Present : Shaw J.

1920.

BHAI *v.* JOHN.

52—C. R. Colombo, 71,575.

Money Lending Ordinance, No. 2 of 1918, s. 8—Entries made in account book several months after the date of transaction—Action not maintainable by money lender—Proof of inadvertence.

Where a money lender entered in his account book particulars regarding a loan on a promissory note six months after the date of the transaction—

Held, that he had not kept his books in conformity with the provisions of the Ordinance, and that he was not entitled to enforce his claim, unless he can claim the benefit of the proviso to section 8 of the Ordinance.

Where the Commissioner held without any evidence that the default of the money lender was due to inadvertence within the meaning of the proviso and entered judgment for the plaintiff, the Supreme Court sent the case back for evidence on the point.

"The plaintiff does not say that he did not know that the provisions of the Money Lending Ordinance, or that there was any accidental cause which prevented the account being entered in a book in the way the Ordinance provides that it should be entered."

THE facts appear from the judgment.

Rajakariar, for the appellant.

J. S. Jayawardene, for the respondent.

July 30, 1920. SHAW J.—

In this case the plaintiff, who is an Afghan money lender, sued the defendant to recover a sum of Rs. 200, the balance due on a promissory note dated May 5, 1919. The case raises a point under the Money Lending Ordinance, No. 2 of 1918. It appears from the evidence of the money lender that the entries in the book he produced regarding this loan were not made at the time the promissory note was given, but were made at a subsequent date. The plaintiff himself stated in his evidence that he had kept the book produced for two or three months. This was in January, 1920, and the promissory note was given in May, 1919.

It is also clear on looking at the book he produced that all the entries with regard to the transaction from May 4 to October 20 were made at the same time and in the same ink. It is quite clear to me that a book kept in this way is not kept in conformity with the provisions of the Ordinance.

1920.

SHAW J.

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The plaintiff is, therefore, under section 8, sub-section (2), disentitled to enforce any claim in respect of any transaction in relation to which the default in the keeping of books and entry of the accounts shall have been made. The Commissioner, however, has given him relief under the proviso of that section.

The proviso is that if the Judge is satisfied of two things, then he may give relief against the default in the keeping of books. These two things are: First, that the default was due to inadvertence, and not to any intention to evade the provisions of section 8 of the Money Lending Ordinance; and, secondly, that the amount of the loan and the payments on account, &c., satisfactorily appear by other evidence.

The Commissioner in the present case has found that the default was due to inadvertence, and that the plaintiff had no intention to evade the provisions of the Money Lending Ordinance.

He has not actually mentioned in his judgment what he found as to the account of the loan and the payments on account, but I presume he is satisfied as to these by the evidence of the money lender. My difficulty in the case, however, is to see on what foundation the Commissioner bases his finding that the default occurred through inadvertence, and without any intention to evade the provisions of the Ordinance.

The plaintiff himself says nothing whatever about it. He does not say that he did not know that the provisions of the Money Lending Ordinance, or that there was any accidental cause which prevented the account being entered in a book in the way the Ordinance provides that it should be entered.

However, the Commissioner thinks that the money lender was unaware of the provisions of the Ordinance, and that when he came to know of it he entered these transactions with the defendant and a number of other transactions on the same day, and that, therefore, his default was due to inadvertence. This may be so, and if the plaintiff had given evidence to that effect, the Commissioner might reasonably have so found. It is clear on looking at the book that this transaction was not entered up until some time subsequent to October 20, 1919. It seems difficult to credit that a person carrying on the business of a money lender should have remained unaware of these provisions of the Ordinance until such a late date. The plaintiff might have given evidence that would satisfy the Court that such was the case.

It is suggested that the Commissioner might have had some facts stated to him which would justify his finding. But if so, he ought to have recorded it in his notes of the evidence. I think the proper course in the present case would be for me to set aside the judgment appealed against and send back the case to enable the Commissioner to take further evidence in regard to the circumstances under which the default was made in not keeping

a proper account of this transaction by the plaintiff, and that if he is then satisfied that the plaintiff has explained the default to his satisfaction, the defendant should be allowed to call evidence, if he desires to do so, to make out the defence which he set forward in his answer. At the time of the trial the defendant declined to call any evidence. He appears to me to have been justified in doing so, because, so far as appears on the record of the case, the plaintiff has not explained his default in keeping the account referred to above. I would make the costs of this appeal costs in the cause.

Sent back.