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MAHADEO SINGH

v.

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RAM CHANDAR SINGH

[COURT OF APPEAL, 1970 (Gould V. P., Marsack J. A., Tompkins J. A.), 28th October, 13th November]

Civil Jurisdiction

C

Moneylending—memorandum of terms of contract—alleged difference between transaction so recorded and actual transaction—initial onus on moneylender—evidential onus devolving on borrower—discharge of onus—evidence—misdirection by trial judge as to weight of documentary evidence—Moneylenders Ordinance (Cap. 210) ss. 16(1) (3), 19—Bills of Sale Ordinance (Cap. 202)—Moneylenders Act 1927 (17 & 18 Geo. 5, c. 21) (Imp.) s. 6(2).

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Evidence and proof—moneylending contract—evidence partly oral and partly documentary—appeal—misdirection by court below as to weight to be attached to documentary evidence.

Appeal—evidence—questions of fact—evidence partly oral and partly documentary—position of Court of Appeal.

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The appellant brought an action against the respondent, a licensed moneylender, for a declaration that three contracts for the loan of money were unenforceable, as contravening the provisions of section 16 of the Moneylenders Ordinance. Each of the three memoranda of the contracts purported to evidence the advance of a specific lump sum, and the appellant called evidence, partly *viva voce* and partly documentray to show that this was not the case . In the Supreme Court the trial Judge dismissed the action, saying that he had scrutinized the evidence

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and examined the documentray exhibits, that the appellant's evidence was confused and contradictory, and that as no reliance could be placed on his work, he had failed to discharge the onus of proof.

Held: 1. While an appellate court, invited to differ on questions of fact from a trial Judge, will rarely do so if the trial Judge based his opinion in whole or in part on the demeanour of witnesses, where the question at issue is the proper

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nference to be drawn from facts not in doubt, the appellate court is in as good a position to decide as was the Judge at the trial.

2. The trial judge had not emphasized the demeanour of the appellant, but disbelieved his evidence on account of its confused nature; the evidence was, moreover, partly documentary, and its weight, unlike that of the oral evidence, was a matter of inference.

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3. The initial onus upon the respondent, as a moneylender, to show that the transactions complied with section 16 of the Moneylenders Ordinance, was *prima facie* discharged by the production of the three memoranda of the contracts; the evidential onus then fell upon the appellant.

4. The learned trial Judge had clearly misdirected himself as to the weight to be given to the documentary evidence, which, properly appreciated, was such as to retransfer the onus of showing compliance with section 16 to the respondent, who did nothing to discharge it. A

5. The appellant was entitled to relief.

6. PER TOMKINS J. the documentary evidence clearly showed that there had been a variation of the terms of the three loans as set out in the memoranda and a clear breach of section 16. B

Cases referred to :

Powell v. Streatham Manor Nursing Home [1935] A.C. 243; 152 L.T. 563.
Yuill v. Yuill [1945] P. 15; [1945] 1 All E.R. 183.
Watt (or Thomas) v. Thomas [1947] A.C. 484; [1947] 1 All E.R. 582.
Benmax v. Austin Motor Co. Ltd. [1955] A.C. 370; [1955] 1 All E.R. 326.
Cohen v. Lester Ltd. [1939] 1 K.B. 504; [1938] 4 All E.R. 188. C
Chapman v. Michaelson [1909] 1 Ch. 238; 100 L.T. 109.
Kasumu v. Baba-Egbe [1956] A.C. 539; [1956] 3 All E.R. 266.
Damodar Jamnadas v. Noor Mohammed [1961] E.A. 615.
Bhaichand Bhanwanji Shah v. Jamnadas & Sons Ltd. [1960] E.A. 894.

Appeal from a judgment of the Supreme Court dismissing an action claiming relief under the Moneylenders Ordinance. D

R. G. Kermode for the appellant.

K. C. Ramrakha for the respondent.

The facts sufficiently appear from the judgment of Gould V.P.

The following judgments were read:

GOULD V.P.: [13th November, 1970]— E

The appellant was the plaintiff in an action in the Supreme Court, in which he sought against the respondent a declaration that three contracts relating to the loan of money by the respondent to the appellant, together with a Bill of Sale and a collateral Assignment of the proceeds of cane crops given as security for repayment, were void and unenforceable. There were other and alternative claims including a prayer for an account to be taken of the moneylending transactions between the appellant and the respondent. The relief was sought in relation to three contracts dated respectively the 11th March, 1965, the 9th June, 1966 and the 9th February, 1967, which were evidenced by three memoranda under the Moneylenders Ordinance (Cap. 210) (the respondent being a licensed moneylender) and which, the appellant asserted, contravened the provisions of Section 16 of that Ordinance. There were other issues in the Supreme Court which have not been raised on this appeal. The learned trial Judge gave judgment on the 2nd September, 1970, dismissing the appellant's suit and against that judgment the present appeal has been brought. F G

It was common ground that the three memoranda referred to above were prepared and signed on the dates mentioned. That of the 11th March, 1965, evidenced an advance of £800 repayable on demand and referred to the Bill of Sale and Assignment by way of security. The second, on the 9th June, 1966, contained an admission of indebtedness in the sum of £206 9s. 0d. under the two securities and evidenced a further loan of £793 11s. 0d. making a total of £1,000. That was said to be " Repayable: 3 months ". In the third memorandum, dated H

the 9th February, 1967, the appellant acknowledged indebtedness of £656 13s. 9d. under the Bill of Sale and Assignment, and a further advance of £793 10s. 8d was acknowledged, making a total indebtedness of £1,450 3s. 5d. Receipts signed by the appellant for the three advances were appended and in each case the rate of interest was stated to be "£12 (twelve pounds) per centum per annum".

It was also common ground that, prior to the date of the statement of claim, the following payments were received by the respondent to the credit of the appellant:

£	s.	d.	
162	0	0	17/6/65
89	14	9	4/10/65
195	18	1	4/10/65
59	10	4	4/11/65
114	11	2	31/12/65
134	10	5	2/6/66
191	16	4	21/7/66
99	11	3	18/8/66
113	9	2	10/10/66
77	0	0	14/6/68
229	0	0	27/9/68

In addition, a payment of £286 was admitted to have been received by the respondent on the 24th October, 1968.

The allegations by the appellant in his Statement of Claim touching these transactions are contained in paragraphs 6–9 thereof which read:—

> 6. Notwithstanding that the contracts and securities referred to in paragraphs 2 and 4 hereof indicated that the moneys therein referred to had been received by the plaintiff on the dates shown therein and the plaintiff was induced to sign receipts to that effect the said moneys were not advanced on the dates stated by the defendant to the plaintiff.
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> 7. The defendant did not advance the loan moneys after execution by the plaintiff of the securities and contracts and between the 11th day of March, 1965 and the 24th day of February, 1967 made advances to the plaintiff and paid accounts on behalf of the plaintiff as shown in the account attached hereto prepared by the plaintiff and which exceeds three folios none of which advances were evidenced by moneylenders' contracts.
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> 8. That it was a condition precedent to the loans by the defendant to the plaintiff that loan moneys would be retained by the defendant and advanced to or paid on account of the plaintiff as and when he required finance and to meet store debts.
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> 9. That it was a further condition of the loans that interest should be charged at the rate of 20 per centum per annum.

The account referred to in paragraph 7 was annexed to the Statement of Claim and shows many payments made by the respondent to or on account of the appellant during the period from the 11th March, 1965, to the 24th February, 1967, and shows also the moneys received by the respondent as listed above, except the last payment of £286. The statement purports to include interest calculated at 15% and shows a final balance owing to the respondent of £147. 9. 5; this would, of course, be converted into a balance in favour of the appellant by the payment to the respondent of £286 on the 24th October, 1968. Clearly, the statement

annexed to the Statement of Claim, if it correctly represents in any substantial degree the transactions between the parties, is inconsistent with the transactions which the three memoranda purport to evidence. A

It is now convenient to refer to certain aspects of the hearing in the Supreme Court. When the hearing commenced on the 8th June, 1970, Counsel for the appellant put certain documents in evidence by consent and conceded that £800 was actually handed over on the 11th March, 1965. He applied to amend (*inter alia*) paragraphs 6 and 7 of the Statement of Claim. Counsel for the respondent objected and the learned trial Judge said that the first step was to formulate in writing the exact amendments. He was apparently willing that this should be done but Counsel for the appellant withdrew his application. The taking of evidence was commenced but about lunch time on the same day the trial Judge was suddenly taken ill and could not continue. In the circumstances, Counsel for the appellant decided to renew his application for an amendment of the Statement of Claim and made an application to that effect in Chambers, on the 30th July, 1970, before the trial Judge. B C

Among the amendments sought was the addition to paragraph 6 of the Statement of Claim of the words " except as to the sum of £800 referred to in paragraph 6 hereof ", and the insertion in paragraph 7 after the figures ' 1967 ' of words " except the sum of £800 which on the day the loan was made was returned to the defendant as a condition of the loan and ". The application as to paragraph 9 was for the alteration of the interest rate from 20 per centum per annum to 15 per centum per annum. The application being opposed, the trial Judge held that on balance it would be unfair to the respondent to accede to the application. The refusal of this application has not been made a ground of appeal but I consider it to have been an unfortunate one. It may well have been influenced by the attitude of Counsel for the appellant when, instead of pressing for amendment at the outset even at the expense of costs and an adjournment, he withdrew his application. Even so, the earlier application showed that it was made pursuant to instructions made before trial, and the refusal to allow amendment when, fortuitously, an adjournment had been rendered necessary before the appellant had completed his evidence in chief, resulted in a very artificial situtaion. It meant that the evidence of the appellant could be challenged and criticised on the ground that it departed from pleadings which he had wished to amend. D E

I should mention at this stage, that on the appeal Counsel for the appellant maintained that the trial Judge had misunderstood him when, in his judgment, he stated that Counsel had withdrawn his prayer for accounts. The record shows clearly that Counsel did so, so far as the prayer for relief in that respect contained in the Statement of Claim is concerned, but Counsel contends that he maintained his request that the Court should exercise its own powers under the Moneylenders Ordinance to re-open the transactions. The notes in the record on appeal support this, but on the view I take of the case as a whole I do not need to pursue the question further. F G

The respondent called no evidence at the trial. The appellant gave evidence and called three witnesses, seeking to prove some of the items in his own statement of account, which he alleged were payments made on his behalf by the respondent. In his judgment the trial Judge dealt with the evidence as follows:— H

> " Apart from the plaintiff himself, three other witnesses were called on his behalf. These are merchants with whom the plaintiff has conducted business over the years. I have scrutinised the whole of this evidence and I have also examined with care all the documentary exhibits.

A The plaintiff's evidence was wholly confused and highly contradictory. Indeed even assuming I believed him to be an honest witness, it is virtually impossible to discover precisely what the plaintiff maintains the true facts to have been. His case, upon his own showing, can only be put in the broadest terms, viz that contrary to what he acknowledged in the various documentary exhibits, the actual transactions between himself and the defendant were such as to render both the contracts and the collateral securities void.

B Now as to this, the plaintiff wholly failed to discharge the onus of proof, for, as I have indicated, no reliance whatsoever can be placed upon his word. Far from revealing himself a simple country peasant who had been easily taken in, the plaintiff struck me as an astute man who knew precisely what he was doing when he executed these various agreements. I am not persuaded that their transactions were other than he acknowledged them to be in the document themselves. What subsequently happened was that the parties C fell out over a family quarrel, and but for that, these allegations would never have been fabricated.

I should add that there was nothing in the remainder of the evidence adduced by his learned Counsel of such cogency as materially to lend weight to the plaintiff's present story. "

D Having dealt with a point of law arising out of the Bills of Sale Ordinance (Cap. 202), which is no longer in issue, the trial Judge dismissed the suit with costs.

As has been seen above, the trial Judge said that he had examined the documentary exhibits with care but he did not set out any of his reasons for not attaching weight to them. The real issue in this appeal is whether the trial Judge erred in not finding that that aspect of the evidence was cogent and of sufficient weight to turn the scale in favour of the appellant.

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Much has been written as to the position of an appeal court which is invited to reverse on a question of fact the judgment of a Judge, sitting without a jury, who has had the advantage of seeing and hearing witnesses. Where he has based his opinion in whole or in part on their demeanour it is only in the rarest of cases that an appeal court will do so: *Yuill v. Yuill* [1945] P. 15. When, however, the question at issue is the proper inference to be drawn from facts which are F not in doubt the appellate court is in as good a position to decide as the Judge at the trial: *Powell v. Streatham Manor Nursing Home* [1935] A.C. 243; *Benmax v. Austin Motor Co. Ltd.* [1955] A.C. 370. The first rule stated by Lord Thankerton in *Watt (or Thomas) v. Thomas* [1947] A.C. 484 at 487–8 is " Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied G that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion ".

The present case is a composite one. The evidence was partly oral and partly documentary. The trial Judge did not appear to emphasize the demeanour of the appellant but rather disbelieved his evidence on account of its confused nature. He H finally used the word " fabricated " in regard to the allegations which the appellant made. There was, on the other hand, documentray evidence which the trial Judge, for no stated reason, treated with scant respect. The weight to be given to this evidence, unlike the oral evidence of the appellant, is a matter of inference, and if this Court found it to be of substantial cogency, it would, I think, be justified

in giving effect to its own conviction, upon the basis that the trial Judge had misdirected himself as to its weight. It is to be remembered that any initial onus upon the respondent as a moneylender, to show that the transaction complied with section 16 of the Moneylenders Ordinance was discharged *prima facie* by the production of the three memoranda which were exhibited by consent: see *Damodar Jamnadas v. Noor Mohammed* [1961] E.A. 615. The evidential onus at the outset therefore was upon the appellant, but he is not, in a moneylending case, estopped by his signature to the memoranda from showing that they did not in fact represent the true transaction between the parties. To hold otherwise would render nugatory the provisions of Section 16(1) and (3) of the Ordinance.

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The evidence given by the appellant, confused though it was, was clear enough that the agreed rate of interest was 15% and not 12% as stated in the memoranda. He mentioned that on one occasion (the third contract) after the papers had been signed, the respondent slapped his shoulder and said he had charged 20%. I do not think that the pleadings, which alleged 20%, should be held against the appellant's veracity in view of the application to amend, and of the fact that his own statement, annexed to the Statement of Claim is worked out at 15% or something closely approximating that rate. That is the rate stated by Counsel for the appellant to have been used, and this is confirmed by a test check. It is also sufficiently clear that the appellant claimed the dealings between himself and the respondent were in the nature of a running account, with the respondent advancing him money from time to time and paying accounts on his behalf, and not the three lump sum advances evidenced by the memoranda. Money was handed over on the first occasion, only to be returned immediately and on the third it was " shown " to comply with the law. The appellant said later that this advance was also handed over and returned. No actual money passed on the date of the second memorandum but certain amounts were paid by the respondent.

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Undoubtedly this evidence was given in such a way that, if it stood alone, it could not be relied upon. But there was put in evidence by consent a number of cheques produced by the respondent and a document headed " List of Payments made by cheques to Madho Singh or on his behalf ". This included the cheques produced, as well as a few others, and was enclosed with a letter (a copy of which was also made a exhibit by consent) from the respondent's solicitors to the appellant's stating " We enclose the list of cheques paid to or on behalf of your client. . . . ". The court was informed that this arrangement was made after the respondent had included " cheque butts " in his affidavit of discovery. It must be taken that they are conceded by the respondent to be relevant to the case.

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In his statement of account, the appellant showed a sum of £200 paid to him by the respondent on the 11th March, 1965, the date of the first memorandum, and twenty-two payments varying from £5 to £30 between that date and the date of the second memorandum. Of these, twelve payments totalling £245 were completely confirmed by the cheques and/or the list produced. In addition three payments made to creditors of the appellant on the 9th June, 1966 (the date of the second contract) totalling £159. 14. 3 were made by the respondent's cheques. The three creditors gave evidence but it adds nothing to the admitted fact that these payments were made by the respondent on behalf of the appellant. Another payment admitted and included in the appellant's statement was a cheque for £134. 6. 0. paid to " Kavanagasau Co-op " on the 27th October, 1966 i.e., between the second and third contracts.

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A The fact that these payments were made provides quite strong support for the appellant's version of the dealings between the parties. They are consistent with a running account. What would the respondent have the court believe in relation to these payments? On the 22nd August, 1967, the respondent, through his solicitors, in response to a demand under Section 19 of the Moneylenders Ordinance, supplied a statement of account to the appellant. This is also part of the documentary evidence, and it shows as debits against the appellant, only the three sums £800, £793. 11. 0 and £793. 10. 8 mentioned in the memoranda. B If the admitted payments by cheque are altogether extraneous and form part of some other transaction they should not have been disclosed as relevant to the present case. If they are part of the present transaction, then they not only support the appellant's version of the dealing, but show the rate of interest chargeable in at least the second and third memoranda to be wrongly stated. The true transaction would be a series of loans from different dates and agreement to pay interest on a fixed sum from a fixed date as provided in the memoranda would C result in a different rate being paid in respect of the actual loans. This would result in these memoranda being unenforceable. The same would apply to the first memorandum if any part of the principal sum were retained and disbursed later by the respondent. If sitting as a trial Judge I would have no hesitation in saying that on the balance of probabilities, these payments by the respondent, disclosed as relevant, were not independent transactions but were part and parcel of the financial dealings which the three contracts purport to cover. Even if the parties did bring other independent loans into account when settling their D affairs on the 9th June, 1966, and the 9th February, 1967, the memoranda of those dates would still be invalid as not containing all the terms of the loan, as the independent advances would have to be absorbed in or repaid from the further advance. I do not think, in view of the disclosure of the cheques as relevant, that it is or could be claimed that these advances are still outstanding, and it is shown indubitably that at least part of the appellant's account is not fabricated.

E I think these considerations alone are enough to change the evidential burden and put the onus upon the respondent. But the respondent's own account provides additional material. As I have said earlier, it shows the three advances mentioned in the memoranda. It shows the amounts received and the dates of receipt. It specifies the interest rate of 12% p.a. Finally it shows principal £1,355. 18. 4 and interest £83. 1. 0 as owing at the date of the account. Calculation on this basis shows that the account is correct arithmetically, but it is not F correct in relation to the second and third memoranda. *Vice versa*, if the account is correct, the memoranda are not. Interest has not been calculated upon the total sum of £1,000 stated in the second memorandum to be owing and as from the date of that document: nor upon the total of £1,450. 3. 5 set out in the third memorandum. If it had been, the final statement of interest outstanding in the account would have been substantially increased. I do not propose to set out the calculations upon which I base this statement.

G I would draw from this fact an inference that the respondent is not prepared to support his memoranda in his accounts. The question can be approached in another way. As Counsel for the appellant pointed out, if interest is calculated under the first memorandum at 12% giving credit for the various payments up to the 9th June, 1966, the resultant balance owing by the appellant as at that date is approximately £90 less than the £206. 9. 0 stated by the second memorandum to be outstanding. A calculation of interset at about 25% would produce that H last mentioned figure. A similar calculation carried down to the date of the third memorandum shows that existing indebtedness as at the 9th February, 1967, should, at 12% p.a., be about £100 less than the £656. 13. 9 specified. Thus

on his own showing, on his own accounts, which exclude any items other than the three amounts specified in the memoranda, the second and third memoranda are incorrect in their specification of the principal sum owing and thus offend against section 16.

I do not say that a mere overcharge in interest is of itself fatal. A situation where that occurred arose in *Bhaichand Bhanwanji Shah v. Jamnadas & Sons Ltd.* [1960] E.A. 894 in which, incidentally, it was common ground that in a money-lending transaction the court must ascertain the true agreement; the memorandum, though no doubt evidence of the bargain, was not conclusive. It was held that the test was whether the rate of interest in the memorandum accurately reproduced what had been agreed—a mere overcharge of 4/– by reason of the method of calculation adopted did not have to be acquiesced in by the borrower.

In the present case the overcharge, if the discrepancy arises from that, has been carried into the second and third memoranda, rendering them inaccurate. Moreover, it is too large a discrepancy to be accidental, and is therefore evidence supporting the appellant when he claims that the agreed rate exceeded 12% p.a. On the other hand, if the discrepancy between the respondent's account and the memoranda is not due to an interest overcharge but (contrary to what is stated in the account) due to the inclusion of what I have called independent items, that does not assist the respondent for the reasons I have given earlier.

For these reasons I think with all due respect to the known ability and experience of the trial Judge, that he clearly misdirected himself as to the weight to be given to the documentary evidence. In some respects, that evidence can stand alone, but it certainly provides substantial support for the story of the appellant, confused as it was, and fantastic as the account of colourable dealings in money may seem in another community.

I am in no doubt in the cases of the second and third memoranda. The documentary evidence does not establish that the accounts shown as paid on the date of the first memorandum were in fact paid by the respondent though he made a number of payments to or for the account of the plaintiff from May to November of that year. The amount secured by this memorandum has, of course, long since been paid in full. On the whole case, however, I am satisfied that when the appellant's case was closed, the evidence, properly appreciated, was such as to transfer the onus to the respondent to show that the contracts were not unenforceable under Section 16 of the Moneylenders Ordinance. He did nothing to discharge the burden and I consider that the appellant is entitled to relief accordingly.

I would allow the appeal set aside the judgment and order for costs in the Supreme Court and direct that judgment be entered for the plaintiff in the court below for a declaration that the three contracts mentioned, and the Bill of Sale and Assignment given as security therefor are unenforceable: The appellant to have his costs in both courts.

As all members of the court are of this opinion it is so ordered.

MARSACK J.A.:

I CONCUR.

TOMPKINS J.A.:

I have had the benefit of reading in advance the judgment just delivered by the learned Vice President. With the greatest respect, I fully agree both with the reasoning and with the conclusions arrived at by him. I desire to add how-

ever, a few observations of my own, as to the effects of non-compliance with the provisions of Section 16 of the Moneylenders Ordinance, Cap. 210, the relevant part of which is as follows:—

> " (1) No contract for the repayment by a borrower . . . . of money lent to him . . . . by a moneylender . . . . or for payment by him of interest on money so lent, and no security given by the borrower . . . . in respect of any such contract, shall be 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 be delivered to the borrower before the money is lent.
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> (3) The note or memorandum aforesaid shall contain all the terms of the contract and in particular shall show separately and distinctly:—
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> (*a*) the date of the loan
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> (*b*) the principal and
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> (*c*) the rate of interest per annum. . . . "

In this case there were three contracts evidencing advances respectively or sums of £800 on 11th March, 1965, of £793. 11. 0 on 9th June, 1966 and £793. 10.8 on 9th February, 1967. A Bill of Sale to secure the sum of £800 plus further advances was duly executed together with an assignment of the monies payable under a cane contract.

Two further memoranda to secure the two later advances were duly executed.

However the defendant supplied and put in as exhibits a list of 26 payments made by cheque either to the plaintiff or to his creditors on his behalf. The payments extended from 4th May, 1965 to 9th February, 1967. The only explanation given for the making of these payments is the evidence of the plaintiff that the real arrangement made by him with the defendant was that the amount of the loans was to be disbursed by the defendant from time to time as requested by the plaintiff.

I think the only inference to be taken from the payment of these cheques is that they formed part of the money lent by the defendant to the plaintiff. Consequently the notes or memoranda of the loans set out in Exhibits 1, 2, 3, 4 and 5 which do not mention these payments by cheque did not disclose all the terms of the contracts as required by Section 16. The whole scheme of the Moneylenders Acts is that the borrower shall be protected from exploitation by a moneylender. Hence Section 16 provides that a memorandum showing the whole of the terms of the lending contract shall be signed by both parties and a copy held by both parties. Thus the borrower goes into the contract with his eyes open. The moneylender cannot vary the written contract by increasing the rate of interest or by making further loans or varying the terms of the existing loans without making further memoranda to comply with Section 16. The section sets heavy penalties for failure on the part of the moneylender in carrying out these provisions, in providing that the contract or contracts become thereby unenforceable. That is exactly what, in my view, the record of payment of these cheques on behalf of the plaintiff by the defendant means. It means that there has been an arrangement whereby the various loans were not eventually paid to the plaintiff in the 3 amounts shown by the memoranda, but were, by an arrangement not mentioned in the memoranda, paid out by the cheques disclosed. Thus one of the very things Section 16 seeks to forbid has been done, namely there has been a variation of the terms of the 3 loans as set out in the memoranda and the security given and a clear breach of Section 16.

I now examine some of the authorities dealing with the effect of such a breach of the Act.

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In *Cohen v. Lester Ltd.* [1939] 1 K.B. 504 the contract of loan was rendered unenforceable by failure to comply with the requirements of Section 6(2) of the Moneylenders Act 1927. Tucker J., at 507, said, " it is common ground that where the provisions of Section 6 have not been complied with, the borrower can obtain an order for the delivery up of P.N's and Bills of Sale given as security, without being put on any terms regarding repayment by him of such of the money borrowed as is then due. " In *Chapman v. Michaelson* [1909] 1 Ch. 238 it was B held that the Court had power to give a declaratory judgment, although no ancillary relief was claimed and that it ought not to impose upon the plaintiff equitable terms as to repayment of the actual money advanced as a condition of giving the declaratory judgment. In *Kasumu v. Baba-Egbe* [1956] 3 All E. R. 266 Lord Radcliffe, in giving the judgment of the Privy Council, said at 271, " When the governing statute enacts that no loan which fails to satisfy any of these requirements, is to be enforceable, it must be taken to mean what it says, that no Court of Law is to recognize the lender as having a right at law to get his money back. C That is part of the penalty which the statute imposes. "

There is, accordingly, in my view, ample authority for the making of the declaratory orders proposed by the learned Vice President.

Appeal allowed.