

1896.
December 4.
1897.
January 22.

CARIMJEE JAFFERJEE v. SEBO.

D. C., Galle, 2,734.

Signature by agent—Liability of principal—Words of description—Bills of Exchange Act, ss. 23 and 90.

Gira, who was empowered by Sebo “to sign and grant promissory notes regarding her trade in her name and for her,” signed a promissory note as follows :—“Sebo’s attorney Gira.”

Held by LAWRIE and WITHEBS, J.J., *dissentiente* BONSER, C.J., that Sebo was liable on the note, there being sufficient indication that the note was signed by Gira as Sebo’s attorney.

THE facts sufficiently appear in the judgment of BONSER, C.J.

Sampayo, for defendant, appellant.

Dornhorst, for plaintiff, respondent.

Cur. adv. vult.

22nd January, 1897. BONSER, C.J.—

In this case I have the misfortune to differ from the rest of the Court. The question to be decided is, whether the defendant Pattiniyadurage Sebo, who is sued as P. S. Sebo, is liable on a promissory note which was made by one Gira. It appears that the defendant, who is a widow carrying on business of a general shopkeeper in Galle, duly appointed Gira to manage the business for her, and empowered him to sign and grant “promissory notes regarding the transactions of the aforesaid trade in my name and for me.” Gira made and gave to the plaintiff on the 1st March, 1894, the note now sued on, which (so far as is material) was in the following words and figures :—

“On the 1st day of April, 1894, I, the undersigned, promise to pay to Carimjee Jafferjee, Esq., or order, at the Mercantile Bank, Galle, and not elsewhere, the sum of Rupees *Four hundred and fifty and Cents ninety-eight only*, currency, for value received.”

The words and figures in *italics* are in writing, the rest is printed. The signature of the maker is in Sinhalese, and being translated is “P. S. Sebo’s attorney Gira.” Now, according to Ordinance No. 5 of 1852, section 2, the instrument is to be construed as if it had been made in England. We must therefore apply to it the provisions of “The Bills of Exchange Act, 1882,” and the question is, whether the defendant would be liable on a note in this form made in England.

This question is quite distinct from the question whether the defendant is liable for debts contracted by her attorney Gira.

Now, in order that a person should be liable as the maker of a promissory note, it is necessary that the note "should be signed by him as such maker" (section 23). It is not necessary that he "should sign with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority" (section 90).

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But it must bear his signature. Nor is it necessary in all cases that the name which is signed should be his own proper name. It may be a trade name, or a name assumed generally or for one particular occasion only (section 23 (1)).

For instance, Smith may have assumed the name of "Robinson," either generally or for trade purposes only, and if he signs a promissory note with the name "Robinson," either with his own hand or by the hand of his agent, he will be liable just as if he had signed his own proper name. So, if from caprice or for some other reason, he signs a promissory note with the name "Robinson" on one occasion only his liability is undoubted. Again, where a firm name is signed that signature is equivalent to the signatures of all the individual partners (section 23 (2)), and there would seem to be no doubt that a person may sign by affixing a mark. But, except in the cases just referred to, the signature must be the maker's own proper name.

It was argued that the signature in this case should be read as "P. S. Sebo by her attorney Gira." If this be so *cadit questio*. But that is paraphrase, not translation.

The question is not what Gira meant, but what he has actually written. It seems to me that the case comes within the express words of section 26 (1).

Gira signed as maker, and I read the rest of the signature as being "the mere addition of words describing him as an agent." I do not see how clause (2) of that section can apply, for, whether this signature be determined to be the signature of Gira or of the defendant, in either case the note is valid. The name of the maker does not occur in the body of the instrument. Had the note run thus: "I, the undersigned, P. S. Sebo, promise," &c., that clause might possibly have applied.

I am of opinion that the defendant is not liable on this note as maker, because, to use the words of the Act, "she has not signed it as such."

The power of attorney only authorized Gira to sign notes in the defendant's name. So that, unless the note is made in her own proper name it is not within the authority.

The order of the Court will be, in accordance with the opinions of my brethren, that the appeal be dismissed with costs.

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LAWRIE, J.—

I read the signature on the promissory note to be “ P. S. Sebo by
“ her attorney Gira.” Therefore I am for affirming the judgment.

WITHERS, J.—

There can be no doubt as to the law on the point. It is the application of the law to the particular circumstances which has to be considered. An agent who signs a promissory note for a principal does so either by simply writing his principal's name or by writing that and his own name as well. If the principal's name does not appear at all in the body of the note or signature the principal cannot be bound. Section 23 read with section 89 of the Bills of Exchange Act declares this to be the law: “ No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such.”

Then, section 26 of that Act enacts that “ if a person signs a bill as drawer and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon, but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.”

It becomes, therefore, a question of fact, does the note before us bear Sebo's signature by procuration? The signature is in Sinhalese, and we are informed that the literal translation word for word is “ Sebo's attorney Gira.” But is this the exact equivalent in English? What is the true sense? Are the words “ Sebo's attorney Gira ” simply descriptive of Gira and marking him from others of that name, or do they signify that Gira signed on Sebo's behalf? We know that at the time of the making of the note Gira was the duly appointed manager of Sebo's trade business, and that in that capacity he held a power of attorney authorizing him to sign and grant promissory notes in Sebo's name and for Sebo. The Bills of Exchange Act, section 26 (2), directs that in deciding whether a signature on a bill is that of the principal or that of the agent in whose hand it is written, the construction most favourable to the validity of the note shall be adopted.

If Gira, according to the true sense of the signature, is not liable as agent, the note is in peril of becoming a dead letter.

But as Sebo's name is on the note, if Gira's subscription sufficiently expresses that he subscribed for Sebo, as I think it does, the construction to be adopted is that it is Sebo's note.

Verba sunt ita intelligenda ut res magis valeat quam pereat. I am for affirming the judgment in consequence.