

1883.

April 19.

PETTACHI CHETTY v. MOHAMADO YUSOOF.

D. C., Colombo, No. 82,535.*

Principal and agent—Mercantile custom of Natukotta Chetties—Action by principals on bond granted to their agent—Meaning of "Pe. Le. Venaitirtan Chetty."

It is the custom among the Natukotta Chetties of South India who carry on trade in Ceylon to describe themselves by the names of the individuals who constitute the firm, and to prefix to each name the initial letters of the firm. Their agents, when signing for their principals, usually sign their own names, prefixing to them the initial letters of the firm for which they act. If an agent signs on his own account, he signs his own name and prefixes to it the initial letters of his own patronymic.

One Nu. Vu. Muttiah Chetty, having been appointed the agent of Pe. Le. Pettachi Chetty, Pe. Le. Periannan Chetty, Pe. Le. Sinnaiya Chetty, and Pe. Le. Narayanan Chetty of South India, came to Colombo and carried on their business, signing himself "Pe. Le. Muttiah Chetty."

Defendant, having had monetary dealings with Pe. Le. Muttiah Chetty, was informed by him that he was going to India, and that his principals would send out another agent.

Mu. A. Ru. Venaitirtan Chetty was appointed such agent, and when he arrived in Colombo defendant signed a bond in favour of "Pe. Le. Venaitirtan Chetty," and received several loans from him amounting to over Rs. 40,000.

Venaitirtan died at Colombo, and Muttiah, re-assuming the management of the firm of Pe. Le., put the bond given to Pe. Le. Venaitirtan Chetty in suit. He brought the suit in the name of the four principals who constituted the firm of Pe. Le.

Held, that the bond in question was not granted by the defendant to Venaitirtan Chetty in his private capacity, but to the firm of Pe. Le.

THIS was an appeal preferred by the defendant against a judgment condemning him to pay to the plaintiffs, Pe. Le. Pettachi Chetty, Pe. Le. Periannan Chetty, Pe. Le. Sinnaiya Chetty.

* Reported at the request of Mr. Browne, D.J. of Colombo.—Ed.

and Pe. Le. Narayanan Chetty, who were carrying on business in Colombo and other places under the name and style of " Pe. Le.," certain sums of money due upon certain promissory notes payable in terms of a bond which the defendant had signed in favour of one Pe. Le. Venaitirtan Chetty.

1883.
April 19.

The facts in detail appear in the judgments given below.

The case came on for argument before De Wet, A.C.J., Clarence, J., and Dias, J., on the 13th March, 1883.

Van Langenberg (with him *Brito and Dornhorst*), for defendant, appellants.

Grenier (with him *Seneviratne*), for plaintiffs, respondents.

Cur. adv. vult.

19th April, 1883. De Wet, A.C.J.—

This is an action upon a bond dated 19th December, 1878, whereby the defendant bound himself to retire or pay at maturity such promissory notes as should be discounted by plaintiffs under the terms and provisions of the bond. For the due payment of the notes so discounted certain properties mentioned in the bond were hypothecated. The plaintiffs now sue for the amount due upon the bond and for a decree declaring the property hypothecated executable.

The defendant admits the due execution of the bond, but alleges that the bond was executed by him in favour of Pe. Le. P. Chetty in his private capacity, and not as agent of the plaintiffs, and denies " that there is due and owing from defendant to plaintiffs the sum claimed in the libel. "

From the evidence adduced in the case it appears that, at a time anterior to the execution of the bond in question, the plaintiffs had traded together in rice and money-lending under the style and firm of " Pe. Le. " at Colombo, Jaffna, Arracan, and other places; and that while so trading one Muttiah acted as their agent in Colombo from 1875 to 1878. During this time he had certain money transactions with the defendant, and it is quite clear that in their money transactions defendant was well aware that Muttiah was acting for and on behalf of plaintiffs: On the 30th July, 1878, Muttiah left Colombo. About two days prior to his departure from Colombo, he (Muttiah) went to the defendant and informed him that he was going to leave, and that his principals Pe. Le. were going to send one Venaitirtan Chetty to Colombo to manage the affairs in his (Muttiah's) place, and that in the meantime one Arunasalam would attend to the business of the firm. It is important to observe that while Muttiah acted for his principals at Colombo he adopted the

1883.
April 19.
 DE WET,
 A.C.J.

name of the firm thus: " Pe. Le. Muttiah Chetty, " and while acting in his private business matters he signed his name thus: " Nu. Vu. Muttiah Chetty. " After his departure from Colombo he met his principals, and it was then arranged that Venaitirtan Chetty should proceed to Colombo and enter upon his duties as agent of plaintiffs for the purpose of trading and money-lending.

Before, however, leaving for Colombo the document produced in evidence marked H was written and signed by him in the presence of Muttiah and the plaintiffs. A translation of this document is as follows:—

" The document settling wages written on the 29th day of Thai of the Isuwen year at Madura. I shall, as paid servant, proceed without delay to the boutique of Pe. Le. at Colombo, and carried on by Pe. Le. Pettachi Chetty, Pe. Le. Periannan Chetty, Pe. Le. Sinnaiya Chetty, and Pe. Le. Narayanan Chetty, and shall take charge of the boutique and carry on the business of the aforesaid person, styling myself Pe. Le. Venaitirtan Chetty. And for so carrying on the business the aforesaid four persons shall pay me for a period of three years 950 pagodas, equal to Rs. 3,325, besides clothes and boarding, &c., which shall also be at the expense of the said four persons. The business and money which may be lent on mortgage bonds, promissory notes, and accounts and lands purchased by me at Colombo in the name of Pe. Le. Venaitirtan Chetty shall belong exclusively to my aforesaid four principals, and neither I nor my heirs shall in any manner have any claim to the said moneys, lands, or goods; or to any part thereof.

" To this effect,

(Signed) " Mu. A. Ru. Venaitirtan Chetty.

" Witness: Pe. Le. Muttiah Chetty. "

After the execution of this document the power marked R was handed to Venaitirtan Chetty. This document *ex facie* purports to be a power of attorney from the persons there stated to act for Pe. Le. Muttiah Chetty in his personal capacity, but, looking at the symbol of the firm Pe. Le., as it appears upon the document, and also looking at the surrounding circumstances connected with the document in question, I am clearly of opinion that in giving the power of attorney Muttiah gave the same as agent of the plaintiffs' firm, and therefore delegated his own functions as Colombo agent of that firm to the persons named, which delegation, it is proved, was subsequently ratified by the plaintiffs' firm. The power of attorney is that of Pe. Le. Muttiah Chetty in favour of Pe. Le. Venaitirtan Chetty and Pe. Le. Arunasalam Chetty, and Venaitirtan Chetty, at this time in very poor circumstances, subsequently

arrives in Colombo about the 19th February, 1878, and while acting for plaintiffs with full knowledge of such capacity the defendant executes the bond in question. It is again important to observe who are the parties to this bond: clearly, Mohamado Cassim Mohamado Usoof and Pe. Le. Venaitirtan Chetty.

1888.
April 19.
DE WET,
A.C.J.

After the execution of the bond large sums of money were advanced by the obligee to the obligor on the bond. In all eighteen promissory notes were made and endorsed by the defendant from dates ranging between the month of February, 1879, and 2nd August, 1879, and amounting to the sum of Rs. 41,771.18. These notes, plaintiffs allege, remain still unpaid.

Venaitirtan died at Colombo on 1st May, 1880. This fact was at once communicated to the plaintiffs' firm; and Muttiah was thereupon despatched to Colombo to look after the affairs of the firm. Upon his arrival at Colombo Arunasalam handed to him all papers and documents connected with Venaitirtan's agency. Amongst the documents so handed to Muttiah are the promissory notes produced at the trial of the case.

Plaintiffs maintain, and I consider rightly, that the defendant is indebted to them upon the amounts appearing upon the notes. Defendant, however, contends that the notes in question were made by him in favour of Venaitirtan in his private capacity, that these have been satisfied, and that those bearing his endorsement have still to be satisfied. Before any evidence was advanced at the trial defendant's counsel admitted " that the notes marked L 1 to L 18 (notes in question) are notes referred to in the answer as discounted for the defendant. " At the hearing of the case defendant produced a receipt, copy of which is as follows:—" 1880, April 13. I, Pe. Le. Venaitirtan Chetty, do write and give to Mohamado Cassim Mohamado Usoof this receipt from 1897, August, to 1880, April 13. I have received from him in full all money due to me on promissory notes signed by him as matter, and do give this receipt. Pe. Le. Venaitirtan Chetty."

In addition to the production of this piece of paper defendant says in his evidence, " I have not fully settled Venaitirtan's claim. " This is a somewhat vague statement, but the vagueness is cleared up by what he says in his petition of appeal, " that the appellant has discharged a large portion of the debt due on the bond. He retired, as they fell due, the promissory notes made by him, and he has still to pay the amounts of the promissory notes endorsed by him. "

Looking at the evidence for the defence, I must say I am not satisfied with the same, and that I consider the so-called receipt a spurious document. The promissory notes come from the

1863.
April 19.
 DE WIT,
 A.C.J.

possession of plaintiffs, made and endorsed in terms of the bond. No satisfactory reason has been given why these notes were also not returned to defendant upon payment made by him. There is also no endorsement upon the bond of any payments. Taking these facts in conjunction with the very strong evidence of both Muttiah and Arunasalam as to the money transactions between the defendant and plaintiffs' firm, I am of opinion that the appeal must be dismissed with all costs in this Court and in the Court below. I have looked at the proxy, and am of opinion that, taking into consideration the evidence and all the documents produced having reference thereto, it was a good and valid one, and empowered the proctor to act for and on behalf of the plaintiffs.

CLARENCE, J.—

This is an action on a bond, the plaintiffs on the record being four Chetties trading under the Tamil firm of "Pe. Le." By the bond, the making of which defendant admits, defendant covenanted with the obligor, who is described in the bond as Pe. Le. Venaitirtan Chetty, to retire at maturity such promissory notes as the obligor might thereafter discount for him. Plaintiffs' case is that Venaitirtan Chetty acted in taking the bond, and afterwards in discounting the notes, solely as the agent of the plaintiffs' firm. Defendant, on the other hand, contends that Venaitirtan acted on his own personal account merely, and that defendant dealt with him on that footing, and defendant denies all liability to plaintiffs.

Defendant also in his answer attempted to raise the point that the proctor who instituted the proceedings as proctor for the party plaintiffs had no authority to represent plaintiffs. That proctor's proxy was signed not by the four plaintiffs, but by one Ps. Le. Muttiah Chetty as their attorney. Defendant, therefore, had a perfect right, as soon as he was served with process in the action, to require proof of Muttiah's authority. That was not a matter for pleading. Defendant might have raised that point by moving to have the libel taken off the file. The District Judge, however, at the trial satisfied himself that Muttiah had authority to sign the proxy on behalf of plaintiffs, and I see no reason to differ from the District Judge. Nor do I see any reason to disapprove of the learned District Judge's finding that Venaitirtan acted in this matter throughout as the agent of plaintiffs' firm of Pe. Le. On the contrary, I have no doubt whatever that Venaitirtan, who is dead, and whose own patronymic initials were Mu. A. Ru., acted in the matter throughout, and

that to defendant's knowledge, as the agent of Pe. Le. It is in my opinion satisfactorily proved that the firm of Pe. Le., after Tamil Chetty fashion, appointed Mu. A. Muttiah as their agent or attorney in Colombo, and that Muttiah, after the same fashion, appointed Venaitirtan, signing himself duly in the instrument of appointment Pe. Le. Muttiah. I agree with the learned District Judge that the words "executors and administrators" in the bond sued on are a mere notary's blunder.

1883.
April 19.
CLARENCE,
J.

The learned District Judge also discredits the attempted defence of payment, and I am very far from being disposed to differ on that point either. I think that this appeal should be dismissed with costs.

Dias, J.—

I agree with the rest of the Court that this appeal should be dismissed. The question raised by the defendant is whether or not the bond sued on by the plaintiffs was a bond in their own favour. The plaintiff are members of a Chetty firm trading in Ceylon under the style 'Pe. Le.,' which are two letters of the Tamil alphabet. Those natives of the south coast of India who are usually known as Natukotta Chetties have been trading in Ceylon for a considerable time. The principals seldom or never come to the Island, and all their business transactions here were carried on through agents. The plaintiffs in this case seem to be persons of this character. These Chetty firms were described by the names of the individual partners, to which were prefixed the initial letters of the firm, as in this case "Pe. Le." These foreign principals, till up to a very late period, seldom or never granted powers of attorney to their Ceylon agents. But, probably finding the inconvenience to which their agents were put when they were obliged to appear in Courts in this Island, they seem to have adopted the plan of giving their Ceylon agents written authorities. The agents, when they were obliged to sign any document for their principals, always signed their own names, to which they prefixed the initial letters of the firm on whose behalf they acted; but when they signed on their own account, they signed their own names and prefixed thereto the initials of their own patronymics. This is a well-known practice among the Chetty traders of this Island, and has more than once been recognized by this Court (see 42,165, D.C., Colombo, decided in 1866, and referred to in 3 S. C. C. 137). At the date of this bond the plaintiffs' Ceylon agent was one Venaitirtan Chetty. Whether he had any patronymic or not, the evidence does not show. The bond is in favour of Pe. Le. Venaitirtan Chetty, which means a

1883. bond in favour of the plaintiffs represented by Venaitirtan Chetty.
April 19. Upon the evidence I have no hesitation in coming to the conclu-
DÍAS, J. sion that the money paid to the defendant was not Venaitirtan's
money, but the money of the plaintiffs, and the conclusion of
fact arrived at by the learned Judge is correct. I think the
appellant should pay the costs in both Courts.

