

1946

*Present : Wijeyewardene and Cannon JJ.*

UMMUKULATHUMMA, *et al.*, Appellants, and UTHUMALEBBE,  
Respondent.

365—D. C. Batticaloa, 275.

*Contract—Mortgage—Loan of paddy—Condition for redeeming mortgage—Return of paddy or its value “then selling”—Computation of sum necessary for redemption of mortgage.*

In 1933 the plaintiffs executed a usufructuary mortgage over their property on borrowing from the defendant 45 avanams of paddy “of the present value of Rs. 360”. They bound themselves to redeem the bond by delivering 45 avanams of paddy or “the value of paddy then selling”.

The plaintiffs sought in this action to redeem the bond by offering Rs. 360, the value of the paddy at the time of the execution of the mortgage. They admitted, however, that “the present market price at which the Government purchased paddy under the internal purchase scheme is Rs. 45 per avanam”.

*Held*, that the sum required for redemption of the bond was the value of the paddy at the time of payment.

*Held, further*, that the transaction was not governed by the provisions of the Money Lending Ordinance.

**A** PPEAL from a judgment of the District Judge of Batticaloa.

*H. V. Perera, K.C.* (with him *A. C. Nadarajah*) for the plaintiffs, appellants.

No appearance for the defendant, respondent.

*Cur. adv. vult.*

March 19, 1946. WIJEYWARDENE J.—

By bond P 1 of 1933 the plaintiffs executed a usufructuary mortgage over their property on borrowing from the defendant 45 avanams of paddy “of the present value of Rs. 360”. They bound themselves to redeem the bond by delivering 45 avanams of paddy or “the value of paddy then selling”.

At the trial the plaintiffs admitted “that the present market price at which the Government purchased paddy under the internal purchase scheme is Rs. 45 per avanam”.

The plaintiffs seek in this action to redeem the bond by offering Rs. 360, the value of the paddy at the time of the execution of the mortgage. They cannot do this as the bond requires them to offer the value of

paddy at the time of payment. I may add that this is not an action for the recovery of money lent and the provisions of the Mohey Lending Ordinance would not apply. It is not necessary to consider the other points of law urged at the hearing of the appeal in view of the admission of the plaintiffs at the trial that the Government purchased paddy and the Government paid Rs. 45 per avanam.

The appeal is dismissed without costs.

CANNON J.—I agree.

*Appeal dismissed.*

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