

v.

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SOHAN SINGH

[HIGH COURT, 1989 (Byrne J) 1 December]

Appellate Jurisdiction

B

*Moneylenders- memorandum of interest charged- whether receipts promissory notes- whether transactions within the Moneylenders Act (Cap. 234) Section 16 (i); Bills of Exchange Act (Cap 227) Sections 88 and 95.*

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The Magistrates' Court gave Judgment in favour of a moneylender. On appeal it was argued that receipts produced by the moneylender were wrongly admitted in evidence as they did not comply with the requirements of the Moneylenders Act. The High Court, dismissing the appeal, explained the relevant provisions of the Act, applied them to circumstances where no interest was charged and HELD: that on the facts the parties had not intended that the loans should come within the ambit of the Act.

Case cited:

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*Kirkwood v. Gadd* [1910] AC 422

*M. Sadiq* for the Appellant

*R. Singh* for the Respondent

Appeal to the High Court against Judgment entered in the Magistrates' Court.

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**Byrne J:**

This is an appeal against a Judgment for the Respondent (Plaintiff) in the sum of \$944.00 and costs given in the Magistrates' Court at Labasa on 7th July 1989.

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By a Summons issued on 11<sup>th</sup> June 1987 the Respondent claimed from the Appellant the sum of \$944.00 as money lent to the Appellant's late husband Shiu Lal by the Respondent during the year 1985 at her husband's request. The appellant denied the claim and counter-claimed against the Respondent for the sum of \$2,446.00 being the difference between the sum of \$3,999.00 which she alleged was paid to the Respondent by her late husband, who died on 26th February 1986, and the \$1,544.00 originally claimed by the Respondent. The Appellant

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claimed that neither she nor her late husband borrowed any money from the Respondent but bought goods for which they paid in cash.

Both the Appellant and the Respondent gave sworn evidence before the learned Magistrate at the hearing. The Respondent in evidence stated that he was a licensed moneylender who had had dealings with the Appellant's husband. During 1985 he said he had lent the late Mr. Lal the sum of \$1,544.00, the first payment being of \$344.00 on 15th April 1985 and the second of \$1,200.00 on 14th October

1985. He produced as evidence of these payments two pink receipts numbered respectively 104 and 519. He said further that on 14th December 1985 he had received \$600.00 from the late Mr. Lal leaving a balance of \$944.00. He denied that he had ever sold goods to Mr. Lal. In cross-examination in a passage which is of importance because of the submissions which have been made by Counsel to the Magistrate and to me, he said this:

“I charged 10% interest because he was like a brother. I have made income tax returns. When we do not charge interest it is not mentioned. I have a name board inside the office stating registered moneylender. I have never charged Shiu Lal any interest.”

He tendered 13 receipts (exhibits D1-13) which he said were all to Mr. Lal showing money lent to him between 1978 and 14th December 1985. He denied owing the Appellant any money. At the very beginning of his evidence the Respondent described the two pink receipts which I have mentioned as promissory notes, a fact which assumed some importance in the eyes of the learned Magistrate as will be seen later.

The Appellant in her evidence stated that she and her husband used to buy groceries from the Respondent. They bought on credit and used to settle the accounts three or four times a year when they received money from the Fiji Sugar Corporation. She said that the payments shown on the thirteen receipts were for groceries and that her husband and the Appellant had never borrowed money from the Plaintiff or the Company called Jhora Singh & Company. She admitted that on 14th December 1985 she had paid \$600.00 to the Respondent. She said her husband was illiterate and signed any documents required by the Respondent on the latter's instructions. The learned Magistrate rejected all of the Appellant's evidence where there was any conflict between that and the evidence of the Respondent.

The Appellant has given seven grounds of appeal, grounds 1, 2 and 5 being based on alleged non-compliance by the Respondent with the Moneylenders Act (Cap. 234) and the remaining grounds alleging in substance that the learned Magistrate failed to give adequate weight to the evidence of the Appellant. Ground 6 which alleged that the learned Magistrate had wrongly admitted into evidence receipt numbers 104 and 519 because of alleged non-compliance with the Stamp Duties Act (Cap. 205) was abandoned in the course of argument.

Under Section 16(1) of the Moneylenders Act no contract for the repayment by a borrower of money lent to him by a moneylender is enforceable “unless a note or memorandum in writing of the contract in the English language be signed by the parties to the contract and unless a copy thereof authenticated by the lender is delivered to the borrower before the money is lent”. I have omitted certain other parts of sub-section (1) and the two provisos thereto which are not relevant to the facts of this case. By sub-section (3) the note or memorandum required by sub-section (1) must contain all the terms of the contract and in particular shall state clearly

- (a) the date of the loan;

- (b) the principal; and
- (c) the rate of interest to be charged.

A By sub-section (4) where a promissory note in the English language given by a borrower to a moneylender in respect of a loan contains all the terms of the contract and is counter-signed by the lender, such promissory note shall in itself be a sufficient note or memorandum of the contract for the purpose of the section.

B Mr. Sadiq for the Appellant argues that the two receipts numbers 104 and 519 did not comply with Section 16 for a number of reasons: First, that they contain no mention of any interest being charged by the Respondent; secondly, that they did not say whether there is any outstanding amount owing by the Appellant's late husband, and thirdly, that the Respondent appears to have signed not as a lender but merely as a witness.

C A short answer to the first objection was given by the learned Magistrate at page 45 of the Court record when he said, in my view correctly, that the Respondent's position was that he never charged Shiu Lal any interest and that consequently no interest was shown on the receipt. Here I refer back to the quotation given earlier of the Respondent's evidence on this question. Whilst the Respondent appears to contradict himself on one view of this passage, e.g. he says at the beginning "I charged 10% interest because he was like a brother" and in the last sentence says "I have never charged Shiu Lal any interest", in my view the learned Magistrate was correct in concluding that the Respondent was really denying that he had charged Shiu Lal any interest. This is supported by the third sentence when the Respondent said "When we do not charge interest it is not mentioned".

D Mr. Sadiq argued that under Section 16(3) it was mandatory for any note or memorandum under the section to state that no interest was being charged if this were so.

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In my opinion this is not correct. I take the clear implication of Sub section (3) to be that if no interest in any transaction is charged then it is not necessary to state this in any note or memorandum. I therefore reject Mr. Sadiq's argument on this objection. As to his second objection, there is no requirement in Section 16 for any outstanding amount to be stated in any note or memorandum but in any event the uncontested evidence of the Respondent was that when he made the first payment of \$344.00 to Mr. Shiu Lal the latter did not owe him any money. I therefore reject Mr. Sadiq's second objection also. As to his third objection, Section 16 does not stipulate that the parties to any transaction under the Act must state the capacity in which they signed the note or memorandum. All the section requires is that any note or memorandum be signed by the parties. I therefore reject this third objection also.

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Mr. Sadiq next argued that because the learned Magistrate accepted the Respondent's description of the two receipts as promissory notes this brought them within the requirements of Sections 88 and 95 of the Bills of Exchange Act Cap. 227. This then led him to engage in a detailed analysis of the evidence, including the receipts, with a view to establishing that the transactions between

the Respondent and Mr. Lal were also contrary to the Bills of Exchange Act. He then added for good measure that the transactions also fell foul of Order 83 Rules 2 and 3 of the Rules of the High Court in that the Summons had not been endorsed with a statement that at the time of making of the loans the Respondent was a licensed moneylender and further failed to state the various particulars required by Rule 3 to be included in a Statement of Claim.

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When I mentioned to him that the present proceedings were governed by the Rules of the Magistrate's Court and not the High Court he replied that although there was no provision in the Rules of the Magistrates' Court Act Cap. 14, the Rules of the High Court apply. With respect this is not strictly true because Rule 8 of the Magistrates' Courts Rules states that where there is no provision in the Rules of the Magistrates' Courts to meet the circumstances of a particular case, the court "shall be guided by any relevant provision contained in the High Court Rules". I do not regard this rule as making it mandatory for any proceedings in a Magistrates' Court to follow to the letter any relevant provision in the High Court Rules. In my view Rule 8 merely states that the High Court Rules are to be used as a guide for proceedings in the absence of any relevant rules in the Magistrates' Courts. But, even if I am wrong on this, I consider that the two receipts in issue did not constitute promissory notes as defined in Section 88 of the Bills of Exchange Act. In my view they are simply receipts because they make no promise to pay on demand at any fixed or determinable future time the sum of money mentioned on each receipt to or to the order of a specified person. In my judgment therefore the learned Magistrate was wrong in holding that the two receipts were promissory notes. For these reasons I also reject Mr. Sadiq's submission on this matter.

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Mr. Sadiq repeated before me the submissions which he made to the learned Magistrate concerning grounds 2 and 4 of the Grounds of Appeal. These concerned the failure of the Magistrate to find that the transactions between the late Mr. Lal and the Respondent were for the sale of goods as opposed to the lending of the money and his failure to give adequate weight to the fact that the Respondent failed to produce the duplicate copy of the receipts 104 and 519 or the book from which they were taken. I have considered the learned Magistrate's comments on these submissions and concur with them. Consequently I reject Mr. Sadiq's submissions on this ground also.

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It was said by the House of Lords in Kirkwood v. Gadd [1910] A.C. 422 at pp 424, 428 and 431 that the question whether any transaction comes within the scope of the Moneylender's Act is always a question of fact, the answer to which depends on the circumstances of the case. I am satisfied on the evidence in this case that it was never intended by the parties that the loans in question were meant to come within the ambit of the Moneylender's Act. It seems to me that the evidence of this is abundantly clear. I therefore dismiss this appeal, and up-hold the judgment of the learned Magistrate of 7th July 1989. The Appellant will pay the Respondent's costs of this appeal.

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*(Appeal dismissed.)*