1936 *Present :* **Akbar and Koch JJ.**

ABEYESEKERE *v.* JAYATILEKE

45—D. C. Negombo, 8,093.

Promissory note—Insufficiently stamped—Right to recover the money lent—Lender not a professional money lender—Ordinance No. 2 of 1918, ss. 8 and 10.

The failure to stamp duly a promissory note taken as security for a loan does not affect the right of the lender to recover the money due where the lender is not a person to whom the provisions of the Money Lending Ordinance apply.

[1] *1 N. L. R. 217.*

[2] *35 N. L. R. 352.*

APPEAL from a judgment of the District Judge of Negombo.

S. Subramaniam, for defendant, appellant.

L. A. Rajapakse, for plaintiff, respondent.

Cur. adv. vult.

June 17, 1936. KOCH J.—

This is an appeal from a holding of the original Court that, on the alternative causes of action to recover two sums of Rs. 500 each that had been lent on January 20 and February 19, 1927, respectively, with accrued interest, the plaintiff is entitled to recover, although the said loans were sought to be secured by two promissory-notes bearing these dates and for these sums but which were not duly stamped.

The learned District Judge has not given any reasons for so holding but it is clear to us what those reasons should be.

There can be little doubt that under section 36 of the Stamp Ordinance, No. 22 of 1909, these promissory notes cannot be admitted in evidence for any purpose whatsoever as they have not been duly stamped, nor can the irregularity be cured by the payment of a penalty. The plaintiff in consequence has to depend upon other proof in support of his claim. The plaintiff is not a money lender and the provisions of Ordinance No. 2 of 1918 do not apply to him.

Mr. Subramaniam argued to us that as the result of the decision in *Sockalingam Chettiar v. Ramanayake* [1], a Court is prevented from regarding these transactions even as ordinary loans as the promissory notes which were taken as securities for them not having been duly stamped, were received in contravention of the terms of the Stamp Ordinance and thereby subjected the parties responsible for this act to a criminal prosecution for an offence against the Stamp law.

I fear very much that the judgments in *Sockalingam Chettiar v. Ramanayake* (*supra*) have been sometimes misunderstood and a wider application has been sought to be given to them than was ever intended. That decision was purely in regard to a money lending transaction by an admitted money lender who thereby brought himself under the provisions of Ordinance No. 2 of 1918. Section 10 of that Ordinance insists on a money lender conforming to certain requirements when he lends out money, and section 8 (1) requires him to record such loans in a certain manner. If he takes promissory notes for these loans he has to obey the directions in both these sections, but if he makes loans unaccompanied by such securities he has at least to see that the terms of the latter section have not been contravened. If he acts in breach of these requirements he commits a criminal offence, and this being so, this Court held that not only cannot the promissory notes be looked at but also that the transactions that have been recorded by such notes cannot equally be regarded By acting in the way he did, the money lender committed an illegal act which is inseparable from the transaction on which he sued. The transaction being illegal, it should be regarded as unclean in the eye of the law and no Court should therefore assist a transgressor to recover on such a transaction, even if there be an admission by the debtor of either the whole or a part of the debt.

[1] *35 N. L. R. 33.*

In the case before us the plaintiff, who is admittedly not a money lender, is seeking to recover two sums he lent to the defendant. It is true he has taken as security two promissory notes insufficiently stamped. For doing so he can be prosecuted for a breach of the revenue law and he is also prevented from relying on the notes as evidence of the transactions, but there is nothing illegal in the transaction of the loan itself. He need not have taken any notes at all nor did the law compel him to grant the loan in such manner that a failure on his part to do so could be visited by a prosecution ; the circumstance that he did take faulty promissory notes may render him liable to punishment, but such failure cannot affect the actual validity of the loan transaction. Taking a promissory note for goods sold and delivered is, as we know, a common practice in trade. Can it be seriously argued that if the promissory note is bad for insufficiency of stamp duty, the sale is also bad and the consideration underlying it cannot be recovered? There is nothing in the Stamp Ordinance to even remotely indicate that the actual loan or the sale in the case I have instanced is in any way tainted by the default of the lender or the seller in taking an unstamped or insufficiently stamped promissory note as security. I may state that I am at a loss to understand why *Sockalingam Chettiar v. Ramanayake* (*supra*) should have been relied on by Mr. Subramaniam or his argument. To my mind this decision far from assisting is against him. In succinctly setting out the effect of the various relevant rulings to the point in that case I said at page 44, under No. (3) :—

> "If the penalty is imposed for doing or not doing an act which should not be done or done at the time the contract is entered into, it is necessary to consider whether the penalty has been imposed for the purpose of the protection of the revenue or for the protection of the public. If for the former purpose, the contract may be enforced ; if for the latter, the contract is unenforceable".

The penalty imposed under the Stamp Ordinance is for the protection of the revenue, while the penalty imposed under the Money Lending Ordinance is for the protection of the public. It follows therefore from this decision that the contract or loans as arises in the case before us can be enforced.

The appeal must therefore be dismissed with costs.

AKBAR J.—

I agree with the judgment of my brother. As I read section 58 of the Stamp Ordinance, 1909, it is not the contract which is penalized but the act of a person drawing, issuing, endorsing, transferring or signing, &c., an improperly stamped bill of exchange, cheque or promissory note.

In the case before me the loan was admitted and I cannot see how the issue of the unstamped promissory notes can affect the contract to repay the money lent. I agree with the interpretation placed by my brother on *Sockalingam Chettiar v. Ramanayake*[1]. In that case as explained by Dalton A.C.J. although the contract on the bond was not illegal, yet in

[1] *35 N. L. R. 33.*

order to prove what was due on the bond, each transaction in respect of the unstamped notes had to be proved and this was the only kind of proof recognized by the bond. To take an extreme example, suppose goods were bought by A on credit from B and within six months after the sale A issued an improperly stamped promissory note as security for the money due on the goods sold. Can it be contended that the issue of this promissory note affected the contract of sale made six months prior to the issue? The following cases appear to be in point: *Pramatha Nath Sandal and others v. Dwarka Nath Dey*[1]; *Yarlagada Veera Ragavayya v. Gorantla Ramyya*[2]; and *1 East*, page 58 and note (*a*).

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.