appealed and, it was, pending that appeal, that this promise was made. The defendant having failed to fulfil the promise, the plaintiff brought the action now before us.

The defendant denied liability. He said that, at about the time he gave this written promise, he was urgently in need of money, and asked the plaintiff to lend him a thousand rupees on a promissory note, and that the plaintiff " brought undue influence and pressure to bear on the defendant, and thus forced the defendant to execute the writing ". He also pleaded that there was no consideration for the promise and he asked that the plaintiff's action be dismissed. The case went to trial on nine issues but for the purpose of this appeal, the two issues that are material are:—(*a*) was there valid consideration for the promise and (*b*) was there undue influence ? The trial Judge answered both these issues in favour of the plaintiff. In regard to the circumstances in which the promise was made, the trial Judge's finding was stated by him thus—

> " I do not think either party was telling the whole truth in this matter. What actually happened seems to be that the defendant, as he felt that his father had been benefited by the plaintiff's money and that most of it came to him, agreed to pay the amount due in case the plaintiff failed in his appeal, within four years of the decision of the appeal, but that the plaintiff took advantage of the fact that the defendant wanted money on a loan and he availed himself of the opportunity on which he lent money to the defendant to have the defendant's promise put down in writing; although the defendant may have promised to return this money to the plaintiff, he may not have given the writing in question unless the plaintiff availed himself of the opportunity to get it on the occasion when he, the defendant,

had to borrow some more money from the plaintiff . . . . The plaintiff, when he got the writing from the defendant, and at every later stage, always intended to use it to recover this money, which he could not recover from his father-in-law's estate, from the defendant ".

On the issue of consideration, the trial Judge found that there was *justa causa* for the promise and that it was, therefore, enforceable. On the question of undue influence, he said that the plaintiff had led no evidence.

Having regard to the doctrine of consideration in Roman-Dutch law as enunciated in *Jayawickreme v. Amarasuriya* [1] and in the South African case of *Conradie v. Rossouw* [2] I am of opinion that the trial Judge was right, for all that appears to be required to support a promise and to make it enforceable is that " the agreement must be a deliberate, serious act, not one that is irrational or motiveless ". This promise was of that nature although it resulted from the web of circumstance in which the defendant found himself at the time. The only other question is that of undue influence. In regard to that too, the Judge was right on the pleadings and issues as they stood, but there was the Money Lending Ordinance too, which, unfortunately, was not brought to his notice. The agreement sued on here is within the purview of section 2 of that Ordinance, and the transaction which appears to have led to the promise being made, also appears to be within the meaning of section 6 of that Ordinance and, therefore, properly regarded, the burden was upon the plaintiff to prove that the promise was not induced by undue influence. Illustrations (*b*) and (*c*) appended to section 6 are very apposite on the facts found by the trial Judge.

There remains the question whether we should ourselves re-open the transaction and grant relief or send the case back to the trial Judge for him to deal with it in that manner. The latter course would involve expenditure of both time and money and the case was brought very nearly three years ago. Moreover, I do not think that any further evidence is required for the purpose. All the material is already on the record.

It would appear that the defendant got the lion's share of his father's property and it is reasonable to suppose that he would have been willing to pay to the plaintiff his proportion of the plaintiff's money that had fallen into the estate. Documents P1 to P4 show that the other children were also willing to make their contributions. But now that they are dead, all but the plaintiff's wife, the plaintiff exercised the dominating power he had over the defendant's will at the time the defendant came to him in urgent need of a loan to compel him to undertake to pay not only his share of the debt but also those shares that the others would have had to pay.

I would, therefore, direct that decree be entered for the plaintiff for a thousand rupees. There will be no order for costs in either Court.

CANEKERATNE J.—I agree.

Decree varied.

[1] *20 N. L. R. 289.*

[2] *S. A. L. R. 1919 (A.D.) p. 279.*