

1894.
July 4.

VELLAYAPPA CHETTY v. SINNETAMBY *et al.*

D. C., Kurunégala, 612/M 420.

Joint promissory note—Right to sue the personal legal representative of a deceased maker jointly with the surviving maker.

A personal legal representative of a deceased maker of a joint promissory note cannot be sued jointly with the surviving maker. The only exception to this rule is the case of a partnership, where recourse may be had against the estate of a deceased partner.

THE judgment of the Chief Justice recites fully the facts of this case.

Wendt, for second and third defendants appellants.

Dornhorst, for respondent.

4th July, 1894. BONSER, C.J.—

This is an action on a promissory note, which was made by four persons in favour of the plaintiff. Three of these persons are dead, and the survivor is now sued, and with him four persons who are alleged to represent the estates of the deceased makers.

The District Judge has given judgment for the plaintiff as against all the defendants, who are sued as representing the estates of two of the deceased makers; and the question arises whether they could properly be sued in this action. The promissory note is a joint one, and not a joint and several one, and there is no question of partnership between the makers. Therefore, the sole point for decision is, whether a personal legal representative of a deceased maker of a joint promissory note can be sued jointly with the surviving maker.

By the law of this Colony actions on promissory notes are governed by the law of England, and the law of England is perfectly clear. The law is stated clearly and concisely in Williams on Executors, 7th edition, vol. 2, p. 1740, as follows:—"In the case of a joint contract, where several contract on the same part, if one of the parties die his executor or administrator is at law discharged from all liability, and the survivor or survivors alone can be sued. And if all the parties are dead, the executors of the survivor is alone liable."

That being the law of England it must be applied to this action. The only exception to the rule is the case of a partnership, where recourse may be had against the estate of a deceased partner, but that exception does not apply to this case, and therefore this action was wrongly framed, and no relief can be had as against the appellants.

The judgment of the District Court must be set aside with regard to the present appellants. 1894.
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Under the circumstances of this case, the order will be that ~~BOWMAN~~, C.J. neither party shall get costs either in the District Court or in this Court.

WITHERS, J.—I agree.

