

1970 *Present*: H. N. G. Fernando, C.J., and Thamotheram, J.

L. J. PEIRIS & CO. LTD., Appellant, *and* L. C. H. PEIRIS,
Respondent.

S. C. 97/67 (Inty.)—D. C. Kalutara, 1172/L.

Incorporated Company—Proxy granted by it to a Proctor—Question who is entitled to grant it on behalf of Company—Civil Procedure Code, s. 27—Companies Ordinance, s. 34 (1).

Where the proxy filed on behalf of a Company incorporated under the Companies Ordinance bore the seal of the Company and the signature of one Director—

Held, that the proxy was valid and duly signed within the meaning of section 27 of the Civil Procedure Code. "The Court in this connection is not concerned with the validity of the appointment of the Proctor as the Company's agent but with certainty that the Proctor had the authority of his client to do what he is permitted to do under section 27 of the Civil Procedure Code."

APPEAL from an order of the District Court, Kalutara.

C. Ranganathan, Q.C., with *B. Bodinagoda* and *L. W. Athulathmudali*,
for the plaintiff-appellant.

H. W. Jayewardene, Q.C., with *Ben Eliyatamby* and *W. S. Weerasooria*,
for the defendant-respondent.

Cur. adv. vult.

December 18, 1970. THAMOTHERAM, J.—

The Plaintiff-Appellant a Company incorporated under the Companies Ordinance, instituted this action in the District Court of Kalutara for a declaration of title to a property which, it was claimed, was gifted to the Company by Lokukankanago John Peiris and accepted on its behalf by the Defendant who, at the time, was its solo Director.

The Defendant-Respondent denied these averments and prayed for the dismissal of the action.

When the case was taken up for Trial the learned counsel for the Defendant submitted to Court that the proxy filed by the Plaintiff was defective, and that the Plaintiff's action should be dismissed.

The Plaintiff filed a fresh proxy as directed by Court. The objection to the original proxy was, thereafter, considered and the learned judge rejected it, holding that it did not conform to the requirements of Section 27 of the Civil Procedure Code. He further held that it was not open to the Plaintiff-Appellant to rectify the original proxy as the Plaintiff-Appellant was not properly before Court at the time of the institution of the action. He rejected the fresh proxy as well.

The original proxy bore the seal of the Company and the signature of one Director. The fresh proxy bore the seal of the Company and the signatures of two Directors as required by the Companies Ordinance in cases where the seal was required to be affixed.

The learned District Judge was right when he said "The relationship of a Proctor and client may well be a contract of agency but there is no law requiring that the contract should be in writing. A proxy is a writing given by a suitor to Court authorising the Proctor to act on his behalf. It does not contain the terms of the contract between the suitor and the Proctor. That contract is a distinct one and has nothing to do with the proxy which is an authority granted by virtue of that contract."

The learned judge however, misdirected himself when he said "In this case we are not concerned with the procedure of filing a proxy but with the substantive question who is entitled to grant a proxy on behalf of a Company."

The real question to my mind is . . . had the Proctor the authority of his client, i.e. the Company, to institute the action and otherwise do what Section 27 of the Civil Procedure Code enables a person having such

authority to do? The question is not who can act on behalf of the Company, but has the Company given the required authority in writing. Section 34 sub-section 1 of the Companies Ordinance states "a document or proceeding requiring authentication by a Company may be signed by a Director, Secretary, or other authorised officer of the Company, and need not be under its common seal". "Authenticate" means "to establish the truth of, to establish the authority of, make valid". This is all that is required for the purpose of a valid proxy.

Section 27 of the Civil Procedure Code reads "the appointment of a Proctor to make any appearance or application or do any act as aforesaid shall be in writing signed by the client, and shall be filed in Court". This is a procedural requirement which must be satisfied to enable a Proctor to act on behalf of his client. This is not a provision of Law that requires a contract of agency between a Proctor and his client to be in writing. The questions that arise for consideration are (1) is there a contract of agency between the Proctor and his client? No writing is required to establish this. (2) Is there a writing appointing a client's Proctor giving him authority to act on the client's behalf for the purposes mentioned in Section 27 of the Civil Procedure Code? (3) Is this writing signed by the client?

Stroud's Judicial Dictionary, vol. 4, p. 2783 states under heading "signed" "signature" "speaking generally a signature is the writing or otherwise affixing a person's name or a mark to represent his name by himself or by his authority (*R. v. Kent Justice*¹) with the intention of authenticating a document as being that of or binding on the person whose name or mark is so written or affixed. In *Morton v. Copeland*² Maule J. said "signature does not necessarily mean writing a person's Christian and surname, but any mark which identifies it, as the act of the party", but the reporter adds in a note "provided it being proved or admitted to be genuine and be the accustomed mode of signature of the party".

The original proxy in this case was in writing and purported to be signed by the Proctor's client, the Company. The question for the decision of the Court was whether in fact it was signed by him by whom it was purported to be signed. It is here that Section 34, sub section 1, of the Companies Act has relevance. The Court in this connection is not concerned with the validity of the appointment of the Proctor as the

¹ *L. R. 8 Q. B. 305.*

² *16 C. B. 535.*

Company's agent but with certainty that the Proctor had the authority of his client to do what he is permitted to do under Section 27 of the Civil Procedure Code.

I am of the view that the original proxy is good. The judgment and orders of the learned District Judge are set aside. The Plaintiff-Appellant should be permitted to proceed on the basis of the original proxy. The Plaintiff is entitled to costs in both Courts.

H. N. G. FERNANDO, C.J.—I agree.

Appeal allowed.