



Moneylending Law Chapter 254 was signed by the appellant and handed to him as required by law and that the contract was therefore unenforceable.

Counsel for the appellant has admitted that this ground of appeal was not raised in the Court below, but has urged the Court to allow the appeal on the ground that the evidence does not disclose that a memorandum was signed. The demand note which was put in evidence in the Court below and a signed copy of which the respondent said he gave the appellant, contains a certain amount of information, but having regard to the course that the Court proposes to take, I do not think that I should at this stage express any opinion as to its validity as a note or memorandum, the more so in view of the fact that arguments on this point have been extremely bare and it appears from the judgment reasons of the learned Magistrate that the matter certainly was not brought to his attention and he did not address his mind to it. The evidence which was given in the Court below is insufficient on this aspect of the case, in my opinion, to enable the Court to give any judgment upon it. This is due to the fact that the matter was not expressly canvassed in the Court below.

In normal circumstances, the Court of Appeal will not decide an appeal upon a new ground of law raised by the appellant, although it may do so, if all the evidence that is relevant appears on the record, or if the matter is purely one of construction of a document, or some similar occasion. In this case, there is not, as I have said, evidence on which, in my view, the Court could allow the appeal on the ground now raised. On the other hand, the

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Moneylending legislation is of a kind designed to protect borrowers and this Court cannot close its eyes to any matter raised under it, if the point appears to be an arguable one.

In the circumstances, I think that the proper course for the Court to take is to send this case back to the Magistrate in order that this defence may be raised and investigated and a decision given upon it. I think I ought to say for the guidance of Magistrates that having regard to the purpose of the Moneylending Law, when a case of this nature bears upon its face the fact that a rate of interest is charged which is outside the exceptions mentioned in the statute, they ought to investigate the matter and satisfy themselves that the provisions of Section 8 of the Moneylending Law have been complied with.

In my view, the appeal ought to be allowed and the case remitted for a new trial.

MOODY, J.A.,

I agree that the point raised here ought not to be allowed to pass unnoticed by this Court. I agree also that the appeal should be allowed and a new trial ordered.

ECCLESTON, J.A.,

I agree.

LEWIS, P. (Ag.),

The Court will make no order as to the costs of this appeal and the costs of the first trial will abide the result of the new trial.