

Present: Fisher C.J. and Driberg J.

MUTTUSAMI PILLAI *et al.* v. MOHAMADU *et al.*

17—D. C. Colombo, 29,362.

Promissory note—Blank stamped paper—Authority to convert into promissory note—Insertion of date—Material alteration—Bills of Exchange Ordinance, No. 25 of 1927, s. 20 (2).

Where the defendant gave the plaintiff a blank stamped paper signed by him with authority to convert it into a promissory note to cover the amount of his indebtedness to the plaintiff,—

Held, that the plaintiff was entitled to insert as the date of the note the date on which he converted the stamped paper into a promissory note.

A PPEAL from a judgment of the District Judge of Colombo.

On December 31, 1927, the defendants, who had certain transactions with the plaintiff, signed a blank stamped paper and gave it to the plaintiff upon the agreement that it was to be converted by the plaintiff into a promissory note which was to be security for their indebtedness to him. For this purpose they gave him express authority to fill up the note for any amount not exceeding Rs. 3,000. recoverable with interest at 18 per cent. On May 21, 1928, the plaintiff inserted the amount "Rs. 3,000 with interest at 18 per cent.," filled in the date "21st May, 1928," and sued the defendants upon the note. The defendants pleaded *inter alia* that the plaintiff had materially altered the note by the insertion of the date as May 21, 1928, and that the note was vitiated in consequence under section 64 (1) of the Bills of Exchange Ordinance, No. 25 of 1927. The learned District Judge upheld the defendants' contention on the ground that the plaintiff had no authority to insert any other date than December 31, 1927, and dismissed the plaintiff's action with costs. The plaintiff appealed.

H. V. Perera (with him *Gratiaen*), for plaintiffs, appellants.—There is no material alteration of a promissory note within the meaning of the Bills of Exchange Ordinance, No. 25 of 1927. The defendants

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did not give the plaintiff a completed note but a blank stamped paper with a simple signature on it, which was to be converted into a note. The delivery of such a paper gives the person who receives it, a *prima facie* authority to make good any material omission as he thinks fit in order to convert it into a note (Bills of Exchange Ordinance, section 20). The plaintiff was entitled to insert any date the stamp would carry (*Brian v. Quackerstrin*,¹ *Caruppiah v. Dorasamy*²). In any event the date "21st May, 1928," was correctly inserted. It was the date on which the blank stamped paper was converted into a complete promissory note.

Nadarajah (with *Rajapakse*), for defendants, respondents.—No question of implied authority arises in this case. The defendants got the plaintiff's express authority to convert the blank paper into a promissory note in a particular way. The only date which the plaintiff was entitled to insert was December 31, 1927, the date on which the blank note was delivered to him by the defendants.

March 20, 1930. FISHER C.J.—

In this case the defendants gave the plaintiff on December 31, 1927, a blank stamped paper upon the agreement that it was to be made into a promissory note which was to be security for the indebtedness of the defendants to the plaintiff. The learned Judge found that subsequently the plaintiff inserted the amount Rs. 3,000 with interest at 18 per cent. and filled in the date, May 21, 1928. The learned Judge says in his judgment: "The defendants agreed to the plaintiff filling up the note for an amount not exceeding Rs. 3,000, and recovering the amount actually due from them with interest at 18 per cent. It was in pursuance of that agreement that the blank note was granted—to enable the plaintiff to sue on it and recover the amount with interest at 18 per cent." The learned Judge dismissed the action on the ground that the insertion of the date, May 21, 1928, was a "material alteration" which vitiated the note. He says: "The only evidence is that the note was granted on December 31, 1927, but that date was not filled in. There is no evidence that the plaintiff was authorized to fill in any other date, nor is there evidence to show how the plaintiff came to fill in the date as May 21, 1928. Section 64 (2) of the Bills of Exchange Act states that any alteration of the date is a material alteration. It may be that the insertion of a date nearly five months later than the true date of issue of the note is to the defendants' advantage, but it does not matter whether the alteration in any way benefits them or not. . . . The alteration was made without the defendants' authority or assent, and since it is a material alteration the note is vitiated."

¹ (1848) 12 L.T. (O.S.) 153. 434.

² 17 N. L. R. 103.

In my opinion this finding is incorrect. It is erroneous to say that December 31 was the date of issue. There is no reason for saying that the note was not filled up "within a reasonable time" within the meaning of section 20 (2) of the Bills of Exchange Act, 1882, which is reproduced in section 20 (2) of the Bills of Exchange Ordinance, 1927, and subject to compliance with that provision the plaintiff must be taken to have been authorized by the defendants to insert whatever date he pleased (see *Caruppiak v. Dorasamy*¹). In that view the date of issue is the date when the blank document was invested with all the features of a promissory note. The insertion of the date therefore was not a material alteration, it was not in fact an alteration at all. For these reasons I think the learned Judge's decree must be set aside and decree entered for the plaintiff for the amount claimed with costs in this Court and in the Court below.

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DRIEBERG J.—I agree.

Appeal allowed.