

1936

*Present : Akbar S.P.J. and Koch J.*SIRIPINA *v.* SOMASUNDERAM CHETTIAR.71—*D. C. Kandy, 45,519.*

*Promissory note—Security for a loan and a balance due on former note—
Capital sum borrowed—Renewal of loan—Ordinance No. 2 of 1918, s. 10 (5).*

Where a promissory note is given by A and B partly as security for a loan and partly to cover the balance due from A to the payee on a previous note,—

Held, that the transaction did not amount to the renewal of a loan within the meaning of section 10, sub-section (5) of the Money Lending Ordinance, No. 2 of 1918, and that it was not necessary to insert the amount of the original loan.

A PPEAL from a judgment of the District Judge of Kandy.

E. F. N. Gratiaen, for defendant, appellant.

L. A. Rajapakse, for plaintiff, respondent.

Cur. adv. vult.

June 8, 1936. AKBAR S.P.J.—

Plaintiff-respondent, a money lender, sued the defendant for the recovery of Rs. 440.10 (Rs. 270, being the principal sum actually borrowed and the balance interest due) on a promissory note made on October 9, 1930, by the defendant and one Dharmadasa (since declared insolvent) jointly and severally.

Defendant in his answer pleaded that at the time this note was signed only Rs. 60 was borrowed by Dharmadasa, and that Rs. 210 then due from Dharmadasa on another note as principal and interest, was added and the note sued upon drawn up to the amount of Rs. 270.

Mr. Gratiaen argued before us that the note was a fictitious note within the meaning of section 14 of Ordinance No. 2 of 1918, as it was not drawn up in terms of section 10 of that Ordinance. It will be seen from section 10 (1) (a) that a promissory note given as a security for the loan of money shall have inserted in it the capital sum actually borrowed.

By sub-section (5) of section 10 the provisions of the section are to apply to renewals of any loan, and in all such cases the amount stated as the capital sum actually borrowed shall be the amount of the original loan. In my opinion sub-section (5) does not apply here, as the note sued on was not a renewal of the old loan. It was a note in which there was a new debtor jointly and severally liable with Dharmadasa who contracted to incur the whole liability for Rs. 270 personally at the option of the creditor. Mr. Gratiaen has quite properly referred us to an English case *Barber v. Mackrell*¹. Lindley L.J. held that a "bill is renewed when another bill is taken in its place, the parties to the bill and the amount of it being the same, though perhaps in some cases the interest due on the first bill is added." Smith L.J. said "Renewing a bill means as a rule that the new bill shall be between the same parties, and that the amount, &c., shall be the same." It will be noticed that the words in sub-section (5) are "renewals of any loan." In the case before me there can be no question that the new note was not a renewal of the old loan, because a sum of Rs. 60 was added and lent and there was a new joint and several debtor. The appeal must therefore be dismissed with costs.

Koch J.—I agree.

Appeal dismissed.
