THE

NEW LAW REPORTS OF CEYLON.

VOLUME XXI.

Present: Bertram A.C.J. and De Sampayo J.

1918.

EVARTS *v.* CHELLAMMA.

105—D. C. Jaffna, 12,133.

Power of attorney—Deed executed by attorney on behalf of principal—Deed signed by attorney with his name.

Where a person executing a deed in pursuance of a power of attorney stated specifically in the body of the deed that he was acting as the attorney of the principal and signed the document with his own name, adding that he did so as the principal's attorney—

Held, that the power of attorney was substantially complied with, and that the deed was binding on the principal.

Sinnatamby v. Johnpulle [1] explained.

THE facts are set out in the judgment of the District Judge (Dr. P. E. Pieris):—

The plaintiff is the brother of the added party, and in 1885, by a power of attorney (copy P 2), constituted the added party his attorney, with express authority to, among other acts, "sell and dispose of . . . . . the said lands." In 1911 the attorney executed P 1, by which he purported to sell the entirety of certain lands referred to in the power of attorney. It is common ground that these lands belonged in equal shares to the plaintiff and to his brother. The first question I am asked to decide is whether the transfer as executed is effective to convey the interest of the plaintiff.

The deed is in Tamil. . . . . There is no question that Hall (the notary) knew Tamil, and took elaborate pains to set out in the attestation specially what exactly the deed was meant to be. There is nothing to show that he knew English, in which language the grantor signed the deed.

Omitting irrelevant portions, the translation of the deed runs as follows: "I, Alfred Chrysostom Evarts, attorney of Levi Smith Evarts, having been paid the sum of Rs. 425 the same having been accepted by me for myself and on his behalf, that is, on behalf of my principal, do hereby sell the property hereinbelow described.

[1] *(1914) 18 N. L. R. 245.*

1918.

Evarts v. Chellamma

"I do hereby declare that a portion of the above-mentioned land is inherited property of my brother, who has, by powers of attorney granted in my favour, conferred on me right as attorney in and over the same, and that the remaining portion belongs to me." . . . . . The deed further states that a copy of the power of attorney was attached. This deed was signed in English "A Chrys. Evarts for Levi S. Evarts. A. Chrys. Evarts." Then follows the Tamil attestation. Hall, the notary, is very careful, and says, "the grantor put his signature for himself personally and as the attorney of Levi Smith Evarts to the said deed by virtue of authority granted in the power of attorney . . . . . and as the personal act of the said Levi Smith Evarts and for him as his attorney."

So far as the Tamil notary was capable of drawing up the transfer, it was meant to be a transfer by the plaintiff acting through his attorney, and also by the party who was attorney acting on his personal behalf in respect of a separate share in which he was personally interested. Is there anything, then, in the English signature "A. Chrys. Evarts for Levi S. Evarts" which prevents it from being the act of Levi through his attorney?

The plaintiff argues that, under the decision in *Sinnatamby v. Johnpulle*,[1] this is not the act of Levi through his attorney. In that case the wording of the power was identical with what it is in the present case, viz., "to act for me and on my behalf and in my name or otherwise . . . . . , and also in my name and as my act and deed to sign . . . all deeds . . . . . necessary for giving effect . . . . to such sales . . . . . " There in the body of the deed the attorney described himself as attorney, but signed it in his personal name, without any qualification or any expression to show that he signed as attorney. It was held that the deed did not bind the principal.

The present case is quite different. Here the attorney has signed expressly "for Levi S. Evarts," and I think that by doing so he has satisfied the requirements of the power of attorney. In view of this finding, it is not necessary to go into the other issues raised. I hold that P 1 is operative to transfer the plaintiffs' interest, and his action is dismissed, with costs.

The deed in question was as follows:—

P 1.—Transfer No. 589.

Know all men by these presents that I, Dr. Alfred Chrysostom Evarts, presently of Chavakachcheri, attorney of Levi Smith Evarts, having been paid by Arumogam Paramaswamy, of Sandirippay, the sum of Rs. 425 only as price, the same having been accepted by me for myself and on his behalf, that is, on behalf of my principal, do hereby sell, transfer, and set over to the said Paramaswamy the property hereinbelow described, with all rights, title, and interests appertaining thereto. The properties are. . . . . .

I do hereby declare that a portion of the above-mentioned lands is inherited property of my brother, who has, by power of attorney bearing No. 875 dated September 29, 1885, attested by P. Kumaraswamy, Notary Public of Colombo, granted in my favour, conferred on me rights as attorney in and over the same, and that the remaining portion belongs to me by right of inheritance from my late father, Iyampillai

[1] *(1914) 18 N. L. R. 245.*

Kathereyelu, by virtue of transfer deeds No. 141 of December 20, 1853, attested by M. Amaralingam, Notary Public, and No. 88 dated June 20, 1865, attested by Sittampalam Suppramaniam, Notary Public, in favour of my said late father, and possession; that the above-mentioned Paramaswamy has conveyed to him perfect title to possess the said property for ever from this day forth; that the said lands are freeholds and free of encumbrance; that I have every right and authority to transfer the said property; that should any dispute arise concerning the lands, I hold myself responsible to settle it and give over (quiet possession); and that accordingly the above-mentioned deeds of sale are annexed hereto with endorsement caused to be made thereon, with copy of power of attorney and duplicate copy of the protocol.

This deed was executed, &c.

September 16, 1911. Signed, witnessed, and attested :

(In English) A. CHRYS EVARTS.
for LEVI S. EVARTS.
A. CHRYS. EVARTS.

Attestation.

The grantor put his signature for himself personally and as the attorney of Levi Smith Evarts to the said deed by virtue of authority granted in the power of attorney No. 875 of September 29, 1885, attested by P. Kumaraswamy, Notary Public of Colombo, and as the personal act of the said Levi Smith Evarts and for him as his attorney in my presence and in the presence of the said witnesses, at the Government hospital at Chavakachcheri, on this September 16, 1911, &c.

The power of attorney was as follows:—

P 2.—No. 875.

To all to whom these presents shall come, I, Levi Smith Evarts, of Jaffna, presently of Colombo, send greeting:—

. . . . . And whereas I am desirous of appointing some fit and proper person as my attorney to manage the said lands and premises situate in Jaffna:

Now know ye and these presents witness that I do hereby nominate, constitute, and appoint my brother, the said Alfred Chrysostom Evarts, my true and lawful attorney in Jaffna, to act for me and on my behalf and in my name or otherwise for all and each and every or any of the following purposes:—

1. To superintend, manage, and control the several lands and premises which I have inherited from my said parents, and to sell and dispose of or to mortgage and hypothecate the said lands and premises or to demise and lease the said lands and premises unto any person or persons, and to receive from them all moneys in respect of such mortgage or lease from time to time, and to give and grant unto him and them in my name receipts and discharges therefor, and also in my name and as my act and deed to sign, seal, execute, and deliver all deeds and other writings necessary for giving effect and validity to such sales, mortgages, leases, receipts, respectively, and to ask, demand, sue for, recover, and receive of and from any person or persons liable to pay the same all sums of money in respect of the said lands and premises, and on payment, &c.

September 29, 1885. Signed, witnessed, and attested.

1918.

Evarts v. Chellamma

Hayley (with him *Rutnam*), for the appellant.—The deed was not signed in the name of L. S. Evarts, but was signed by the agent with his own name thus: " A. Chrys. Evarts for Levi S. Evarts." It was held in *Sinnatamby v. Johnpulle* [1] that an agent holding a power of attorney like the power of attorney in this case must sign the name of his principal, and not his own name. Counsel referred to *Berkeley v. Hardy;*[2] *Fontin v. Small;*[3] *Story on Agency, 175,176.*

A. St. V. Jayawardene (with him *Balasingham*), for the respondents.—The recitals in the deed and the signature make it quite clear that A. Chrys. Evarts was signing on behalf of his principal. The technical English rules of conveyancing do not apply to Ceylon. Counsel cited *Halsbury's Laws of England, vol. I., Agency, article 365; Wilks v. Back;* [4] *Letchiman v. Peria Carpen Chetty;* [5] *Carimjee Jafferjee v. Sebo;* [6] *Leake 327.*

In *Sinnatamby v. Johnpulle* [1] the attorney signed his name, and there was nothing to show that he was signing as attorney.

June 17, 1918. BERTRAM A.C.J.—

The question for decision in this case is whether the deed of transfer executed by the second defendant, partly in his own name in respect of his own share and partly as agent of his brother in pursuance of a power of attorney, is, so far as it relates to the brother's share of the property, a good execution of the power. There appear to be other matters of controversy between the parties in connection with the matter. It is alleged, for example, by the second defendant that the brother's share of the property had, at some period or other, been donated to him. We are not required to go into this question. All that we have to determine is whether this is a good execution of a power of attorney.

There is no question that, strictly speaking, a person executing a deed in pursuance of a power of attorney ought to have the deed drawn up in the name of his principal as party, and ought to sign the deed with the name of the principal, adding the words " by his attorney, &c. " This is a strict compliance with the power of attorney. The question arises, however, whether such a power of attorney is not substantially complied with, if the attorney states specifically in the body of the deed that he is acting purely and simply as the attorney of the principal, and if he signs the document with his own name, adding that he does so as the principal's attorney. This, after all, is the way in which it would occur to a plain man to discharge his functions in pursuance of the authority accorded to him, and it would be most unfortunate in this country, where three languages are employed, and where documents have to

[1] *(1914) 18 N. L. R. 245.*
[2] *(1826) 5 B & C. 355.*
[3] *2 Strange 705.*
[4] *(1802) 2 East 142.*
[5] *(1879) 2 S. C. C. 193.*
[6] *(1896) 2 N. L. R. 286.*

be executed by notaries of a comparatively simple type in remote parts of the country, if the strict technicalities of English practice were applied to the deeds which they draw up.

To proceed to consider the authorities on the subject. There are several English authorities, going back to a fairly remote date. They have been summed up as follows in a recent text book, *Halsbury's Laws of England, Agency, Article 365:* "A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him." There is one case which is referred to in all discussions on the subject, namely, *Wilks v. Back*,[1] where the attorney, Mathias Wilks, acting on behalf of the principal, James Browne, in executing the deed, signed "for James Browne, Mathias Wilks." It was argued that he ought to have signed "James Browne, by his attorney Mathias Wilks." But this contention was rejected by the Court of King's Bench. Grose J. says: "Where is the difference between signing J. B. by M. W. his attorney, which must be admitted to be good, and M. W. for J. B.? In either case the act of sealing and delivering is done in the name of the principal and by his authority." Lawrence J. said: "Here the bond was executed by Wilks for and in the name of his principal, and this is distinctly shown by the manner of making the signature. . . . . There is no particular form of words requiring to be used provided the act was done in the name of the principal." In an Irish case, *M'Ardle v. Irish Iodine Co.*,[2] of which unfortunately we have only the headnote, the principle is laid down as follows: "A deed executed by A on behalf of B must, in order to bind B, be executed by A in the name of B, or by A in his own name with such words to show that he is acting solely as the agent of B in such execution." There is only one English case which is in the contrary direction, and that is the case of *Berkeley v. Hardy*.[3] In that case, which referred to a lease, the principal's name appeared throughout the body of the deed, but the deed was executed by the agent in his own name simply, without any reference to the fact that he was executing it as agent. It is not clear from the judgment on what precise grounds Lord Tenterdon based his decision. The decision may have been based upon the faulty execution of the deed, or it may have been based upon the other ground in the argument, that no person could validly execute a deed as attorney of another person unless his own appointment was also by deed, which was not the case here. What Lord Tenterdon said in deciding against the validity of the deed was that "we are left to decide upon those strict technical rules of law applicable to deeds under seal which, I believe, are peculiar to the law of England." It may be doubted, therefore, in any view of the facts, whether that decision should be

[1] *(1802) 2 East 142.* [2] *(1864) 15 Irish L. R. 146.*
[3] *(1826) 5 B. & C. 355.*

1918.

BERTRAM A.C.J.

Evarts v. Chellamma

followed as an authority in this Colony, and in any case it should be noted that on the facts in that case the deed was executed in the agent's name, without any reference to the principal.

These being the English authorities, we will now consider the local authorities. The first of these is *Carimjee Jafferjee v. Sebo.*[1] There the document was signed simply with the words " Sebo's attorney, Gira." The execution was held to be sufficient. The document was executed in Sinhalese, and the decision may have turned upon the question of the precise significance of the Sinhalese words used. The next case was *Letchiman v. Peria Carpen Chetty.*[2] That was a case of a promissory note. There the note was signed with the words " Kana Peri Ramaswamy." It was pointed out in the judgment that " the distinctive portion of the principal's name, that is, ' Peria Carpen,' did not form part of the subscription to the promissory note." It appears to be suggested that, had the distinctive portion of the principal's name formed part of the subscription to the promissory note, then the execution, even though it was an execution in the agent's name, might have been good.

The last case, and the one that has occasioned us most difficulty, is the case of *Sinnatamby v. Johnpulle.*[3] In that case the document, which was an agreement for a lease, in the body of the deed contained references to the fact that the person executing was acting as the attorney of the principal. But it was signed by the attorney's name alone, without any reference to the fact that he was executing it as attorney. In this respect it is parallel to the English case of *Berkeley v. Hardy,*[4] to which I have referred above. It may be noted about this case that it was not necessary for the decision of the case that the Court should determine whether or not the document was duly executed. The Court held that, in any case, the document was *ultra vires*, inasmuch as the substance of the deed was not within the authority accorded to the attorney. In his judgment the Chief Justice merely remarks that the District Judge found that the deed being executed by the agent in his own name did not bind the principal. He does not express any opinion as to what would constitute an execution of the deed in the name of the principal. At any rate, this case cannot be cited as an authority for the proposition that a deed signed by the attorney with his name, but expressly on behalf of the principal, is not a good execution of the power of attorney. It cannot be cited as an authority for that proposition, inasmuch as the deed there referred to was not executed in that manner.

The only real question we have to consider in this case is whether the case of *Sinnatamby v. Johnpulle* [3] is an authority which prevents us from applying what appears to be the substantial principle of the English authorities, apart from the case of *Berkeley v. Hardy.*[4] I

[1] *(1896) 2 N. L. R. 286.*
[2] *(1879) 2 S. C. C. 193.*
[3] *(1914) 18 N. L. R. 245.*
[4] *(1826) 5 B. & C. 355.*

do not myself read the judgment in that sense, and, as I have said before, I think it would be extremely unfortunate if we found ourselves driven to adopting technical rules in a matter of this description. So far as the facts of the case go, it is perfectly clear that the attorney intended to act purely as attorney, and the notary drew up the deed solely in order to enable him to act in that capacity. In substance there is no question that this was not a transfer intended to be made by the attorney by virtue of any interest of his own in the property, but that, so far as his brother's share was considered, he was acting simply as attorney on behalf of a principal. It is quite true that in one part of the deed there is a covenant in which the attorney ought to have covenanted on behalf of the principal, but in which he takes the responsibility of the covenant on himself. The covenant for quiet possession is in fact, a covenant by the attorney, pure and simple. But I do not think the fact that in this place of the deed he takes this responsibility upon himself detracts from the substantial nature of the instrument, which is an instrument executed on behalf of the principal.

In all the circumstances of the case I think the appeal should be dismissed, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.