MUTTIAH CHETTY *v.* KARUPAIYA KANKANI.

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D. C., Kandy, 14,376.

Principal and agent—Authority of one of two agents appointed by power of attorney to carry on the business of the principal—Validity of promissory note signed by one agent.

Where an authority is given to two or more persons to do an act, the act is valid to bind the principal only when all of them concur in doing it, for the authority is construed strictly, and the power is construed to be joint and not several.

It makes no difference to the rule that the words in the power named A B and C D, " my true and lawful attorney and attorneys." Therefore a promissory note endorsed by only A B, under such a power, does not bind the principal.

ACTION on a promissory note made by one Arumugam in favour of Karupaiya Kankani, the defendant, who endorsed the same to the plaintiff.

On the back of the note appeared the following endorsement:—" *Per pro* V. E. K. R. Karupaiya Kankani; Suppiah. "

It appeared that Karupaiya Kankani, being about to leave the Island, signed a power of attorney in the following terms:—" I do hereby constitute and appoint V. E. K. R. Vellasamy and V. E. K. R. Suppiah my true and lawful attorney and attorneys in Ceylon during my absence therefrom, to act for me and on my behalf for all and each and every or any of the following purposes: ..... to purchase for me any estates or lands which my said attorneys shall think fit and proper .....; to invest the moneys which belong to me upon such security as my said attorneys shall consider good and sufficient .....; to sign, make, and endorse and accept bills of exchange and promissory notes, and perform all things whatsoever which my attorneys may think necessary concerning my business, lands, houses, debts, or affairs as fully and effectually as I myself could do, it being my intent that all matters respecting the same shall be under the full management of my said attorneys. "

As Suppiah was the only attorney of the defendant who endorsed over the note to the plaintiff, the issue agreed to at the trial was, whether the two persons appointed as attorneys were empowered to act jointly or severally.

The District Judge (Mr. J. H. de Saram) held as follows:—

" The appointment is of Vellasamy and Suppiah, ' my true and lawful attorney and attorneys; ' that is to say, each is appointed attorney separately and can act separately. The words relied on

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for the defendant, ' my said attorneys shall think fit and proper ' ..... ' my said attorneys shall consider good and sufficient '..... ' my said attorneys shall or may think necessary or proper to be done '.....will not control the effect of the operative part, which is the appointment. These words do not appear in the clause relating to promissory notes. The distinction in the wording supports the contention for the plaintiffs. I am of opinion that the appointment of the attorneys is joint and several. I give the plaintiff judgment as prayed. "

Defendant appealed.

Bawa, for appellant.

30th March, 1903. LAYARD, C.J.—

The plaintiff sued as holder of a promissory note made by one K. Arumukan in favour of the defendant. It was endorsed by one Suppiah purporting to act as attorney of the defendant, and delivered by him to the plaintiff. The defendant, on the 3rd April, 1900, by an instrument bearing that date, appointed two attorneys, one of whom was Suppiah, and gave them authority amongst other things to endorse promissory notes. The endorsement of the promissory note sued on by Suppiah is admitted. The contention for defendant is, that the endorsement did not bind the defendant, because Suppiah's co-attorney did not also sign the endorsement. The District Judge has decided that under the instrument dated the 3rd April Suppiah and his attorney were appointed jointly and severally the attorneys of the defendant, and that consequently Suppiah's endorsement bound the defendant. The defendant appeals, and contends that the construction put upon the power of attorney by the District Judge is erroneous, and that he is wrong in holding that Suppiah and his co-attorney Vellasamy were each empowered under it to act separately, and his counsel argues that they could only act jointly. As a general rule, where an authority is given to two or more persons to do an act, the act is valid to bind the principal only where all of them concur in doing it, for the authority is construed strictly, and the power is understood to be joint and not several. *Browne v. Andrew* (*18 L. J. Q. B. 153*) shows that, where an authority is given to more than one person, there must be express words before any smaller number than the whole number of the agents or attorneys appointed can act.

If, however, a power is given to three or four persons jointly and severally to act as they or any of them shall jointly and severally think proper, it has been construed that the power is given to all

or any of them to act as all, or any of them shall think proper. *Guthrie v. Armstrong* (*5 B. and Ald, 628*).

The District Judge in his judgment very properly holds that in construing the power of attorney the effect of the operative parts shall be given its full construction. When two persons are appointed to act jointly and severally the operative words in the ordinary form of power of attorney in general use runs as follows:—" I, the said A, do hereby appoint B and C and each of them jointly and severally my true and lawful attorney and attorneys, " &c. The important words " each of them " and " jointly and severally " are wanting in the instrument under consideration.

Still, it may be that the words used were intended to confer joint and several authority to Suppiah and Vellasamy to act for and on behalf of the defendant, so I will examine carefully the actual words used in the instrument under consideration. The words are " do hereby appoint V. E. K. R. Vellasamy and V. E. K. R. Suppiah of Ramboda my true and lawful attorney and attorneys. " The Judge says that this means each is appointed and can act separately. I do not agree with him, for it appears to me that if the words " and attorneys " had been left out, the general rule would apply, and both attorneys would have to concur, there being no express words that either of them could act alone as the defendant's attorney. The same rule of construction would apply if the words " attorney and " had been left out. I fail to see that when the two words " attorney " and " attorneys " are used conjunctively, any different construction can be placed on them than if they occurred separately. Reading the whole of the instrument, it is noticeable that the expression " attorneys " occurs five times in such contexts as " as my attorneys shall think fit," and in no case do the words run " as my attorney or either of them shall think fit." Further, the general power to manage, control, and direct the defendant's business is specially restricted to the attorneys jointly, for no express words occur enabling one of them to manage, control, and direct that business, and the general authority ratifying acts done under the power, before notice of the death of the defendant has reached the attorneys, is limited to acts done by the attorneys, and is not extended to an act done by one of them. Whether I look at the operative words of the instrument alone or the whole of the instrument, I come to the same conclusion, viz., that it contains no express words enabling one of the attorneys to act alone.

Since I wrote the above my attention has been drawn by Mr. Advocate H. J. C. Pereira (who appears for the respondent in another case on to-day's list, in which this Court has to decide as

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to the construction of a power of attorney similar to the one in this case) to the authority of *Lindsay v. The Oriental Bank Corporation* (*1 Lorenz, 108*), in which the Collective Court held that, when two persons were appointed " attorneys and attorney " to prosecute an action to a final determination, a petition of appeal which was signed by one only of them could not be received, as the use of the words " attorneys and attorney " restricted the attorneys to acting jointly, and did not authorize them to act separately. I am much indebted to Mr. Pereira for pointing out this previous decision of the Collective Court. Had it decided otherwise, I should have been bound to follow it. As, however, it concurs with the views above expressed by me, I have no hesitation in setting aside the judgment of the District Judge. The appellant is entitled to his costs in both Courts.

MONCREIFF, J.—

If the matter upon which this appeal hinges had been open for discussion I should have been disposed to entertain some doubts as to the correctness of the argument of the appellant. As, however, the matter has been dealt with by the Collective Court, we have no course but to assent to the order of the Chief Justice.

WENDT, J.—

I am of the same opinion. The rule laid down in *Story on Agency, section 42*, is that " where an authority is given to two or more persons to do an act, the act is valid to bind the principal only when all of them concur in doing it, for the authority is construed strictly and the power is understood to be joint and not several; " and the case of *Lindsay v. The Oriental Bank Corporation*, which has been cited today, establishes that it makes no difference to the rule that the words in the power named A B and C D " my true and lawful attorney and attorneys, " which is the form used in this case.