

1967 Present : H. N. G. Fernando, C.J., and Abeyesundere, J.

G. A. PUNCHINONA, Appellant, and L. J. LEELAWATHIE,
Respondent

S. C. 107/63 (F)—D. C. Matara, 1449/M.

Promissory note—Designation of payee—Reasonable certainty—Bills of Exchange Ordinance (Cap. 82), s. 7 (2).

A promissory note which is made payable to a person or his heirs on demand is valid. In regard to such a promissory note it cannot be contended that the payee is not specified with certainty.

Peter v. Suriapperuma (20 N. L. R. 318) not followed.

APPEAL from a judgment of the District Court, Matara.

C. Ranganathan, Q.C., with *W. S. S. Jayawardene*, for the plaintiff-appellant.

G. T. Samarawickrame, Q.C., with *E. St. N. D. Tillekaratne*, for the defendant-respondent.

Cur. adv. vult.

March 7, 1967. H. N. G. FERNANDO, C.J.—

This action for the recovery of a sum of Rs. 4,000, being the amount specified in an instrument proved to have been signed by the defendant, was dismissed solely on the ground that, although the instrument purported to be a promissory note, the payee was not specified with certainty. The promise in the instrument was (according to the translation from Sinhala) to pay *the plaintiff or her heirs* on demand. In dismissing the action on this ground, the learned District Judge properly felt bound to follow the judgment of 2 Judges of this Court in *Peter v. Suriapperuma*¹, where the designation of the payee was in almost identical terms.

In that case, the Court relied on an English decision (*Yates v. Nash*)², in which a note had been drawn in favour of the holder of an office for the time being. That decision ceased to be good law with the enactment of the Bills of Exchange Act, 1882, which expressly declared that a bill of exchange may be drawn in favour of the holder of an office for the time being (e.g. S. 7(2) of the Ceylon Ordinance, Cap. 82). With respect, it was in my opinion unsafe for this Court in the Ceylon case to rely on a statement in an English decision the effect of which had been expressly altered by legislation. The particular statement was that the payee must be capable of being ascertained with reasonable certainty *at the time the bill is drawn*. Soerfsz, J. in *Silva v. Jayaweera*³, impliedly criticised the statement by adding after it a mark of exclamation, but it was not necessary in the case before him to dissent from the decision in *Peter v. Suriapperuma*.

A common form of promissory note contains a promise to pay X. Nevertheless, the promise is enforceable at the instance of X's legal representative, whose identity cannot be ascertained with reasonable certainty at the time when the promise is made. Nor is there such reasonable certainty where payee is "X or order". The uncertainty in both these common forms of bills is no less than the uncertainty regarding the identity of heirs when a bill is drawn in favour of "X or his heirs". So long as X is alive, there is perfect certainty that X alone can demand payment; and after the death of X, the difficulty of ascertaining who can demand payment is no different from the difficulty which can arise upon the death of the sole payee of a bill. The "heirs" of X will be either those named in a last will, whether generally or with special reference to the bill, or else the heirs upon intestacy ascertainable in the course of testamentary proceedings.

I must add that Ennis J. (who participated in the decision of *Peter v. Suriapperuma*) held subsequently (at the report appended at 37 N. L. R. 28) that a note (as translated from the Sinhala) in favour of X or "a person who comes into possession of the document in the proper manner" did designate the payee with sufficient certainty. I am satisfied that "heirs" is a designation which is narrower and more certain than that which Ennis J. found acceptable.

¹ 20 N. L. R. 313.

² 39 N. L. R. 289.

³ (1860) 29 L. J. O. P. 306.

For the reasons stated I must express disagreement with the decision by which the trial Judge was bound. Sitting on a bench of 2 Judges, I am not bound to follow it.

I would allow the appeal with costs and enter judgment for the plaintiff as prayed for.

ABEYESUNDERE, J.—I agree.

Appeal allowed.
