9, 1957

P.C.A.—No. 46 of 1954.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

BADURDIN MAHOMEDALLY (1st Defendant) . *Appellant*

AND

1. G. E. MISSO (Plaintiff)

2. VERNON PIERIS (2nd Defendant) . . *Respondents.*

Case for the Appellant

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon dated, respectively, the 11th and 15th February, 1954, pp. 35, 39. allowing an appeal from a Judgment and Decree of the District Court of Colombo, dated the 6th March, 1951, whereby (in an action instituted by pp. 26, 31. the 1st Respondent against the Appellant and the 2nd Respondent, on a promissory note made by the Appellant in favour of the 2nd Respondent and indorsed and delivered by the latter to the 1st Respondent, praying for judgment against both Defendants jointly and severally) the District Court held that the 1st Respondent was entitled to recover the sum due on the note, together with interest, from the 2nd Respondent but not from the Appellant who, before the indorsement of the note by the 2nd Respondent, had, to the knowledge and with the approval of the 2nd Respondent, discharged the same by substituting for it a higher security (viz. a mortgage bond) and against whom, therefore, the action was dismissed. The Supreme Court entered judgment in favour of the Plaintiff (the 1st p. 39. Respondent) as prayed for, with costs in both Courts.

2. The main question for determination on this appeal is concerned with the discharge of a promissory note and its negotiability thereafter. More specifically it is, whether or not, in the circumstances of this case, the Appellant, as maker of a promissory note in favour of the 2nd Respondent became liable thereon to the 1st Respondent notwithstanding that before it was indorsed and delivered to the 1st Respondent by the 2nd Respondent the note had been completely discharged as between the 2nd Respondent and the Appellant, who at the time were the only parties to it.

3. Relevant portions of the Bills of Exchange Ordinance (C. 68) are included in an Annexure hereto.

4. The following is a list of relevant dates and events prior to the institution of the present proceedings :—

p. 41. **16th October, 1947.**—Date on the face of a promissory note payable on demand with interest at 10% per annum given (with 3 other notes bearing earlier dates) by the Appellant to the 2nd Respondent, being the note sued upon in the present case.

p. 42. **15th January, 1948.**—Mortgage bond executed by the Appellant in favour of the 2nd Respondent for the amount then outstanding according to the tenour of the four notes, less payment made. The bond was attested and an endorsement was put on each note by a notary public.

p. 45, l. 10.
p. 41, l. 22.

p. 46. **17th July, 1948.**—Plaint by Appellant commencing an action against 2nd Respondent for relief including a declaration that the Appellant was not liable on the mortgage bond, for the cancellation of the bond and the return of the four promissory notes.

p. 52. **29th September, 1948.**—Plaint by the 2nd Respondent commencing an action against the Appellant on the mortgage bond.

p. 66, ll. 27–28. **18th December, 1948.**—While these actions were pending the 2nd Respondent purported to indorse and deliver to the 1st Respondent (his father-in-law) the promissory note dated the 16th October, 1947.

p. 4, l. 6.

pp. 63–64. **4th July, 1949.**—The Appellant and the 2nd Respondent settled both actions.

pp. 65–66. **5th July, 1949.**—By consent decrees both actions were dismissed without costs, the mortgage bond was cancelled and discharged, all claims were waived and cancelled, and it was decreed that no outstanding claims remained.

5. The facts concerning the present litigation are as follows :—

The 1st Respondent (hereinafter also called " the Plaintiff ") instituted proceedings on the said note in the District Court of Colombo against both the Appellant (hereinafter also called " the 1st Defendant ") and the 2nd Respondent (hereinafter also called " the 2nd Defendant "), and by his Plaint, dated the 24th May, 1950, alleged that the 2nd Defendant had indorsed and delivered to him, for valuable consideration, the promissory note dated the 16th October, 1947, which the 1st Defendant had made in favour of the 2nd Defendant. He prayed, *inter alia*, for judgment against both Defendants, jointly and severally, for the sum of Rs.49,393/64 (Rs.35,450/– being principal and Rs.13,943/64 being interest due from the 16th October, 1947, up to the 1st May, 1950) together with further interest on the principal sum at 10 per cent. per annum from the 2nd May, 1950, until date of decree and thereafter at 5 per cent. per annum on the aggregate amount until payment in full.

pp. 1–2.

6. The said promissory note was pleaded as part and parcel of the Plaint and is printed as Exhibit P.1 on p. 41 of the Record.

It was dated the 16th October, 1947, and by its terms the 1st Defendant promised to pay to the 2nd Defendant on demand the sum of Rs.35,450/– for value received with interest thereon at 10 per cent. per annum. p. 41.

It bears the following endorsements and signatures :— p. 41.

"The amount due on this promissory note together with interest thereon from the date hereof has been secured by Mortgage Bond No. 44, dated the 15th January, 1948, attested by me.

(Sgd.) S. COOMARASWAMY, p. 26, ll. 39–49.
Notary Public.

(Sgd.) Illegibly (1st Defendant).

(Sgd.) Vernon Pieres.

(Sgd.) VERNON PIERES."

7. Both Defendants filed affidavits praying for unconditional leave to appear and defend the action.

In his affidavit, dated the 7th June, 1950, the 2nd Defendant (now the 2nd Respondent), the payee of the note, said, *inter alia*, that :— pp. 4–5.

(A) The Plaintiff was his father-in-law.

(B) He (the 2nd Defendant) had lent a total sum of Rs.119,425/– to the 1st Defendant (present Appellant) on the security of four promissory notes signed by him, the last of which was the note sued on. p. 4, ll. 9–20.

(C) All the said notes (including the note sued on) had been paid and discharged by mortgage bond No. 44, dated the 15th January, 1948, whereby the 1st Defendant had bound himself, his heirs, etc. to pay to the 2nd Defendant the sum of Rs.94,125 (then the aggregate balance due to the 2nd Defendant) and had further hypothecated his share of certain properties as security for repayment of the said sum. An endorsement as to the execution of the mortgage bond was made on each of the said notes by one S. Coomaraswamy, a Notary Public. p. 4, ll. 21–35.

(D) "The said four notes had then become paid and discharged by the granting of the said mortgage bond No. 44 but the 1st Defendant allowed the said four notes to be retained by me to evidence the consideration for the said mortgage bond No. 44." p. 4, ll. 32–35.

(E) An action on the said bond instituted by the 2nd Defendant against the 1st Defendant (together with the previous proceedings instituted by the latter against the former for a declaration that the 1st Defendant was not liable on the bond and for the return of all four notes) had been settled, the action being dismissed of consent without costs. Thus, in July 1949, the bond was duly discharged of which fact the Plaintiff was fully aware. p. 5, ll. 4–11. pp. 65, 66.

8. As to the circumstances under which he indorsed the said promissory note (which was then discharged) and delivered it to the Plaintiff (his father-in-law), the 2nd Defendant, in his affidavit, said :—

p. 4, l. 36. to p. 5, l. 3.

> " 6. Some time in December, 1948, I was indebted to the Commissioner of Income Tax in the sum of Rs.22,428/–. The Plaintiff provided me with the sum of Rs.22,428/– to be utilised by me for paying the said debt. I agreed to repay the said amount without any interest no sooner I recovered the money due to me on the said mortgage bond No. 44. The Plaintiff asked me to endorse the note sued upon and deliver to him as security. I pointed out to him that the said note was paid and discharged by the bond referred to above. However, as he insisted on the said note being endorsed and delivered to him I endorsed the note and delivered to him but told him that the said note was a worthless document."

pp. 6–7.

9. In his affidavit, dated the 5th July, 1950, also praying for

p. 6, ll. 10–27.

unconditional leave to defend, the 1st Defendant (present Appellant) said that he had, as a result of undue influence, been induced by his old friend the 2nd Defendant to sign the said promissory notes for which he had received no consideration and which were unenforceable being " fictitious " within the Money Lending Ordinance (C. 67) ; that he had

p. 6, ll. 28–39.

also been " wrongfully and deceitfully " induced to sign the said mortgage bond which was executed without any consideration ; and that, further, he had been wrongfully induced to sign a collateral document which later he discovered was a warrant of attorney to confess judgment on the said bond. He said also that he had been informed by the said Notary Public, who had made the endorsements as to the mortgage bond on all the promissory notes, that the notes thereupon stood cancelled.

p. 7, ll. 1–15.

He referred to the proceedings which, on the 17th July, 1948, he had instituted in the District Court of Colombo against the 2nd Defendant ; to the action subsequently instituted against him by the latter ; and to the dismissal of both action by consent on the 4th July, 1949, it being agreed between them that all the promissory notes and other documents to which they were parties should stand cancelled.

p. 8.

In a further affidavit, dated the 29th July, 1950, the 1st Defendant

p. 8, ll. 28–30.

said that when the said actions were settled the said mortgage bond No. 44 was discharged by the 2nd Defendant and that the discharge was

p. 8, ll. 31–36.

registered. He said further that both actions were pending when the 2nd Defendant indorsed and delivered the note sued on to his father-in-law the Plaintiff.

pp. 12–13.

10. By Order of the District Court, dated the 12th September, 1950, leave was given to both Defendants to appear and defend the action unconditionally, and, accordingly, both Defendants filed Answers.

pp. 14–15.

The 1st Defendant's Answer, dated the 25th September, 1950, was, in effect, a repetition of his case as stated in his said Affidavits (see

p. 14, ll. 29–32.

paragraph 8 hereof). He said that the note in question was discharged while in the 2nd Defendant's possession and, in the circumstances, no rights could have accrued to the Plaintiff as a result of the subsequent indorsement and delivery of the note to him.

Similarly the 2nd Defendant's Answer, also dated the 25th September, 1950, said quite shortly that— p. 16.

> " the said note sued upon was duly paid and discharged on or about the 15th January, 1948 " p. 16, ll. 14–16.

and that the Plaintiff had taken the note notwithstanding the information as to its said payment and discharge which he had given to the Plaintiff. p. 16, ll. 17–21.

11. At the trial fifteen issues were settled. They are set out, with the District Judge's answers, in paragraph 15 hereof. The only oral evidence in the action was that of the Proctor and Notary Public (S. Coomaraswamy) who, called by the 1st Defendant, referred in examination-in-chief to his attestation of the said mortgage bond which was as follows :— pp. 18–24. p. 18, ll. 30–34.

> " I, SANMUGAM COOMARASWAMY of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that no consideration passed in my presence but the same was set off against the amounts due on promissory notes dated 5th September, 1947, 26th September, 1947, 11th October, 1947, and 16th October, 1947, in favour of the said obligee " (the present 2nd Respondent) " and which said promissory notes have been duly identified by me and annexed to the original of this instrument . . ." p. 45, ll. 10–18.

The witness said that, at the time of the execution of the mortgage bond, he had informed both Defendants that all the said promissory notes were cancelled and discharged as a result of the execution of the bond. Continuing, he said :— p. 19, ll. 11–17.

> " The notes were to be kept by the mortgagor, namely, the 2nd Defendant, as proof of consideration for the bond. I made that perfectly clear in the attestation."

12. The witness was not cross-examined by counsel for the 2nd Defendant. p. 19, l. 18.

13. In cross-examination on behalf of the Plaintiff the witness said that no money had passed in his presence when the mortgage bond was executed ; and, with reference to his endorsements on the promissory notes, he said that he had made these after the bond was executed in the interests of both parties, to both of whom he had voluntarily given the information that the promissory notes had been cancelled and discharged by the bond. He said that he had at first retained possession of the cancelled notes but that three weeks later, the 1st Defendant not having requested their return, he had handed them over, with the bond, to the 2nd Defendant (who was to retain them as proof of consideration for the bond). p. 19, ll. 29–39. p. 20, ll. 3–5. p. 22, ll. 9–10. p. 19, ll. 38–43. p. 22, ll. 19–24. p. 16, l. 15.

As to the attestation clause, he said that under the Notaries Ordinance (C. 91) an attestation clause had to be prepared and signed within a reasonable time of the execution of a bond ; and that in this case he had drafted the attestation within an hour of the execution of the bond. p. 20, l. 37 to p. 21, l. 3.

p. 23, ll. 1–10. 14. In re-examination, the witness said that before he prepared the bond he had been told by the 2nd Defendant that the promissory notes
p. 23, ll. 9–10. were to be " cancelled immediately the bond was signed "—a position
p. 23, l. 43 to p. 24, l. 10. which he had agreed with and made clear to the 1st Defendant. His endorsement on the notes was made " because it was agreed between the parties " (that the notes) " must remain cancelled once the bond was signed." He said that the mortgage bond, the warrant of attorney to confess judgment, and the endorsements on the notes were all executed and made at or about the same time.

15. Issues framed in the suit were answered thus by the learned District Judge :—

p. 17, ll. 9–11. " (1) Did the 1st Defendant by his promissory note dated 16.10.47 promise to pay the 2nd Defendant or order on demand a sum of Rs.35,450/- with interest thereon at 10 per cent. per annum ? "

p. 30. *Answer :* " Yes."

p. 17, ll. 12–13. " (2) Did the 2nd Defendant endorse and deliver the said promissory note to the Plaintiff for valuable consideration ? "

p. 30. *Answer :* " Yes."

p. 17, ll. 14–16. " (3) If Issues (1) and (2) are answered in the Plaintiff's favour, is the Plaintiff entitled to judgment against the Defendants jointly and severally, and if so, in what sum ? "

.30. *Answer :* " No."

p. 17, ll. 18–19. " (4) Is the note sued upon fictitious within the meaning of the Money Lending Ordinance ? "

p. 30. *Answer :* " Not proved."

p. 17, ll. 20–23. " (5) Was the note discharged and settled while in the hands of the 2nd Defendant by the execution of mortgage bond No. 44 dated 15.1.48 and by the execution of a warrant of attorney to confess judgment on such bond ? "

p. 30. *Answer :* " Yes."

p. 17, ll. 24–28. " (6) Did the 1st Defendant on 17.7.48 file Case No. 257/2 of this Court against the 2nd Defendant asking for a declaration that no money was due from 1st Defendant to the 2nd Defendant on the said bond No. 44 and for the return of the four notes referred to in such bond inclusive of the note sued upon in this case ? "

p. 30. *Answer :* " Yes."

p. 17, ll. 29–30. " (7) Did the 2nd Defendant thereupon put the said bond No. 44 in suit in Case No. 2101/M.B. of this Court ? "

p. 30. *Answer :* " Yes."

p. 17, ll. 31–32. " (8) Was the Plaintiff aware of all or any of the facts set out in Issues (4) or (5) or (6) or (7) ? "

p. 30. *Answer :* " Not proved."

p. 17, l. 33. " (9) Is the Plaintiff a holder in due course for value ? "

p. 30. *Answer :* " Yes."

" (10) If any of the Issues (4) or (5) or (6) or (7) or (8) or (9) be answered in the 1st Defendant's favour, can Plaintiff have and maintain this action ? " p. 17, ll. 34–36.

Answer : " Not against 1st Defendant." p. 30.

" (11) Were actions Nos. 257/Z of this Court and 2101/M.B. of this Court dismissed and the bond No. 44 cancelled and discharged ? " p. 17, ll. 37–39.

Answer : " They were settled, and the bond thereupon cancelled and discharged." p. 30.

" (12) If Issue (11) be answered in the affirmative, is the Plaintiff barred from suing on the note in this case ? " p. 18, ll. 1–2.

Answer : " No." p. 30.

" (13) Did the 2nd Defendant inform the Plaintiff that the note sued upon had been paid and discharged on or about 15.1.48 ? " p. 18, ll. 6–7.

Answer : " Not proved." p. 30.

" (14) Was the Plaintiff aware of all the facts in Issue (5) ? " p. 18, l. 8.

Answer : " Not proved." p. 30.

" (15) If Issues (5), (13) and (14) are answered in the affirmative, can the Plaintiff have and maintain this action ? " p. 18, ll. 9–10.

Answer : " He can against 2nd Defendant." p. 30.

16. By his Judgment, dated the 6th March, 1951, incorporating the Answers to Issues, the learned District Judge dismissed the action against the 1st Defendant (the present Appellant), with costs, but gave judgment for the Plaintiff (the present 1st Respondent) against the 2nd Defendant (the present 2nd Respondent) with costs. pp. 26–30. pp. 30, 31.

17. The learned District Judge was " clear that the note in suit was discharged upon the execution of the bond." He referred to, and accepted, the uncontradicted evidence of the Notary Public (who had been in practice for 12 years) that he had informed both the Defendants of the intended effect of the transaction—the cancellation and discharge of all the promissory notes by the mortgage bond—and that he had prepared and signed the attestation clause immediately after the execution of the bond. The learned Judge pointed out that the Notary had said that he was acting for the 2nd Defendant and " his statement to them that the four notes were cancelled and discharged by the bond would, therefore, carry more weight when one has to consider the question whether such discharge actually took place. In fact he has made it clear that the 2nd Defendant told him that the four notes were to be cancelled immediately the bond was signed, and he says he told the 1st Defendant that." The learned Judge found nothing in the bond to contradict the evidence of the Notary. p. 27, ll. 39–40. p. 27, ll. 21–40. p. 20, l. 37.

18. Interpreting the attestation clause of the said Bond in which the Notary Public had said " no consideration passed in my presence but the same was set off against the amounts due on the promissory notes " (see paragraph 11 *supra*), the learned District Judge said that the p. 27, ll. 41–47. p. 45, ll. 10–18.

consideration for the bond was the money which was then due on the promissory notes—an effect intended by the 2nd Defendant, accepted by the 1st Defendant, and conveyed to both by the Notary.

p. 27, l. 48 to p. 28, l. 34.

19. The learned District Judge next referred to the relevant authorities and to appropriate passages in Byles on " Bills of Exchange " (18th Ed.)* on the merger of the remedy of a bill of exchange or promissory note which follows the taking of a co-extensive security of a higher nature and on the rule that although the taking of a security of a higher nature extinguishes the simple contract debt on the bill or note, as between the parties to the substitution, it has no effect on the liability of the other distinct parties to the instrument.

*pp. 243, 244 of the 21st Ed. (1955).

The learned Judge was clear that there had been in this case an effective substitution of all the rights and liabilities of the parties *inter se* by the execution of the bond, and his finding was as follows :—

p. 28, ll. 35–39.

> " In view of the evidence of Mr. Coomaraswamy, the terms of the attestation clause in the bond, the endorsement on the note made by the Notary at the time of the execution of the bond, and the effect of the decisions which I have referred to, I hold that there was a discharge of the note in suit on 15.1.48."

p. 28, ll. 40–42.

20. Continuing, the learned District Judge said that his finding that the note sued on had been discharged on the 15th January, 1948, must, in accordance with the authorities, have this result : the endorsement and delivery of the note by the 2nd Defendant to the Plaintiff could not give to the latter any rights as against the 1st Defendant who had discharged the note.

21. As to the rights of the Plaintiff against the 2nd Defendant, the learned District Judge said :—

p. 29, ll. 7–19.

> " I do not think the position of the 2nd Defendant is the same as that of the 1st Defendant in regard to the effect of the discharge which took place on 15.1.48. De Sampayo, J., in the Full Bench case " (*Jayawardena* v. *Rahaiman Lebbe* (1919), 21 N.L.R., incorrectly described by the Reporter as a decision of the Full Bench) " said : ' it is only necessary to add that there is nothing to prevent the Plaintiff from enforcing his remedy against his immediate endorser, who was the payee on the note.' This would seem to follow from the terms of Section 55 (2) (*c*) of the Ordinance " (Bills of Exchange Ordinance (C. 68)) which enacts that the endorser of a bill by endorsing it is precluded from denying to his immediate or subsequent endorsee that the bill was, at the time of his endorsement, *a valid and subsisting bill* and that he had then a good title thereto. The Plaintiff is, therefore, entitled in my opinion to maintain his action on the note against the 2nd Defendant . . .

Annexure.

p. 29, ll. 33–36.

> " The 2nd Defendant has raised the issue that he informed the Plaintiff that the Note had been paid and discharged on or about 15.1.48. There is no proof of this, and I cannot, therefore, say that Section 55 (2) (*c*) does not apply."

22. A Decree in accordance with the Judgment of the learned District Judge was entered on the 6th March, 1951, and from the said Judgment and Decree the Plaintiff (the present 1st Respondent) appealed to the Supreme Court of Ceylon on grounds set out in his petition of appeal, dated the 12th March, 1951. p. 31. pp. 32–35.

23. No appeal against the said Judgment and Decree of the District Court was filed by the 2nd Defendant (the present 2nd Respondent).

24. By its Judgment, dated the 11th February, 1954, the Supreme Court (Gratiaen, J. and Gunesekara, J.) allowed the appeal. The learned Judges of the Supreme Court directed judgment to be entered in favour of the Plaintiff as prayed for (i.e., against *both* Defendants jointly and severally) with costs. pp. 35–38.

25. Delivering the main Judgment of the Supreme Court, Gratiaen, J. (with whom Gunesekara, J., agreed) referred to Section 36 (1) of the Bills of Exchange Ordinance (C. 68) under which a promissory note ceases to be negotiable after its discharge by " payment or otherwise." Continuing, he said :— p. 36, ll. 38–40. Annexure.

> " It is clear law that the rights of a holder of a note can be satisfied extinguished or released in a number of ways besides payment—Byles on Bills (20th Ed.), p. 237.* As an illustration of a discharge ' otherwise than by payment,' the text-book mentions, at p. 238, a case where ' the taking of a security of a higher nature for a bill or note merges the remedy on the inferior instrument.' It is by the application of this rule that the learned " (District) " Judge decided the present case." p. 36, ll. 41–47. *See 21st Ed. (1955), pp. 242–244.

But the learned Supreme Court Judge was not in agreement with the Court below on the said application of the " clear law." He said that there was " no absolute proposition of law " that the taking of a higher security necessarily operates as a discharge of the earlier inferior instrument; and it was his view that " the issue invariably calls for a decision on a question of fact and the onus of proving the discharge in an action between an endorsee for value and a maker is on the maker." In his opinion it was necessary for the present Appellant (as the maker of the note) to establish that by the execution of the said mortgage deed it was intended to provide a substituted (as opposed to an additional) security. The language of the Notary's endorsement relating to the execution of the mortgage to secure the amount due on the note did not, in his view, make it " manifest " (as it would have to do in the case of a novation) that the liability on the note had been extinguished. He thought that it was calculated to give the impression that the repayment of the amount due on the note was *also* secured by the bond. He referred to the circumstance that the note had remained in the 2nd Defendant's possession after the mortgage had been executed and he thought that the language of the mortgage deed itself was equivocal. p. 36, l. 48 to p. 37, l. 3. p. 37, ll. 8–24. p. 37, ll. 24–26, 38–43. p. 37, ll. 50–51.

And, in support of the principle of negotiability, he said :—

> " Even therefore if as between the Defendants *inter se* the true position (unknown to the Plaintiff) was that the note sued on p. 38, ll. 5–11.

ought to be regarded as having been discharged on the 15th January, 1948, that defence is not in my opinion available as against the Plaintiff."

p. 39. 26. A Decree in accordance with the Judgment of the Supreme Court was entered on the 15th February, 1954, and against the said Judgment and Decree this appeal is now preferred to Her Majesty in Council, final leave to appeal having been granted to the Appellant by a Decree of the Supreme Court, dated the 2nd June, 1954.

27. The Appellant respectfully submits that this appeal ought to be allowed, that the Decree of the Supreme Court should be set aside and that the Decree of the District Court should be restored, with costs throughout, for the following among other

REASONS

(1) BECAUSE the promissory note sued on was discharged in accordance with law and the intention of both parties thereto when, in substitution therefor, the said mortgage bond was executed.

(2) BECAUSE from the Notary's attestation clause of the said bond, his indorsement on the promissory note, and his testimony in Court, it is plain that the bond was substituted for all the promissory notes as one composite higher security for several inferior ones and not merely as an additional security.

(3) BECAUSE the discharge of the promissory note was confirmed and given effect to by both the Appellant and the 2nd Respondent in previous proceedings between them which were settled in Court on the basis that no outstanding claims remained.

(4) BECAUSE if, as between the Appellant and the 1st Respondent, the onus of proving that the note was discharged was upon the Appellant, the Appellant has discharged that onus.

(5) BECAUSE the 1st Respondent must, by the terms of the Notary's indorsement on the note, be deemed to have had notice of the discharge thereof or at least to have been so put upon his enquiry as—in the absence of any investigation by him—to disentitle him from being regarded as a holder for value without notice, or as a holder in due course.

(6) BECAUSE upon its discharge the note ceased to be a negotiable instrument and its subsequent purported indorsement could not vest any rights in the 1st Respondent against the Appellant, whether or not the 1st Respondent had notice of the discharge.

(7) BECAUSE the 1st Respondent's remedy in law is—as was correctly held by the learned District Judge—not against the Appellant and the 2nd Respondent jointly and severally but only against the 2nd Respondent who has not appealed from the Judgment against him.

FRANK GAHAN.

R. K. HANDOO.

ANNEXURE.

THE BILLS OF EXCHANGE ORDINANCE

(C. 68)

How long bill continues negotiable.

" 36.—(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been—

(*a*) restrictively indorsed, or

(*b*) discharged by payment or otherwise

* * * * *

Liability of indorser.

" 55.—(1) . . .

(2) The indorser of a bill, by indorsing it—

(*c*) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

* * * * *

PART IV.—PROMISSORY NOTES

Application of Part II (sections 3, 72) to notes.

" 90.—(1) Subject to the provisions in this Part, and except as by this section provided, the provisions of this Ordinance relating to bills of exchange, apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order."

No. 46 of 1954.

In the Privy Council.

ON APPEAL

from the Supreme Court of Ceylon.

BETWEEN

BADURDIN MAHOMEDALLY
(1st Defendant) . . *Appellant*

AND

1. **G. E. MISSO** (Plaintiff)
2. **VERNON PIERIS** (2nd Defendant) . . *Respondants.*

Case for the Appellant

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