

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 194 of 1960

Between:

BALDEO

RAMA WATI

BODH MATI

Plaintiffs

v.

NUR MOHAMMED

Defendant

Bills of Sale Ordinance (Cap. 193)—failure to renew registration within five years—bill deemed fraudulent and void.

The plaintiffs claimed under a Bill of Sale which had been registered under the Bills of Sale Ordinance (Cap. 193), but the registration had not been renewed within five years. The defendant contended that since the registration of the Bill of Sale was void for failure to renew its registration within the five years under section 14 of the Ordinance, the Bill must be deemed fraudulent and void by reason of section 7 of the Ordinance. These two sections read:

"7. Every bill of sale to which this Ordinance applies shall be duly attested, and shall be registered, within seven days after the making or giving thereof if made or given in Suva, or within twenty-one days if made or given in any other part of the Colony than the city of Suva, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale shall be deemed fraudulent and void.

14. The registration of a bill of sale must be renewed, or further renewed, as the case may be, at least once every five years, and, if a period of five years elapse without such renewal or further renewal the registration shall become void."

Held.—The Bill of Sale must be deemed fraudulent and void. Claim dismissed.

Cases cited:

Fenton v. Blyth (1890) 25 Q.B.D. 417.

Bradford Advance Co. Ltd. v. Ayers (1924) W.N. 152.

National Provincial Bank Ltd. v. Gaunt (1942) 2 All E.R. 112.

S. D. Sharma for the Plaintiffs.

R. I. Kapadia for the Defendant.

HAMMETT, Ag. C.J. (17th April, 1961).

The plaintiffs claim the sum of £470 principal and £247 5s. 0d. interest under Bill of Sale Book 55 Folio 40 dated 7th January, 1955.

This Bill of Sale was duly registered under the Bills of Sale Ordinance Cap. 193. It should have been renewed, under the provisions of section 14 of the Ordinance, within five years but this was not done. Counsel for the defendant has submitted as a preliminary point that the claim cannot succeed because the Bill of Sale is void as a result of the failure to renew it.

Section 14 of the Ordinance reads:—

“The registration of a bill of sale must be renewed, or further renewed, as the case may be, at least once every five years, and, if a period of five years elapse without such renewal or further renewal the registration shall become void.”

Section 7 reads:—

“Every bill of sale to which this Ordinance applies shall be duly attested, and shall be registered, within seven days after the making or giving thereof if made or given in Suva, or within twenty-one days if made or given in any other part of the Colony than the city of Suva, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale shall be deemed fraudulent and void.”

It is the contention of the defendant that since the registration of this Bill of Sale is void for failure to renew its registration under section 14, the whole Bill of Sale must be deemed to be fraudulent and void by virtue of section 7.

In reply the plaintiffs contend that by section 7 a Bill of Sale which is not registered within seven days is deemed to be fraudulent and void. But the Bill in this case was registered within seven days—and whatever may be the results of failure to renew its registration under section 14, it cannot be deemed to be fraudulent and void under section 7 for not being registered within seven days.

Section 14 provides that failure to renew a registration makes the registration void—not the Bill of Sale void.

Counsel for the plaintiffs submits that whilst therefore the document cannot be enforced as a Bill of Sale, the defendant can be sued on the personal covenant to repay the principal sum and interest thereon on the ground that this covenant is severable from the remaining covenants in the Bill.

This is a point of interest and importance. No authorities were cited by Counsel in support of their arguments. The only one in point of which I am aware is *Fenton v. Blyth* (1890) 25 Q.B.D., 417, in which on appeal from the Country Court it was held that failure to renew the registration of a Bill of Sale which makes the registration void leads to the Bill of Sale becoming wholly void.

Wills, J. said at page 419:—

“Now, section 11 of the Act of 1878 provides that on failure to renew the registration of a Bill of Sale, the registration is to become void, and to this provision I can attach only one meaning—that from that time forward the rights of parties are to be regulated as though there had been no registration in the first instance, as though no such formality had ever taken place.”

The first paragraph of section 11 of the Bills of Sale Act 1878 reads:—

“The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five

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years, and if a period of five years elapse from the registration of a bill of sale without a renewal or further renewal (as the case may be) the registration shall become void."

It will be seen that there is no material difference between this and section 14 of the Bills of Sale Ordinance Cap. 193.

Under these circumstances, albeit with some reluctance, I feel I must uphold the submission of Counsel for the defence that the failure to renew the registration of this Bill under section 14 has led not only to the registration becoming void but also by virtue of section 7, to the Bill of Sale being deemed fraudulent and void.

In these circumstances I do not think the plaintiffs can succeed in a claim under the personal covenant to pay principal and interest contained in an agreement which by law is deemed to be fraudulent and void.

It would appear that the plaintiff's only remedy would be to sue for the recovery of the money lent, with reasonable interest, as money had and received, on the authority of *Bradford Advance Co. Ltd. v. Ayers* (1924) W.N. 152.

I have considered whether I should allow the plaintiff to amend the statement of claim to enable him to proceed with that claim in this action. To do so would appear to me to offend against the principle so clearly reaffirmed in *National Provincial Bank Ltd. v. Gaunt* (1942) 2 A.E.R. 112, where it was held that no amendment of a Statement of Claim may be permitted which has the effect of allowing a party to set up a cause of action which has become statute barred.

In this case the Bill of Sale was dated 7th January, 1955. The claim under this Bill of Sale must fail for reasons I have already given. If the plaintiffs were to amend their statement of claim to enable them to proceed on a claim for money had and received, that cause of action must have arisen not later than 7th January, 1955. Such a claim would have become statute barred by 7th January, 1961. Hard as this may seem, it is clear that the plaintiffs were given warning by paragraph 7 of the Defence that the Bill of Sale was void and unenforceable. The Defence was dated 26th October, 1960, and from then until 7th January, 1961, Counsel for the plaintiffs had ample time and opportunity of amending the statement of claim and it would appear that he has no one but himself to blame for not having done so.

In these circumstances the plaintiffs' claim must be dismissed.