

Apart from authority, however, it would introduce confusion into the administration of the criminal law of this Colony if this Court, having held in 1934 upon the facts then before it, that an accused person was guilty, should now hold, upon a set of facts indistinguishable from the former, that another accused person is innocent.

It follows that it is unnecessary for the Court to express any view upon the learned argument put before it by the Acting Attorney-General as to the effect upon these proceedings of a decree *nisi* issued by this Court in favour of the witness Budhai against the accused Sarjudei decreeing the dissolution of their marriage.

The Court finds the accused guilty of bigamy.

SENTENCE.

It is clear that at the time of the second ceremony the accused was under the honest belief that she was free to marry so that her conviction does not call for more than a nominal penalty. The accused is sentenced to serve a term of 24 hours imprisonment and upon that sentence is entitled to be released forthwith.

AMMAI *ats.* GOVIND PILLAY.

[Appellate Jurisdiction (Corrie, C.J.) August 10, 1937.]

Summary Procedure Rules, 1916—Rule 22¹—division of cause of action—two promissory notes given on a settlement of accounts—whether each promissory note constitutes a distinct cause of action—distinction drawn between an action to recover sum due under a promissory note and an action under the Usurious Loans Ordinance.

The appellant's claim for the sum of £34 14s. 6d. due on a promissory note was dismissed in the Court of Summary Jurisdiction on the ground that the promissory was one of two notes given by the respondent for a total amount exceeding £50 arrived at on a settlement of account between the parties and that appellant's action involved a wrongful division of a cause of action.

HELD.—Each promissory note constitutes a separate and distinct cause of action and the promisee is entitled to bring separate actions upon each of them.

Cases referred to :—

Brunskill v. Powell [1850] 19 L.J. Ex. 362 ; 1 Dig. 18.

Mangal Sardar v. Bakewa [1936] 3 Fiji L.R.—.

[**EDITORIAL NOTE.**—See also *Giwar Singh and or. ats. Birbal* [1943] 3 Fiji L.R.—

APPEAL by the defendant against judgment for the plaintiff in an action for moneys due under a promissory note. The facts are fully set out in the judgment.

R. L. Munro for the appellant.

(No appearance of the respondent).

CORRIE, C.J.—This is an appeal from the judgment delivered on the 20th November, 1936, of the Commissioner of this Court in the district of Nadroga dismissing, on the ground of lack of jurisdiction, an action brought by the appellant against the respondent.

¹ *Rep. Vid. Magistrates Courts Rules O. IV r. 12.*

The appellant's claim was for £34 14s. 6d. due upon a promissory note. The appellant stated in evidence that there had been a settlement of accounts between him and the respondent and that in payment of the amount due from him under that settlement, the respondent had given the appellant the promissory note the subject of the action and another promissory note, maturing upon the same date, for £32, upon which he was bringing a separate action.

Rule 22 of the Summary Procedure Rules 1916¹ directs that :—

“ No plaintiff shall divide any cause of action for the purpose of bringing two or more actions under these rules.”

The Commissioner, therefore, relying upon a ruling given by the Chief Justice in a matter arising under the Usurious Loans Ordinance 1932,² dismissed the action for lack of jurisdiction.

Against that judgment this appeal is brought.

There is one important distinction between the present case and an action under the Usurious Loans Ordinance. That Ordinance contains provisions which enable a Court to go behind a promissory note and to ascertain the true nature of the transaction in respect of which it was given. There is no such provision in the Summary Procedure Rules.

The rule against splitting demands so as to being actions in a court of inferior jurisdiction is not peculiar to this Colony ; a similar rule is contained in the English County Courts Act 1888 and was contained in the earlier County Courts Acts.

From the decisions upon those statutes it is clear that a plaintiff is entitled to bring separate actions in respect of matters which constitute distinct causes of action.

Thus in *Brunskill v. Powell* [1850] 19 L.J. Ex. 362, the defendant was indebted to the plaintiff for goods supplied and for money lent at different times : the plaintiff was in the habit of entering the various items in one account. The plaintiff having sued the defendant and obtained judgment for £20 for goods sold, brought a separate action in respect of money lent and it was held that he was entitled to do so as they were “ several and distinct demands ”.

In *Sardar v. Bakewa* an action upon a promissory note given in part payment of an account, this Court held that a promissory note “ constitutes and creates a fresh debt due from the respondent to the appellant ”.

Following the decision in that case, I hold that the promissory notes given to the appellant by the respondent constituted distinct causes of action and that the appellant was therefore entitled to bring separate actions upon them in the Commissioner's Court.

The Magistrate in the judgment here appealed observed :—

“ His Honour the Chief Justice on the 5th September 1934, in three actions submitted under the Usurious Loans Ordinance 1932, ordered as follows—

“ The three promissory notes were made on the same date obviously part of one transaction and for an amount in total exceeding the Commissioner's jurisdiction. I have several times pointed out that this is an abuse of the process of the Court and in any event even if the total was within the jurisdiction of the Commissioner only one set of costs is ever to be allowed.”

“ These cases must be dismissed without costs on the grounds of no jurisdiction in the Commissioner.”

The cases referred to are unreported.

The appeal is therefore allowed ; the judgment of the Commissioner is set aside and the case sent back for hearing.

The respondent will pay the costs of this appeal.

¹ Rep. Vide Magistrates Courts Rules O. IV r. 12.

² Rep. by Moneylenders Ordinance, 1938 now Cap. 185 (s. 21 (2) contains similar provision).