IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 1 of 1955

Between:

SAMA — Plaintiff

AND

1. SHARIF MOHAMMED, F/N NANKE KHAN
2. DUKHI, F/N MIAN SINGH
3. DUKHI PRASAD, F/N RAM GARIB — Defendants

Moneylenders Ordinance s. 3—loan at interest—whether presumption arising that lender is a moneylender relates to other loans without interest.

The plaintiff claimed repayment of a loan of £300. It was pleaded *inter alia* in defence that the plaintiff was an unlicensed moneylender at the time of the loan, and that the contract for repayment was therefore unenforceable by reason of section 15 of the Moneylenders Ordinance. It was common ground that the plaintiff had lent money at interest to another person called Ram Autar. Section 3 of the Moneylenders Ordinance provides:—

> "3. . . . . any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

However the plaintiff contended that the presumption under section 3 only arose in respect of the loan to Ram Autar, who could have but had not taken advantage thereof. It did not arise in respect of the loan to the defendant, who could not therefore take advantage of it.

*Held.*—Any person who lends any one sum of money at interest is, in respect of that loan and in respect of any other loan or loans he may make, whether with or without interest, presumed to be a moneylender until the contrary be proved.

Judgment for the defendants.

*R. D. Patel* for the plaintiff

*P. Rice* for the defendants

HAMMETT, J. [22nd March, 1956]—

Judgment:

The plaintiff claims from the 1st defendant the sum of £300 being the return of money lent by the plaintiff to the 1st defendant and secured by a Bill of Sale dated 14th October, 1952. The 2nd and 3rd defendants are sued as co-guarantors of the repayment of this sum of £300.

The defence, in the first place, is that at the material time the plaintiff was an unlicensed moneylender and that by virtue of the Moneylenders Ordinance, Cap. 185, section 15 the contract is unenforceable.

The facts relied on by the plaintiff to support his claim are not disputed. On 14th October, 1952, the plaintiff lent the 1st defendant the sum of £300 on the security of (*a*) the Bill of Sale executed by the 1st defendant on that date (Ex. A) and (*b*) the Contract of Indemnity and Guarantee executed by the 2nd and 3rd defendants on the same date in respect of this loan (Ex. B). The Bill of Sale provided for repayment of the said sum of £300, without interest, on 9th January, 1953. It was not so repaid and despite a written demand has still not been repaid.

The defence under the Moneylenders Ordinance, Cap. 185, is based on three grounds:—

"*Firstly*—

That the plaintiff was a moneylender although not licensed as such under the Moneylenders Ordinance, Cap. 185, at the material time.

*Secondly*—

That this particular transaction although it is ostensibly a loan for £300 without interest, was in fact a loan for £300 until 9th January, 1953, at the agreed interest of £25. Under section 3 of the Moneylenders Ordinance, the plaintiff must be presumed to be a moneylender, and he was not licensed as such at the material time.

*And Thirdly*—

That the plaintiff, who admits he was a licensed moneylender, at the date of issue of the writ in this case namely 11th January, 1955, did not file with his claim the particulars required under the provisions of the Moneylenders Ordinance, section 21."

In support of this first ground there are the admissions by the plaintiff under cross-examination of the following facts:—

"1. That prior to 14th October, 1952, he took over for £700 from one Ranchhor Bhikabhai the debt of £700 owed by Ram Autar to the said Ranchhor Bhikabhai. The plaintiff admits he charged Ram Autar 10 per cent interest on this sum of £700 until repayment.

2. The plaintiff further admits that, at about the same time, he lent the said Ram Autar the further sum of £400 at 10 per cent interest. These two sums amounting to £1,100, together with the interest due thereon were repaid by Ram Autar to the plaintiff in 1952.

3. Again towards the end of 1952 or at the beginning of 1953 (after the plaintiff had lent the 1st defendant the £300 in this case), the plaintiff lent £95 to Makrab Khan at 10 per cent interest. The plaintiff also admits that although he only lent Makrab Khan £95 he took from him a promissory note for £100 by way of security.

4. In this same period the plaintiff admits he lent money to one Das.

5. In about January, 1953, the plaintiff applied for a moneylenders licence which was eventually granted him in April, 1953.

6. The plaintiff also stated that some years ago he lent £50 to the second defendant in this case without interest."

On these facts the defence submit that the plaintiff should be held to be a moneylender under the Moneylenders Ordinance, Cap. 185.

The definition of a moneylender is contained in section 2, the material parts of which read as follows:—

"'Moneylender' includes every person whose business is that of moneylending or who carries on . . . . that business whether or not that person also . . . . earns . . . . money derived from sources other than the lending of money etc."

The material part of section 3 of the Ordinance reads as follows:—

"3. . . . . any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

There can be no doubt that since the plaintiff lent Ram Autar money at interest (before he lent the 1st defendant the £300 in this case), a presumption then arose under section 3 that the plaintiff was a moneylender. The plaintiff has done little or nothing to rebut this presumption and has certainly failed to satisfy me that he was not a moneylender at that time.

For the plaintiff, however, it is contended that the presumption arising from section 3, that the plaintiff was a moneylender applied only in the case of the loan to Ram Autar. It is submitted that it would have been open to Ram Autar to avail himself of the defence that the plaintiff's claim against him for repayment was unenforceable because of the presumption that he was a moneylender who was not at the time licensed under the Ordinance. It is submitted, however, that it is not open to the 1st defendant in this case to rely upon the facts as far as the loan to Ram Autar is concerned to raise the presumption that the plaintiff was a moneylender so far as his loan to the 1st defendant in this case is concerned. In other words, it is submitted for the plaintiff that the presumption under section 3 of the Ordinance, that the plaintiff is a moneylender only arises if the facts in the particular case before the court at the time themselves raise this presumption.

This is an interesting point. There is nothing in the section which expressly limits its application in this way, but the court is asked so to construe it. I have given this matter careful consideration. It would appear that section three may possibly be open to this construction but I have been unable to trace any authority on the point, which would not appear to have been decided heretofore. It is a well established canon of construction that where a statute is open to more than one construction, the court may look to the intention of the legislature in an endeavour to construe it correctly. The intention of the legislature as expressed in the headnote of the Moneylenders Ordinance is " to make provision for the control of moneylending ". This purpose is effected by (*a*) compelling them to take out a licence under pain of rendering all their contracts unenforceable and (*b*) placing a limit on the rates of interest which may be charged. In order that the intention of the legislature should not be defeated, the definition of a Moneylender has been made particularly wide. Section 3 of the Ordinance would appear to be designed expressly to cover the case of those persons who whilst they may not be considered to be " carrying on a business as am oneylender " nevertheless do lend money on interest.

In my opinion, the presumption that a person is a moneylender under the Moneylenders Ordinance which arises under section 3 when he lends money on interest, etc., is not intended to and does not apply merely to any one particular loan made by this person. If the legislature had so intended to restrict the effect of the presumption raised it could and doubtless would have said so. In may view the correct interpretation of section 3 is that any person who lends any one sum of money at interest, etc., is, in respect of that loan and in respect of any other loan or loans he may make, whether with or without interest, presumed to be a moneylender until the contrary be proved.

In the present case for example, the plaintiff admits he first lent some £400 at 10 per cent interest to Ram Autar. In that case a presumption arises under section 3 that the plaintiff was a moneylender. It would be open to the plaintiff to rebut this presumption. When he subsequently lent £300 to the 1st defendant—(and for the purpose of the argument I assume for the time being that this was lent free of interest), it is my opinion that the presumption arising from the previous loan of £400 at 10 per cent interest, that the plaintiff was a moneylender still applies. It is open to the plaintiff to rebut that presumption but unless and until he does, he is by virtue of section 3 presumed to be a moneylender.

I am fortified in this view by the wording of section 3 and the definition of a moneylender in section 2 of the Ordinance.

If, in section 3, instead of the words " is presumed to be a moneylender " there are substituted the main part of the definition of a moneylender in section 2, the material part of section 3 would read as follows:—

" Any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a person whose business is that of moneylending or who carries on . . . . that business."

When section 3 is read in this light, I think it is clear that when a person lends money at interest the presumption is raised that he is not merely a moneylender for the purpose of that specific loan, but in respect of any other transaction in which he takes part as a lender of money, whether or not he does so on interest, unless and until he rebuts this presumption.

I hold that the plaintiff was a moneylender at the material time, i.e. 14th October, 1952, by virtue of the presumption raised by section 3 of the Ordinance. He has not rebutted this presumption nor made any real effort to do so. I also hold that at the material time he was carrying on business as a moneylender.

The plaintiff admits that in October, 1952, he was not licensed under the Moneylenders Ordinance. In January, 1953, he applied for a licence to carry on business as moneylender. It is common ground that a moneylender's licence was first granted to him in April, 1953, and that he has held a moneylender's licence since then.

The material part of section 15 of the Ordinance reads as follows:—

" No contract for the repayment of money lent . . . . by an unlicensed moneylender shall be enforceable."

For this reason alone, I am of the opinion that the plaintiff's claim must fail, since at the time he made this loan, he was an unlicensed moneylender.

I feel it may be convenient for me to record that after giving the evidence in this case, the most careful consideration, I am quite satisfied that the evidence of the 1st defendant that (*a*) the loan for £300 made to him by the plaintiff ostensibly without interest was made at the previously agreed interest rate of £25 for the period 14th October, 1952, to 9th January, 1953 and (*b*) that after that date, the 1st defendant gave the plaintiff at the plaintiff's request the two promissory notes referred to in evidence for £30 and £33 respectively in respect of further interest on this loan of £300 is the truth. I have only accepted the evidence of the 1st defendant after careful thought and bearing in mind the tempation there must be for him to give this evidence whether it be true or not, in order to avoid any liability to the plaintiff in this action. In my opinion, however, the plaintiff was not telling the truth when he said he loaned the 1st defendant £300 without interest. He offered no reasonable explanation why he should lend him any sum of money at all without interest. The manner in which both he and his only witness replied to questions put to them under cross-examination was moreover so unsatisfactory that I am now, after having heard the whole of the evidence in this case, firmly of the opinion that they were both untrustworthy and untruthful witnesses in respect of this aspect of the case.

For this reason, even had I not felt obliged to construe section 3 of the Moneylenders Ordinance in the manner in which I have construed it, I would have been obliged to hold that the plaintiff having lent this £300 at interest, must for that reason, under the terms of section 3 be presumed to have been a moneylender in October, 1952. There is insufficient evidence before me on the part of the plaintiff to rebut this presumption. He was, on his own admission, in October, 1952, not licensed as a moneylender and by virtue of section 15 of the Ordinance his claim must therefore, have failed against all the defendants.

I do not think any useful purpose would be served by my arriving at conclusions on the other aspects of the defence in this case in the circumstances.

There will be judgment for the defendants against the plaintiff.