APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

AT. N. AT. CHOCKALINGAM CHETTIAR (PLAINTIFF), APPELLANT, 1934, July 23.

v.

RAMA MU RAMA PALANIAPPA CHETTIAR, (DEFENDANT), RESPONDENT.*

Thavanai document—Nattukottai Chetties—Usage among, in respect of—Character of such document—One-anna stamp affixed to same—Insufficiency of stamp—Cause of action—Amendment of, basing claim on original cause of action—Principles underlying the grant of.

A thavanai (period) document among Nattukottai Chetties bearing one-anna stamp was in the following terms: "30th Panguni Sitharthi (date), Kallal (place), A.T N.A.T. credit, the same place, R.M.M.R.M. debit, for two hundies taken by me on 13th idem, Rs. 9,500 at Rs. 95 (exchange rate), three months thavanai, 11 annas interest, rings (dollars) 10,000, for these 10,000 rings adding from thavanai, thavanai interest and principal will be paid and this letter taken back by me."

Held, (1) that it was a promissory note inasmuch as the promisor and the promisee were clearly indicated and there was a definite promise to pay though it was expressed in the participial form and (2) that the same was a promissory note not payable on demand, since there was a well-established usage amongst Nattukottai Chetties that during the first thavanai the money was not repayable.

APPEAL against the decree of the Court of the Temporary Subordinate Judge of Devakottai in Original Suit No. 138 of 1928.

Advocate-General (Sir A. Krishnaswami Ayyar) and *A. Nagaswami Ayyar* for appellant.

K. Rajah Ayyar for respondent.

* Appeal No. 280 of 1929.

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The JUDGMENT of the Court was delivered by VARADACHARIAR J.—Plaintiff-appellant sued to recover a sum of money on the basis of what is referred to in the plaint as a "signed letter" given by the defendant on 12th April 1920. That letter bears only a one-anna stamp and the lower Court has held that it is a promissory note "not payable on demand" and is therefore insufficiently stamped. It dismissed the suit, holding that the suit is based only on that inadmissible letter and not on any original debt as an independent cause of action. In the appeal the learned Advocate-General has contended that that letter is not a promissory note at all or, if it is a promissory note, it is payable on demand and is therefore duly stamped. The appellant has also taken the precaution of applying to this Court for permission to amend the plaint by basing the claim, alternatively, on the "debt" independently of the said letter.

In support of the first contention urged on behalf of the appellant, viz., that the document in question is not a promissory note, reliance is placed upon the fact that the document does not in terms contain a promise to pay *to a specified person*. The terms of the document are set out in the judgment of the lower Court. It is in these terms :—

"30th Panguni Sitharthi—Kallal A.T.N.A.T. வரவு (credit), the same place R.M.M.R.M. பற்று (debit) for the two hundies taken by me and sent for our Penang firm as on 13th idem Rs. 9,500 at Rs. 95 (exchange rate) 3 months thavanai 11 annas interest, rings 10,000 for these 10,000 rings adding from thavanai, thavanai interest and principal will be paid and this letter taken back by me."

The document begins in the way in which similar documents in vogue among Chetties run, mentioning the fact of the money having been lent by A.T.N.A.T. and having been received by R.M.M.R.M. The English translation puts the concluding words in the passive voice. Perhaps it will be a more accurate rendering of the original to have these words in the active voice, i.e., "paying the principal and interest as per above terms I shall take back this letter". The point of the argument on behalf of the appellant is that the document does not say "paying *to you*"; and in support of that contention reliance was placed upon a decision of this Court in *Kadir Moithin Pulavar* v. *Panduranga Naidu*(1). No exception can be taken to the principle laid down in that case that, in considering whether a document is a promissory note or not, it is material to see whether the payee is named there. But neither that case nor any other decision lays down in which part of the document the payee is to be named, or by what kind of language. On the other hand, illustration (*b*) to section 4 of the Negotiable Instruments Act clearly shows that the reference to the payee need not be found in the words of promise. The illustration runs thus:

"I acknowledge myself to be indebted to B in Rs. 10,000 to be paid on demand for value received."

This is declared to be a promissory note within the meaning of the definition. In the document now in question the promisor and the promisee are clearly indicated in the opening portion of the document and there is a definite promise to pay

(1) (1933) 38 L.W. 846.

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though it is worded in the participial form. There is therefore no force in the first contention.

The second contention is that the reference to three months thavanai is only a provision for calculation of compound interest with three-monthly rests and does not make the document payable otherwise than on demand. There was at one time some difference of opinion in the reported decisions in this Court as to whether, in the case of these thavanai documents among Nattukottai Chetties, the money becomes due immediately on the expiry of the first thavanai or only upon an express demand after the expiry of the thavanai, but there was at no time any doubt whatever that during the first thavanai the money was not repayable. That this is the well-established usage amongst Chetties in the case of these thavanai documents is shown by the plaintiff's admission as his own witness in the case that the amount is not repayable within three months as it is given on three months thavanai. This contention therefore also fails.

As regards the application to amend the plaint by inserting a prayer based upon the original cause of action, it is difficult to read the plaint as containing any basis for such a prayer and it is therefore very doubtful if the appellant will be justified in asking for it at this stage. But even apart from that consideration, it will, in the circumstances of this case, serve no purpose to the appellant to allow such an amendment. The note as well as the loan were contemporaneous and there is really no question of a definite anterior liability apart from the note. Further, considerable amounts have admittedly been repaid

to the plaintiff and unless the plaintiff could enforce the particular terms as to interest, exchange, etc., contained in the letter, and that, in the particular way in which he wishes to interpret those terms, he will get nothing in the suit. It will therefore be no good to him merely to fall back upon the theory of an implied debt from the mere fact of a loan ; he must be permitted to prove the very terms contained in the suit letter under the guise of an original debt. To permit him to do so will be in the very teeth of section 91 of the Evidence Act. The learned Advocate-General admitted that the cases in this Court are opposed to this contention of his where the debt and the note are simultaneous ; but he relied upon certain passages in *Shanmuganatha Chettiar* v. *Srinivasa Ayyar*(1) as recognizing that a claim on a debt may exist alongside of and independently of a claim on a promissory note. In that case there was no difficulty or obstacle in the way of legally proving the note itself. The executants were held liable under the note and the only question that was considered by the learned Judges was whether the partners of the executants could be held liable for the debt as a partnership debt. That is very different from the present case. No question of section 91 was involved there and the learned Judges themselves referred to the cases under the Stamp Act and distinguished them on that ground. For these reasons the application for amendment must be disallowed with costs.

The appeal fails and is dismissed with costs.

G.R.

(1) (1916) I.L.R. 40 Mad. 727.