

NELLIE BROWN v. T. MAILE NIU.

(Civil Action : Hunter J. Nuku'alofa, 7th March, 1956).

Claim for money lent — Unregistered written agreement — Estoppel — Negligence of Solicitor — The Contract Act 1921 (Cap. 66) Section 4.

The Plaintiff sued the Defendant for £1,300 money lent. A written agreement had been entered into between the parties but it was not registered as required by Section 4 of Cap. 66. The Defendant admitted that he had borrowed the money and that he had not repaid it, but relied on S. 4 of Cap. 66.

The facts sufficiently appear in the judgment.

HELD. The action was not maintainable in view of the provisions of S. 4 (2) Cap. 66.

Verdict for the Defendant.

Koloamatangi appeared for the Plaintiff.

Finau appeared for the Defendant.

HUNTER J. : The Plaintiff is suing the Defendant for £1,300 and interest. The writ contains two causes of action :— (a) A claim for money lent and (b) a claim for damages for negligence.

In 1949 or 1950 the Plaintiff lent the Defendant £1,300 in instalments. It is not clear how many instalments, there were or at what times they were paid, but I am satisfied that the amount lent was £1,300, in fact the Defendant does not dispute this. On the 19th April, 1950 the parties signed a document entitled "Agreement." This document is to a certain extent self contradictory for the first paragraph refers to "M. N. Brown's £1,300 which had been invested in my business. "The second paragraph commences. — "I Mrs. N. Brown hereby agree to deposit with T. M. Niu the sum of £1,300" but it goes on to say that the money shall remain in the business for five years" starting from January 1st, 1950". The document also provides for the payment of interest at 10% half yearly — an illegal provision (S. 13 of Cap. 66).

From the evidence and from the document itself I am satisfied that when the document was executed the £1,300 had already been paid to the Defendant. The date fixed for repayment was 1st January, 1954. None of the money (except perhaps £5) has been repaid.

The defence raised is that there is no registered document as required by Section 4 of Chapter 66 evidencing the loan.

In reply to this the Plaintiff's counsel submits that the Defendant by his conduct and by his representations made to the Plaintiff at the time of the loan is estoppel from raising the defence of "no registration."

Even if estoppel applies to render such an action as this maintainable although the provisions of Section 4 have not been complied with (and I am doubtful of this), I am satisfied on the evidence that the Defendant did or said nothing to raise an estoppel.

With regard to the second cause of action set out in the writ, the Plaintiff's case is that in the matter of the loan the Defendant was acting as the Plaintiff's solicitor and that he knew or should have known that a registered document evidencing the loan was requisite in any action to recover the money and that he negligently failed to procure such a document.

All I need say on this submission is that I am not satisfied that the relationship of solicitor and client ever existed between the parties, and that therefore there was no obligation on the part of the Defendant to ensure that the loan was evidenced by registration.

Section 4 of Chapter 66 sets out clearly that no action for the recovery of money lent to a Tongan shall be maintainable unless a receipt in duplicate signed by the borrower and the lender and conforming to the requirements of the Act regarding registration is produced to the Court.

No such document has been produced to the Court in this case. I must administer the law as laid down by Parliament and, regrettable as it may be, I must find a verdict for the Defendant.

Finau : Don't ask for costs.

No order as to costs.
