

1931

*Present: Drieberg and Akbar JJ.*S. MOTY *et al.* v. KAYLAYAN CHETTY160—*D. C. Jaffna, 26,026.**Principal and agent—Authority to purchase goods—Holding out—Restriction of authority—Notice.*

An act done by an agent in the course of his employment, on behalf of the principal and within the apparent scope of his authority, binds the principal, unless the agent was, in fact, not authorized to do the particular act and the person dealing with him had notice that in doing such act he was exceeding his authority.

**A** PPEAL from a judgment of the District Judge of Jaffna.

*H. V. Perera*, for first defendant, appellant.

*F. A. Hayley, K.C.* (with him *Nadarajah* and *Chelvanayagam*), for plaintiff, respondent.

August 17, 1931. AKBAR J.—

In this action the plaintiff sued three defendants for the recovery of a sum of Rs. 2,906.65, being the value of goods supplied by him to the three defendants for the use of their shop at Chavakachcheri. The appellant in his answer denied that the other two defendants were his

partners and stated that he was not liable as the latter had no authority to pledge his credit. The parties went to trial on the following issues:—

- (1) Did plaintiff supply goods to the boutique of S. V. S. K. Kaylayan Chetty at Chavakachcheri ?
- (2) Are the second and third defendants partners of the S. V. S. K. firm ?
- (3) Even if the second and third defendants are not partners, is first defendant liable for goods supplied to second and third defendants ?

The District Judge held against the first defendant in a long judgment, the purport of which seems to be that, although the second and third defendants were not partners, yet the first defendant was liable, because he held out the second and third defendants as agents, who were authorized to buy goods. It is argued by Mr. Perera for the appellant that the evidence falls short of this finding. The Kanakkapillai of the plaintiff's firm stated in evidence that his firm supplied goods to the boutique at Chavakachcheri which admittedly belonged to the first defendant, at the request of the first defendant. If this evidence is believed then, of course, there will be an end to the case for the appellant. Unfortunately, the District Judge has not held on this ground. It must, therefore, be assumed that he did not believe the statement of the Kanakkapillai. Now it is admitted by the first defendant that this boutique at Chavakachcheri belonged to him and that the second and third defendants were employees under him. But he added that although this was the arrangement for the first few months, the second and third defendants complained to him that the profits were not enough and asked him for his permission to purchase their supplies direct from outside sellers without getting them through the Jaffna branch of the first defendant's business. He stated further that he gave them this permission, but with the reservation that they were to pay cash. He allowed, therefore, the second and third defendants more liberty than was usually accorded to employees, because they had to manage the whole business and this business was to be carried on under his Vilasam, which was exhibited on a signboard over the shop. The accounts were to be looked into at the end of three years and the profits were then to be divided. Mr. Perera argued that the second and third defendants were not authorized to pledge the first defendant's credit when making these purchases as they were only to make cash purchases. The plaintiff put in evidence three documents, namely, P 12, P 13, and P 14, which are three promissory notes signed by the second defendant, but backed by the first defendant and his son. These are all notes negotiated in Colombo and the evidence points to the fact that they were moneys needed for the purchase of supplies for the Chavakachcheri boutique. So that on the first defendant's own admission, the second and the third defendants were given authority to carry on the business at Chavakachcheri under the Vilasam of the first defendant; they were to purchase direct, and the first defendant even helped them to raise money for the purchase of supplies. I cannot see how, in these circumstances, the first defendant can now plead that his agents, whom he allowed to carry on the business of cloth merchants at Chavakachcheri, under

his Vilasam, were not authorized to enter into the ordinary contracts, which such a business would require to be entered into from time to time for the purchase of the necessary supplies for the carrying on of the business. It will be noticed that the third issue is framed in very wide terms and as no objection was taken to that issue, it was competent for the Court to decide against the first defendant and hold that he was liable inasmuch as he held out that the second and third defendants had the necessary authority to make the purchases. Mr. Perera further argued that inasmuch as the plaintiff had a claim against the appellant for the sum of Rs. 416 odd in respect of the Colombo branch of the appellant's business and inasmuch as the plaintiff had refused to supply any further goods, this was evidence that the plaintiff supplied the goods to the Chavakachcheri branch to the second and third defendants personally and not on account of the first defendant. But there is hardly any evidence to support his contention. The account P 1 filed with the plaint shows that the last item of cloth supplied by the plaintiff to the Chavakachcheri branch was on October 13, 1929. The first defendant in his evidence stated that it was just before Deepavali, 1929, or October, 1929, that the plaintiff refused to supply goods to his Jaffna branch. So that the refusal by the plaintiff to supply goods, both to the Jaffna branch and Chavakachcheri branch, was about the same time, namely, October, 1929. Mr. Perera referred to a letter, I D 3, as supporting his argument; but that letter is only a request for the payment of the balance money due from the Colombo branch and asking for further orders for goods. The statement of accounts between the Chavakachcheri branch and the Jaffna branch of the first defendant's firm, I D 4, supports the argument of Mr. Hayley that there was a gradual falling off of cloth supplied by the first defendant from the Jaffna branch to the Chavakachcheri branch during the years 1928 and 1929, which in turn shows that, when the first defendant stated in his evidence that by the new arrangement he gave permission to the second and third defendants to purchase their supply direct, he must have known that the ordinary course of business would undoubtedly require goods being bought on credit. The secret reservation that the first defendant stated he made when he authorized the second and third defendants to manage his business at Chavakachcheri cannot bind outside vendors dealing with the Chavakachcheri branch in good faith. This case, therefore, falls within the principle of law stated in Article 80 of *Bowstead on Agency*, i.e., every act done by an agent in the course of his employment on behalf of the principal and within the apparent scope of his authority binds the principal, unless the agent was in fact not authorized to do the particular act and the person dealing with him had notice that in doing such act he was exceeding his authority. The case cited in the judgment of the Supreme Court, namely, *Velauthanpillai v. Harmanis Appu*<sup>1</sup>, supports this contention. In an action brought in the District Court of Jaffna, the second and third defendants filed a plaint claiming the release of the seizure effected on the goods of this same boutique at the instance of the first defendant in that case, on a judgment, which that first defendant had obtained against the appellant. That action

<sup>1</sup> 7 *The Times of Ceylon Law Reports* 155.

was dismissed as against the second and third defendants in this case and the goods seized were ordered to be sold. The second and third defendants failed in that action, because they could not establish a partnership between them and the appellant, but that decree is evidence that the goods seized were recognized as the property of the appellant in this case. In my opinion the judgment of the District Judge was right but not for all the reasons given by him. The appeal must be dismissed with costs.

*Appeal dismissed.*

