

responsible personally and as an heir for the whole of the money due. Three other heirs were responsible to the full extent of their interests in the estate and also personally as they had authorized Tan Po Shwe to borrow the money. One heir was liable only to the extent he admitted his liability, as he had not authorized Tan Po Shwe to encumber the estate. One defendant, Kyauk Ho, was not an heir and had no interest in the estate. The result was that the decree of the Lower Court was varied as to the extent of liability of the defendants and as to costs.]

DAS, J.—I concur.

1927
 N. N.
 CHETTYAR
 FIRM
 v.
 TAN MA PO
 AND
 OTHERS.
 —
 TAN BABU
 AND
 OTHERS
 v.
 N. N.
 CHETTYAR
 FIRM.
 —
 BAGULEY, J.

APPELLATE CIVIL.

Before Mr. Justice Brown.

ISMAIL HOOSAIN MAMSA

v.

K. PURBHUBHAI AND ONE.*

1928
 Mar. 2.

Interest on loan—Rate stated in inadmissible promissory note, whether can be claimed—Reasonable rate whether allowed.

Held, that where a promissory note is inadmissible in evidence for want of stamp, and the creditor sues for the money lent as on the original contract of loan, he may claim a reasonable rate of interest, but he cannot claim at the rate stated in the promissory note.

Maung Kyi v. Ma Ma Gale, 10 L.B.R. 54—*referred to*.

N. N. Sen for the appellant.

BROWN, J.—The same point arises for decision in this case and in Civil Revision Cases No. 246 and No. 247 and they will all be dealt with in this judgment.

The three cases have been heard *ex parte*.

The petitioner filed three suits in the Small Cause Court of Rangoon for payment of money lent with interest. In each case the money was lent on a

* Civil Revision Cases Nos. 245, 246 and 247 of 1927.

1928

ISMAIL
HOOSAIN
MAMSA

vs.
K. PURBHU-
BHAI AND
ONE.

BROWN, J.

promissory note but the promissory note was not sufficiently stamped and was therefore not proved, the petitioner falling back upon the original consideration. The trial Judge heard each case *ex parte* and gave the petitioner a decree for the principal only refusing to allow interest.

The petitioner now claims that he should be allowed interest. It was decided by the Full Bench of the late Chief Court in the case of *Maung Kyi v. Ma Ma Gale and one* (1), that where money is lent and at the same time a promissory note is given therefor, a creditor is not debarred from suing for the money lent as on the original contract of loan, if the promissory note cannot be proved. I do not see however that it follows from this that he can claim for interest at the rate stated in the promissory note. The promise to pay the specific rate of interest is clearly entered in the terms of the document and cannot be implied from the fact of the loan having been made in the first instance. I do not see therefore that the petitioner was entitled to claim interest at the rate stated in the promissory note. But I think it is open to the plaintiff to ask for a reasonable rate of interest. From the acceptance of the money lent and the implied promise to repay, I think that the promise to pay interest at a reasonable rate can be inferred.

I alter the decree of the trial Judge in each case into a decree for the principal sum claimed in each case together with interest thereon from date of loan up to date of the decree at one per cent. per mensem and costs on that amount on *ex parte* scale. Further interest at 9 per cent. per annum is allowed on the total amount decreed for principal and interest from the date of the decree to the date of realisation.