1894.
October 4, 11.

LOWE *v.* POLORIS.

D. C., Chilaw, 608.

Promissory note—Illegal consideration—Charge of criminal misappropriation against defendant—Promise not to press such charge, part consideration for note.

P, who had been charged before a Police Court with criminal misappropriation of goods entrusted to him by L, granted to L, during the pending of such case, a promissory note for part of the value of such goods and paid him the balance in cash, obtaining at the same time an acknowledgment from L that he had received in full the amount due to him "from P, the defendant in P. C. case No. 3,664."

***Held* that, as the debt due was not the only consideration for the note, but the agreement also not to prosecute any further the criminal charge then pending, the note was tainted with a bad consideration, and was void.**

ACTION on a promissory note. Defendant, *inter alia*, pleaded that he received no consideration, and that "plaintiff "obtained the said document by fraud, coercion, and duress."

The District Judge gave judgment for plaintiff, seeing no reason to doubt his statement that the promissory note was granted in consequence of defendant not accounting to the plaintiff for a

quantity of copperah entrusted by him to the defendant for delivery at Colombo; that the defendant paid plaintiff a part of the value of the copperah in cash, and for the balance granted the promissory note; and that thereupon plaintiff withdrew a criminal charge of misappropriation which he had brought against the defendant, and which was then pending in court.

Defendant appealed.

4th October, 1894.—*Seneviratne* appeared for appellant, and *Aserappa* for plaintiff respondent.

Cur. adv. vult.

11th October. LAWRIE, A.C.J.—

The answer is evasive and disingenuous; I do not rely on the evidence of the defendant. I examine only the evidence of and the receipt given by the plaintiff, and in these I find sufficient admissions and proof that the consideration for this note was at least in part illegal. It involved the dropping of a criminal prosecution, for which the Police Magistrate of the district had issued a warrant for the apprehension of the first defendant. I think there can be no doubt that the defendant Poloris and the first accused Podi Sinno are one and the same person.

The plaintiff says that the first defendant was arrested after he gave the promissory note. This I think may safely be said to be untrue. He was certainly under arrest when the note was made. It is said by the plaintiff that the consideration for the note was the value of copperah which he had charged the first defendant and others with having misappropriated. The discharge granted by the plaintiff at the same time as the note was made, refers specially to the criminal case 3,664: it is an amicable discharge of the amount referred to in that case, and this writing under the hand of the plaintiff seems to me to prove clearly that part of the consideration for the note was the giving of a document, which the parties believed would convince the Magistrate that the plaintiff had settled, and had no further claim against the defendant.

There may have been a debt due by the first defendant to plaintiff. I assume that there was, but that was not the only consideration for the making of the note, that certainly was not the consideration moving the second defendant (the first defendant's wife) to make it.

The consideration was that the plaintiff would not insist in and continue a prosecution for criminal misappropriation which he had already instituted; and as I am of opinion that this note is tainted with a bad consideration, I would set aside and dismiss the action with costs.

1894.

WITHERS, J.

WITHERS, J. :—

This is an action on a promissory note for Rs. 120 with interest, alleged to have been made by the defendants to plaintiff at Márawila on the 28th day of August, 1892.

The answer did not deny the making of the note, but raised every possible objection against the makers being adjudged to pay the amount. The principal pleas raised are illegality of consideration and duress.

These defences are imperfectly pleaded, and the answer containing them should have been returned for amendment, or, if the party would not amend these pleas, should have been struck out.

The 75th section of the Code requires that the circumstances of the case upon which the defendant means to rely for his defence should be stated. The answer should have disclosed the circumstances which constituted "duress," or made the consideration "illegal."

The plaintiff, however, made no objection to the form of the answer. He no doubt understood the drift of it, and he let the case go to trial without any settlement of issues.

In the argument in appeal, the two defences of duress and illegal consideration were so mixed up together that I was not quite able to apprehend the line of defence.

I was not satisfied that the plea of duress had been made out, and so I address myself to the plea of illegal consideration. It is admitted that the plaintiff charged the defendant before the Police Magistrate with a criminal offence relating to a quantity of copperah, which he alleges he entrusted the first defendant with to take to Colombo for sale. Upon that charge a warrant of arrest was issued by the Police Magistrate, and this accused was arrested by one Sebastian, Police Headman of Márawila.

It is admitted that this note was demanded by the plaintiff of the defendant on account of the copperah which was the subject of the criminal complaint. Whether this note was made before or after the arrest by the police headman is not clear from the evidence. Plaintiff says it was before, defendant says it was after, the arrest.

On the same day, however, as the note was given by the defendant to the plaintiff, a receipt was granted by the plaintiff to the defendant, the correct translation of which is said to be as follows:—" Received amicably on the 28th August the amount in " full due to me from Kuruppu Arachchige Peloris Appu, of " Wennappuwa, the defendant in case No. 3,664, and his wife " Catherina Hamy. Signed Paulu" (*i.e.*, plaintiff).

Plaintiff, who gave this receipt, speaks of it in these words: "I "gave a receipt to the defendant. It was a discharge, on condi-"tion that I would not proceed further with the case against "him." The case referred to is No. 3,664, and is the criminal matter above mentioned.

After careful consideration of the evidence I find it impossible not to regard the demand for the note, the making it, and the granting of the receipt, as one transaction, and impossible not to say that a part of the consideration for the making of the note was the promise not to prosecute the first defendant any further in the criminal case No. 3,664.

That being so, the agreement not to prosecute clearly vitiates the whole transaction, and renders the promissory note void.

The judgment should be set aside, and plaintiff's action dismissed with costs.

Action dismissed.