

## APPELLATE CIVIL.

*Before Mr. Justice Munro and Mr. Justice Abdur Rahim.*

1909.  
July 12, 27.

SANKARA SUBBAN PATTAR'S SON, SIVARAMAKRISHNA  
PATTAR AND OTHERS (DEFENDANTS NOS. 1, 2 AND 4), APPELLANTS,

*v.*

MANGALASERI KUNHU MOIDEEN MUSALIAR AND ANOTHER  
(PLAINTIFF AND THIRD DEFENDANT), RESPONDENTS.\*

*Negotiable Instruments Act XXVI of 1881, s. 16—Endorsement, what constitutes—  
Holder in due course—Bill payable on demand, when overdue.*

Section 16 of the Negotiable Instruments Act does not lay down any specific form of words for an indorsement.

A promissory note payable on demand was executed on 18th December 1901. On the 12th September 1904, the payee received the amount due on the note from one S and the following was indorsed on the note by the payee: "I have this day received from you, S, the sum of . . . due for principal and interest and assigned this note to you with power to recover the amount due under it by showing the same."

No demand for payment was made before the 12th September 1904

*Held*, that S was an indorsee of the promissory note, that the promissory note was not overdue on the date of indorsement and that S was entitled as holder in due course to sue on the note.

SECOND APPEAL against the decree of S. Raghunathaiya, Subordinate Judge of South Malabar at Palghat, in Appeal Suit No. 194 of 1906 presented against the decree of A. Srinivasa Ayyangar, District Munsif of Chowghat, in Original Suit No. 676 of 1904.

The facts for the purpose of this case are sufficiently stated in the judgment.

*T. R. Remachandra Ayyar* for appellants.

*J. L. Rosario* for first respondent.

JUDGMENT.—On the 18th December 1901 the first defendant executed the promissory note (exhibit A) promising to pay on demand to the third defendant or order Rs. 1,000 with interest. On the 12th September 1904 the following entry signed by the third defendant was made upon the note:—"I have this day received in cash from you Mangalasherri Kunhu Moidu Mosaliar . . . . Rs. 1,169 made up of Rs. 1,000 being principal due

\* Second Appeal No. 1065 of 1906.

under this note and of Rs. 169 interest accumulated up to date, and assigned to you this note with power to recover the amount due under it, by showing the same." The assignee is the plaintiff who sued on the note. The defence was that the suit is not maintainable by reason of the agreement contained in the separate document (exhibit I) executed on the same date as exhibit A by the third defendant in favour of the first defendant. The Subordinate Judge held that plaintiff was a holder in due course, and that even apart from his position as holder in due course he was entitled to recover. The only question which we need consider is whether the plaintiff is a holder in due course. That the plaintiff paid consideration for the transfer is found by the Subordinate Judge. That the plaintiff had any notice of the agreement contained in exhibit I was not alleged by the defendants in their written statements, and no issue was raised on this subject. It is contended however that there is no indorsement on the note, so that the plaintiff is not an indorsee of the note, and that even if the entry on the note is construed to be an indorsement, the indorsement was not made before the amount mentioned in the note became payable, the note being payable on demand. We think that the indorsement on the note which has been set out above is an indorsement in full within the meaning of section 16 of the Negotiable Instruments Act. Under that section if the indorser in addition to signing his name adds a direction to pay the amount to a specified person the indorsement is said to be in full. The section does not lay down that any specific form of words is to be used. It is sufficient if the words used can be properly construed as a direction of the nature mentioned, and we think that the words used in the present case can be so construed. A similar view was taken in the case of *Srinivasa Pillay v. Venkattamma*(1). The plaintiff is therefore an indorsee of the note. As to the remaining contention, it is not alleged that there was any demand for payment prior to the indorsement, or that there is any other circumstance to show that the promissory note was overdue when indorsed to the plaintiff. This being so we think that the indorsement to the plaintiff was made before the amount of the promissory note became payable. Vide *Commundum Mohideen Saib v. Oree Meera Saib*(2) where the English cases on the subject

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(1) C.R.P., No. 603 of 1906, (unreported).

(2) (1873) 7 M.H.C.R., 271.

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are referred to, and *Van Ingen v. Dhunna Lall*(1). The plaintiff thus possesses all the characteristics of a holder in due course as defined in section 9 of the Negotiable Instruments Act, and his suit cannot be resisted. The appeal fails and is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Munro and Mr. Justice Abdur Rahim.*

1908.  
February 19,  
22.  
March 8.

N. P. N. M. CHITHAMBARAM CHETTIAR (PETITIONER—  
PLAINTIFF), APPELLANT,

v.

KRISHNA AIYANGAR AND OTHERS (RESPONDENTS—DEFENDANT),  
RESPONDENTS.\*

*Indian Companies Act, VI of 1882, s. 76—Alteration of memorandum of association by articles—To what extent a company can by resolution alter articles.*

Under section 76 of the Indian Companies Act anything which appears in the articles of association but is not provided for in the memorandum of association may be altered by a special resolution.

Where the articles of association provide for matters which need not, under section 8 of the Companies Act, be contained in the memorandum of association and which are not either expressly or impliedly dealt with by such memorandum, the portions of the articles dealing with such matters cannot be treated as part of the memorandum and can be altered by a special resolution of the company.

Rights which have their origin in a contract outside the articles, the terms of which contract are found in or referred to in such articles, can be altered by such alteration of the articles unless it is proved that one of the terms of such contract was that such rights should not be affected by an alteration of the articles.

Facts are sufficiently stated in the judgment.

APPEAL against the order of K. Ramanatha Ayyar, Subordinate Judge of Tinnevely, dated 8th July 1908, in Miscellaneous Petition No. 7 of 1908 in Original Suit No. 58 of 1907.

*P. R. Sundaram Ayyar, K. Srinivasa Ayyangar and R. Rangaswami Ayyangar* for appellants.

*Joseph Satya Nadar* for fifth respondent.

The Hon. The Advocate-General, and *C. V. Anantakrishna Ayyar* for eighth respondent.

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(1) (1882) I.L.R., 5 Mad., 108.

\* Civil Miscellaneous Appeal No. 143 of 1908.