

1963

*Present : Herat, J., and Abeyesundere, J.*

D. B. DISSANAYAKE, Appellant, *and*  
S. SARAVANAPARANATHAN, Respondent

*S. C. 228/1961—D. C. Kandy, 6079/M. B.*

*Cheque—Dishonour—Holder a professional money lender—Failure to keep accounts—  
Right to sue on the cheque—Money Lending Ordinance (Cap. 80), s. 8.*

Where a cheque is dishonoured when it is presented for payment, no action can be maintained upon the cheque if it was given by the defendant to the plaintiff as security for a loan and the plaintiff is a professional money lender who has failed to maintain proper books of account as required by section 8 of the Money Lending Ordinance.

**A**PPEAL from a judgment of the District Court, Kandy.

*T. B. Dissanayake, with Siva Rajaratnam, for the Defendant-Appellant.*

*C. R. Gunaratne, with M. T. M. Sivardeen, for the Plaintiff-Respondent.*

October 24, 1963. HERAT, J.—

This was an action by the plaintiff-respondent against the defendant-appellant upon a cheque for Rs. 10,000, which was alleged to have been given as security for a loan in respect of the said amount, given by the plaintiff-respondent to the defendant-appellant. The cheque was dishonoured when presented for payment and hence the present action was instituted.

Among other defences the defendant-appellant pleaded that the plaintiff-respondent carried on the business of a professional money lender and that he had failed to keep proper books of account and by reason of his non-compliance with the provisions of Section 8 of the Money Lending Ordinance (Cap. 80), the plaintiff-respondent could not enforce the present claim.

The learned Judge of first instance held, as a finding of fact, that the plaintiff-respondent carried on the business of a professional money lender and also that he had failed to maintain proper books of account relating to his money lending transactions as required by the Money Lending Ordinance. Despite the affirmative answers which the learned Judge gave to the above questions, he, nevertheless, held that the plaintiff-respondent could have and maintain this action. The plaintiff respondent at no time pleaded nor proved that by any inadvertence he committed a default in making an entry either with regard to the keeping of books of account or as regards the recording of this particular transaction in the books of account.

According to the Judge's finding of fact the present case is one where there has been a total failure on the part of a professional money lender to keep books of account at all. It has been held by this Court in the case of *Sinnapillai v. Veeragathy and others*<sup>1</sup> that the proviso to Section 8 (2) which gives relief in the case of a failure due to inadvertence in the case of non-entry of a transaction has no application where there is a total failure to keep account books of any sort whatsoever. This is such a case and in our view the learned Judge should have answered the issue as to the maintainability of the action in the negative.

We therefore set aside the judgment and decree of the lower Court and dismiss the plaintiff's action with costs. The defendant's appeal is allowed with costs.

ABEYESUNDERE, J.—I agree.

*Appeal allowed.*

