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The Chetty Vilasam.

By Ordinance No. 5 of 1852, the English Law of promissory notes bills of exchange and cheques had been introduced into this Island. By this law, no person is liable as drawer, indorser, or acceptor or maker of a bill or note unless he has signed it as such; but signing a trade or assumed name is as binding on a man's real name as signing the name of a firm is equivalent to the signature by the person writing it of the names of all the partners (§ 28 of the Bills of Exchange Act.)

The signature need not be by the man himself, it may be written by the hand or even in the name of a duly qualified agent (§ 91). Where a person signs as drawer, or indorser or acceptor or maker of a bill or note adding words indicating that he signs for a principal or as executor etc., he is not personally liable thereon but the mere addition of the words agent or executor is not sufficient to free him from liability [§ 26 (1)]. An agent will be personally liable to third persons on his drawing endorsing or accepting unless he either signs his principal's name only or expressly states in writing his ministerial character and that he signs only in that character, "unless he states upon the face of the bill that he subscribes it for another unless he says plainly I am the mere scribe" *Leadbitter v. Farrow* 5 M. & S. 345. It would appear that the mere addition of the words agent (or executor) is not sufficient to relieve the maker of liability. He must expressly decline personal responsibility.

In Ceylon the customary law has to some extent superseded the above provisions of the Bills of Exchange Act with regard to transactions where an agent of a chetty firm signs as drawer endorser or acceptor or maker of a bill of exchange or note. In such cases where the agent prefixes to his name the vilasam of the firm to which he belongs, instead of his own patronymics, it would appear that in view of a longstanding custom among the chetty traders who have come from India such agent is deemed to pledge the credit of the firm; and that the firm is liable on the instrument.

The earliest instance of a recognition of such custom is by a judgment of the Supreme Court dated 11th October 1866 in the case of *R. M. P. A. Serukan Chetty v. K. R. C. Colapan Chetty*.¹ The judgment of the Supreme Court was couched in the following very guarded language: "It was proved in this case to be a wellknown commercial custom for chetties like Palaneappa Chetty when employed by persons on the coast like the defendant, to sign promissory notes for their principals and to do so by a peculiar form of signature. It seems reasonable to consider that when the defendant employed Palaneappa Chetty to act for him he employed and authorized him to act for him in the customary manner. The form in which the note was signed is proved to be the form in which the chetty would properly sign when acting for principal." It is uncertain as to what law regulated the relation of principal and agent at the time when this judgment was pronounced, but on the 24th of December 1866 was passed the Ordinance No. 22 of 1866. By this Ordinance it was enacted that "in all questions or issues which may hereafter arise or which may have to be decided in this Colony with respect to the law of principals and agents the law to be administered shall be the same as would be administered in England in the like case at the corresponding period if such question or issue had arisen or had to be decided in England unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted." This Ordinance, says Lawrie J. in *The Bank of Madras v. Ana Rana Suna Veyana Rana Weerappa Chetty*² "put the agents of the Chetty firms in the same position as the agents of other merchants and the law to be applied to their dealings became the law of England; in which the local custom formerly recognized and tolerated had no place." But the local custom has proved itself to be too strong to be supplanted by the Ordinance.

1. Ramanathan 1863-68 p. 69.

2. 7 S. C. C. 89 (1885).²

However in the case of *K. N. P. Letchuman Chetty vs. K. N. P. Periacarpen Chetty*³ where it was sought to apply this customary law in order to fix the principal with liability on a promissory note signed by the agent with the firm's vilasam as his initials, the District Judge expressed the opinion that the promissory note being signed by the agent in his own name and not in the name of his principal, would only bind the person who had actually signed it. In appeal the Supreme Court did not go into this question but affirmed the judgment on other grounds. The decision in *R. M. P. A. Kowagan Chetty vs. K. R. C. Kolapan Chetty*⁴ was cited in the case. But Cayley C. J. said "It is unnecessary in the present case to consider the general question decided by the Supreme Court in the case cited; for the authority of Ramasamy to bind the defendant must be determined by the express provisions of the power of attorney."

In 1880 Mr. Berwick, D. J., held in the case of *K. M. M. S. T. Walagappa Chetty vs. V. R. M. S. Supramanian Chetty*⁵ that an agent was not personally liable in a note signed by him with the principal's initials because the plaintiff had notice that the defendant had endorsed in his representative character.

And he went on to say: "Nor do I by any means intend to go back in any respect from the remarks made in D. C. Colombo 76376 *K. N. P. Letchiman Chetty vs. K. P. N. Periacarpen Chetty*⁶ on the powerlessness of any native usage to detract from the operation of the English law of Bills and Promissory notes so as to make a principal invariably liable simply by force of such usage on a note signed by an agent in the manner of the ones in suit. But I would observe that this mode of representing agency is one which certainly ought to be discouraged as much as possible in commercial transactions simply because as at present advised it has no efficiency excepting as against such individuals as happen to know the fact in respect to a maker or endorser's actual name." In appeal this judgment was affirmed by the Supreme Court. With the exception of the above two judgments in which the local custom was not the pivotal point on which the case turned, the Supreme Court has been consistent in its recognition of the Chetty usage.

In *Pettechy Chetty vs. Mohammado Usoof*⁷ a full bench consisting of De Wet A. C. J., Clarence & Dias, J. J., held

3. 2 S. C. C. 193 (1878).

4. Ram. 1863-68 p. 209 (1866).

5. 4 S. C. C. 91 (1881).

6. 2 S. C. C. 193 (1897).

7. 6. N. L. R. 125 (19th April; 1883.)

that where the defendant gave a promissory note to Pene Lena Venanthirthan Chetty who was the agent of the firm of Pe Le, he was liable on the note to Pe Le Muthia Chetty who succeeded Venanthirthan as the agent of the firm. In *The Bank of Madras v Sidamberam Chetty*⁸ Burnside, C. J., said that in order to bind a chetty firm by an endorsement on a promissory note of the initials of that firm it must appear that such was the usual partnership signature under which the firm traded or that the signature was affixed by a member of the partnership having authority to make it and with the intention of making it the signature of the firm.

The decision in *Pettachy Chetty vs. Usoof* does not seem to have been brought to the notice of the full Court in *The Bank of Madras vs. Ana Runa Suna Veyenna Runa Weerappa Chetty*⁹ where the plaintiffs as endorser of certain promissory notes sued the defendant, a Chetty, averring that the notes had been endorsed by his agent A. Ru Su Vee Ra Muthuramen Chetty. The defendant denied the authority of Muthuramen Chetty to endorse on his behalf. Evidence was adduced at the trial that the defendant was the principal of the Coast Chetty firm A. Ru Suna Vee. Rana and that Muthuramen Chetty was his Colombo agent. The defendant was in India when the note was endorsed by Muthuramen. It was held that the evidence established the agency and that the defendant was liable on the notes. In *Meyappa Chetty vs. Usoof*¹⁰ it was held by Bonser C. J., that according to the custom of chetty traders R. M. M. S. T. Meyappa Chetty means that Meyappa is the agent of the firm of R. M. M. S. T. In *R. M. M. S. T. Meyappa Chetty vs. A. M. Chittambalam*¹¹ Bonser, C. J., and Wendt, J., held that where a plaintiff in suing prefixes certain initials to his name, the Court will presume that he is the agent of the firm indicated by such initials.

The cases of *Kanappa Chetty vs. Welathappa Chetty*¹² and *Letcheman Chetty vs. Tambyah Summogam*¹³ also followed the above decisions.

It is not Coast Chetty firms alone that trade under a vilasam. Many native as well as Indian Tamils (other than Chetties) and Coast Moormen carry on business under vilasams through agents. The history of the

8. 6 S. C. C. 153 (August 1883.)

9. 75 C. C. 89 (1885.)

10. 5 N. L. R. 265 (1902.)

11. 2 Br. 394 (1902.)

12. 7 N. L. R. 339 (1903.)

13. 8 N. L. R. 121, 1 Bal. 114 (1903.)

vilasam regarding the latter class of traders is as follows. The head of the firm leaves his own country emigrates to a foreign place and settles down in business. At the start his business is carried on by him alone. In course of time he succeeds in making a small fortune and then he finds that he cannot stand the strain of a foreign climate throughout a great part of the year. Thereupon he hastens to engage the services of subordinates to one of whom he entrusts the management of his business and returns to his country making only periodical visits to examine the business. The agent or manager continues the business in the name of his master and takes his initials as the vilasam of the business. In such cases it is an open question whether the custom recognized in Coast Chetty firms would find application.

In the case of *Panavan Chetty vs. Usan Saibo* the defendant was sued as the administrator of the estate of one Meeyenna Kawanna Dawoodu Kannu Saibo who the plaintiff alleged made the note through his attorney Jana Mohammado Kanne Saibo. The note was signed thus "Meeyenna Kawanna Dawoodu Kannu Saibo through his attorney Jana Mohammado Kannu Saibo." The defendant contended that the signature did not bind his intestate but the attorney personally. The D. J. held that the defendant as administrator of Dawoodu Kannu Saibo was liable, but the Supreme Court by a full bench order reversed the judgment of the District Court and sent the case back for evidence on the issue viz. "Is that signature in the form usually adopted in similar circumstances in Ceylon by an attorney in executing an instrument in the name of his principal?"

From this case one may draw the reasonable inference that the Supreme Court would consider any customary usage prevailing among traders who are not Chetties regarding the signature by an agent of his own name prefixed by a vilasam.

J. J.



The Bar Council Rules 1901.

I. The GENERAL COUNCIL of the advocates of Ceylon, as constituted by these Regulations, is hereinafter referred to as "THE COUNCIL."

II. The Council shall be the accredited representative of the advocates of Ceylon, and its duty shall be, subject to resolutions of General and Special Meetings of the advocates hereinafter provided for, to deal with all matters affecting the profession, and to take such action thereon as may be deemed expedient.

III. The Council shall consist of :—

(1.) The Attorney-General and the Solicitor-General.

(2) Twelve practising advocates not permanently or temporarily employed under Government [hereinafter referred to as the Elected Members] to be elected by the whole body of advocates.

IV. The Council shall have power to appoint as Additional Members such advocates in actual practice, not exceeding 2 in number, as the Council may consider it desirable to appoint. The members so appointed shall go out of office at the time appointed for the close of the election next following appointment.

V. The Council shall be deemed duly constituted notwithstanding any vacancy in the number of members elected or appointed as aforesaid.

VI. Of the elected members, not less than 4 shall, if available, be advocates of at least ten years' practice at the time appointed for the close of the election.

VII. The elected members and additional members if any, appointed under Rule IV. shall remain in office until the time appointed for the close of a fresh election. They shall then go out of office, and elected members going out of office shall be eligible for re-election.

ELECTIONS.

VIII. The time of the election for 1901 shall be in the month of June next on such day or days as shall be by notice appointed by the Attorney-General; and the time of the annual election thereafter shall be fixed by the Council, and shall be held as soon as possible after the Annual General Meeting of the advocates.

IX. Every advocate shall be entitled to vote, and voting papers shall, as far as practicable, be sent by the Secretary to all advocates resident in Ceylon whose

addresses are known to him or can be conveniently ascertained by him.

X. Every advocate desirous of voting shall return his voting paper to the Secretary having filled in the names, to the number to be elected, of the advocates for whom he votes, four at least of whom shall be advocates who at the time appointed for the close of the election shall have been at least ten years in practice, and the Attorney-General or the Council, as the case may be, shall, having regard to Rules VI. and XII., declare to be elected the required number of candidates in whose favour the largest number of votes has been recorded.

XI. Voting papers not filled up in accordance with these Regulations shall be void.

XII. The Attorney-General for the year 1901, and the Council thereafter shall make Regulations for the conduct of the election, and in the case of an equality of votes shall determine respectively which of the candidates shall be deemed to be elected.

XIII. Casual vacancies which may occur among the elected members may be filled up by the Council, and the person filling a vacancy shall go out of office as if he had been elected instead of and at the same time as the person whose place he fills.

POWERS OF THE COUNCIL.

XIV. The Council shall carry into effect the purposes for which it is constituted as before mentioned, in such manner as it may determine. The Council may appoint an Executive Committee and such Sub-Committees as it may think fit, and may from time to time delegate to any such Committee or Sub-Committee any of the powers or duties of the Council as to the Council may seem desirable.

XV. The Council shall have power to appoint a Secretary, Treasurer, and assistant officers, and servants as may be necessary with or without salaries. The officers necessary for the purposes of the election of 1901 shall be appointed by the Attorney-General.

XVI. The funds received by the Council shall be at its disposal for the payment of such salaries and other expenses as the Council may incur in prosecuting the objects for which it is constituted.

XVII. The quorum of the Council shall be seven.

XVIII. The Council shall have power to make bye-laws regulating the elections, and the proceedings at their

meetings generally for the purpose of carrying these regulations into effect, and from time to time to alter such bye-laws.

XIX. The decision of the Council as to the mode in which effect is to be given to these regulations or any question of construction or fact arising under these regulations shall be conclusive.

ANNUAL GENERAL MEETING OF THE ADVOCATES.

XX. The Annual General Meeting of the advocates shall be held (subject, if necessary, to the permission of the Chief Justice) in the Law Library at 4 p. m. on the first Monday of the month of July each year, but the Council shall have power to alter the date and place of the Annual General Meeting. Any Special General Meeting of advocates shall be called at any time by the Council on a written requisition therefor signed by any ten advocates; and the Council may, at any time, of its own accord, call any such Special General Meeting. At such General and Special Meetings and at all meetings of the Council the Attorney-General or, in his absence, the Solicitor-General or, in their absence, the senior Advocate among the members of the Council present, or, if no members of the Council be present, the senior advocate present shall preside.

XXI. The Council shall submit its accounts to the Annual General Meeting with a statement of the proceedings of the past year, and a record of the attendance of the elected members of the Council at its meetings.

XXII. Any advocate shall be at liberty to bring forward for discussion at the Annual General Meeting or any Special General Meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the Council not less than fourteen clear days before the day of meeting.

XXIII. Notice of the Annual General Meeting and every Special General Meeting shall be given in writing by the Secretary to each advocate not less than 10 clear days before the day of meeting, and such notice shall state briefly the matters to be brought before such meeting.

XXIV. For the purpose of meeting the expenses necessary to give effect to these regulations, every advocate in actual practice in Ceylon shall pay to the Treasurer of the Council in the month of June each year, commencing from June 1901, an annual subscription of Rs. 10. Any advocate making default may, after due

notice to him, be declared by the Council to have forfeited all rights under the regulations including the right to take part in the proceedings of the meetings of the Council and of all General and Special Meetings of advocates convened under these Regulations. The Council may, however, on such terms as to it may seem proper restore to such advocate such rights as aforesaid.



Special General Meeting of Advocates.

A Special General Meeting of Advocates will be held in the Colombo Law Library, on Thursday, December 8th, 1910, at 4 p. m. to take such steps as may be deemed necessary in view of the fact that the elected members of the General Council of Advocates have tendered their resignation to the Attorney-General and that there are no provisions in the rules for the election of a new Council.

At the meeting the Hon'ble the Acting Attorney-General will move.

“That the meeting do consider the question of amending the Rules as hereunder”

Rule 2. By substituting the words “Annual General” for the words “General” and “Special” in lines 3 and 4.

Rule 3. Para 2 : By substituting the words “ten” for the word “twelve” in line, and by deleting the words “or temporarily” in the same line.

By deleting Rule 4.

Rule 5. By deleting the words “or appointed” in line 3.

Rule 7. By deleting the words “an additional member if any appointed under Rule IV” in lines 1 and 2 and by adding the following proviso: “Provided however that an elected member shall be entitled to tender at any time his resignation to the Attorney-General and on its being accepted by the Attorney-General he shall cease to be a member of the Council.”

Rule 8 By adding the words “or the Attorney-General” in line 5.

Rule 9. By inserting the words “or other person specially appointed for the purpose by the Council or the

Attorney-General," immediately after the word "Secretary" in line 3.

Rule 10. By inserting the words "or such other person as aforesaid" immediately after the word "Secretary" in line 2 and by deleting the words "as the case may be" in line 8 and by adding the following proviso: "Provided that if in the number so elected is included an Advocate temporarily acting as Attorney General or Solicitor-General, the candidate with the next larger number of votes shall also be declared elected to serve as a member of the Council until the advocate acting as Attorney-General or Solicitor-General is relieved of his duties as such and in the event of there being no candidate with any votes left another advocate shall be duly elected as aforesaid."

Rule 12. By inserting the words "or the Attorney-General" immediately after the word "Council" in line 2.

Rule 13. By substituting the words "election as provided for in these rules" for the words the "Council" in line 3.

Rule 17. By substituting the word "five" for the word "seven".

Rule 20. By deleting the words "subject if necessary to the permission of the Chief Justice" in lines 2 and 3.

By inserting the words "or the Attorney-General" immediately after the words "Council" in line 5.

By deleting the words "any special meeting and general meeting" in lines 8 and 13.

By deleting the words "and special" in line 13.

Rule 22. By deleting the words "or any special general meeting" in line 3.

By substituting the words "seven" for the word "fourteen" in line 6.

Rule 23. By deleting the words "and every special general meeting" in line 2.

By adding the following rule to be numbered 25.

Rule 25. The powers conferred on the Attorney-General in rules 8, 9, 10, 12 and 20 shall be exercised only in the event of neglect or refusal on the part of the other members of the Council to act by assembling so as to form a quorum or when by reason of vacancies created by resignation or otherwise or of inability for any cause whatsoever to attend, a sufficient number of members cannot assemble so as to form a quorum.