1961 *Present :* **Sansoni, J., and L. B. de Silva, J.**

P. C. MEYAPPAN and others, Appellants, *and* K. S. MANCHANAYAKE, Respondent

S. C. 315—D. C. Colombo, 36277/M

Cheques—Partnership—Signature by rubber stamp—Validity—Bills of Exchange Ordinance (Cap. 68), ss. 2, 23, 92 (1)—Evidence Ordinance, s. 67—Civil Procedure Code, ss. 5, 155 et seq.—Interpretation Ordinance (Cap. 2), s. 2 (q).

When a cheque is required to be signed by a partnership, the affixing of a rubber stamp which merely bears the name of the firm is not a valid signature unless there is added to the name so stamped a signature of a person verifying the so-called signature to show that it was placed there with the authority of the firm.

The 2nd, 3rd and 4th defendants were partners carrying on business in the name of Nirchalananthan Co. Four cheques drawn by the 1st defendant payable to bearer were indorsed with a rubber stamp which merely bore the name Nirchalananthan Co. This name was indorsed with a rubber stamp on the back of each cheque by the cashier of the firm, on the instructions of the 2nd defendant, before the cheques were delivered to the plaintiff by the 2nd defendant.

Held, that the mere stamping of the firm's name was not a sufficient signature within the meaning of section 92 (1) of the Bills of Exchange Ordinance for the purpose of rendering the firm liable as indorsers.

"If the signature of a partnership is required, one of the partners should write the name of his firm with his own hand, or it should be written by hand by a duly authorised agent. A so-called signing by stamping the name of the firm without anything to verify it, as in the present case, is no signing at all."

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *M. Markhani*, *N. R. M. Daluwatte* and *D. S. Wijewardene*, for 2nd and 3rd Defendants-Appellants.

C. Ranganathan, with *M. Shanmugalingam* and *K. Palakidnar*, for Plaintiff-Respondent.

Cur. adv. vult.

March 10, 1961. SANSONI, J.—

This is an appeal by the 2nd and 3rd defendants, who, with the 4th defendant, are partners carrying on business in the name of Nirchalananthan Co. Judgment was entered against them on four cheques which were drawn by the 1st defendant payable to bearer and

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endorsed with a rubber stamp which bore the name Nirchalananthan Co. This name was stamped on the back of each cheque by the cashier of the firm, on the instructions of the 2nd defendant, before the cheques were given to the plaintiff. The question for decision is whether the 2nd and 3rd defendants as partners are liable on these cheques.

The learned District Judge considered that Section 92 (1) of the Bills of Exchange Ordinance Cap. 68 had not been complied with, as the stamping of the firm's name was not a signature within the meaning of that section. But he held that the 2nd and 3rd defendants were, nevertheless, liable because the cheques had been delivered to the plaintiff by the 2nd defendant. The latter finding has not, quite correctly, been supported by counsel for the plaintiff in view of section 23 which provides that no person is liable as drawer, endorser or acceptor of a bill who has not signed it as such. The only question for decision now is whether the learned Judge was correct when he held that the mere stamping of the firm's name is not a sufficient signature for the purposes of rendering the firm liable.

Mr. Jayewardene for the appellants relied strongly on section 67 of the Evidence Ordinance which reads : " If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting." He argued that under this section a document cannot be said to be signed unless the signature is written by hand. He also relied on section 155 and other sections in Chapter 19 of the Civil Procedure Code which deal with the admission of documents in evidence, and referred us to the definition of the word " signed " in section 2 (*q*) of the Interpretation Ordinance, Cap. 2 which reads : " ' sign ', with its grammatical variations and cognate expressions, shall with reference to a person who is unable to write his name, include ' mark ' with its grammatical variations and cognate expressions." His argument based on these provisions was, in short, that a document cannot be said to be signed unless the signing is written by hand. I do not think these statutory provisions go as far as Mr. Jayewardene urged. The Evidence Ordinance and the Civil Procedure Code in the sections quoted do not lay down how documents should be *executed :* they merely deal with the question of how a document which has been signed by hand may be *proved ;* and according to those provisions, where a document is alleged to have been signed or written by the hand of a person, a witness called to prove the genuineness of that document must be able to identify the handwriting on the document as the handwriting of that person. There is no question that a document can be signed with a mark, for both section 2 (q) of the Interpretation Ordinance and section 5 of the Civil Procedure Code define the word " sign " as including " mark ", when the person making the mark is unable to write : in such a case, in order to prove due execution, the making of the mark by that person must be proved.

I come back to the point as to the meaning of the words " sign " and " signature " in section 92 (1). Some recent decisions of the Court of Appeal in England were cited to us, and the first case I should like to refer to is *Goodman v. J. Eban Ltd.*[1]. Under the Solicitors' Act, 1932, a solicitor's bill of costs had to be signed by the solicitor, or the letter accompanying it had to be so signed. It was held in that case that where the signature of the solicitor consisted of a facsimile of his handwriting affixed by means of a rubber stamp, the Act had been complied with. Evershed M.R. who, with Romer L.J., came to this conclusion followed earlier cases such as *Bennett v. Brumfitt*[2] and *Jenkins v. Gaisford & Thring*[3]. They were cases dealing not with the Bills of Exchange Act, but other Acts which required signing, where it was held that a facsimile of a person's ordinary signature stamped on a document was a sufficient signing. But Evershed M.R. expressly reserved his opinion on the question " whether the same result would follow if the ' signature ' impressed by the stamp was not a facsimile representation of the solicitor's handwriting, but a mere typed or printed representation of his name or the name of his firm ", " for," he said, " it would not appear to carry the same warrant of authenticity." On this point, he referred to the decision in *Regina v. Cowper*[4], where the Divisional Court held that a lithographed representation of a solicitor's name is not a signature by him. Romer L.J. was prepared to go further than Evershed M.R. and quoted with approval the definition of " signed " and " signature " in Stroud's Judicial Dictionary, (3rd Edition) which says : " 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, with the intention of authenticating a document as being that of, or as binding on, a person whose name or mark is so written or affixed." But the judgment of Denning L.J. was uncompromisingly opposed to the word " sign " including the use of a rubber stamp with a facsimile signature in cases under the Solicitors' Act. He explained the earlier decisions by the nature of the particular documents under consideration and added : " Has anyone ever supposed that a man can sign a Bill of Exchange or a cheque by means of a rubber stamp ? Or that a man can execute or witness a transfer of shares in such a way ? " It would seem that while Evershed M.R. was prepared to grant validity to a facsimile representation of the solicitor's handwriting, he was not prepared to go as far as Romer L.J. in regard to the use of rubber stamps.

In the case of *London County Council v. Agricultural Food Products, Ltd.*,[5] decided in the following year, Denning L.J. said : " In the ordinary way when a formal document is required to be ' signed ' by a person it can only be done by that person himself writing his own name upon it, or affixing his own signature upon it with his own hand, see *Goodman*

[1] *(1954) 1 Q.B. 550.*
[2] *(1867) 3 C.P. 28.*
[3] *(1863) 3 Sw. and T. 93.*
[4] *(1890) 24 Q.B.D. 533.*
[5] *(1955) 2 Q.B. 218.*

v. J. Eban Ltd.[1] ; but there are some cases where a man is allowed to sign by the hand of another who writes his name for him. Such a signature is called a signature by procuration, by proxy, ' per pro ', or more shortly ' p.p' ". In that case a valuer's assistant signed the name of the valuer with his own hand, but without adding anything to show that it was a signature by proxy. It was held that it would be a good signature by the valuer, provided it was authorised by him. Two cases were followed in arriving at this decision—*Reg. v. Kent Justices*[2] and *France v. Dutton*[3]. In these cases a clerk had written the name of his employer with the latter's authority, but without adding anything to show that the signature was written by proxy, and the signature was held to be good. Denning L.J. said that section 91 (1) of the Bills of Exchange Act, 1882, which is the same as section 92 (1) of the Bills of Exchange Ordinance, proceeds on the same footing as those cases, and is a statutory recognition of the rule in *Reg. v. Kent Justices*[2].

The last case which I need refer to is *Lazarus Estates Ltd. v. Beasley*[4]. Certain documents issued by a company were stamped with a rubber stamp " Lazarus Estates Ltd." and Denning L. J. said this about them : " The statutory forms require the documents to be 'signed' by the landlord, but the only signature on these documents (if such it can be called) was a rubber stamp 'Lazarus Estates Ltd.' without anything to verify it. There was no signature of a Secretary or of any person at all on behalf of the company. There was nothing to indicate who affixed the rubber stamp. It has been held in this Court that a private person can sign a document by impressing a rubber stamp with his own facsimile signature on it : see *Goodman v. J. Eban Ltd.*[1], but it has not yet been held that a company can sign by its printed name affixed with a rubber stamp." It must be conceded that this expression of opinion was obiter, and the two Lords Justices who sat with Denning L. J. did not deal with this point, but I think the dictum has great persuasive weight on the point we have to decide in the present case.

While the opinion of Denning L. J. on the question of how a solicitor should sign a bill of costs has to be disregarded, I think that his views as to the validity of a so-called signature with a rubber stamp which merely bears the name of a firm find support in the opinion of Evershed M. R. already quoted. The correct view, I think, is that unless there is added to the name so stamped a signature of a person verifying the so-called signature to show that it was placed there with the authority of the firm, the document cannot be regarded as validly signed. No case has gone so far as to hold that the mere stamping of the name of a firm, be it a company or a partnership, on a document is a valid signature by that firm.

[1] *(1954) 1 Q. B. 550.*
[2] *(1873) 8 Q.B. 305.*
[3] *(1891) 2 Q.B. 208.*
[4] *(1956) 1 Q.B. 702.*

Mr. Ranganathan relied on the definition of " written " in section 2 of the Bills of Exchange Ordinance, which reads : " 'Written' includes printed, and 'writing' includes print." But section 2 starts with the words " In this Ordinance, unless the context otherwise requires . . . " There is a definition in similar terms in the Bills of Exchange Act, 1882, while section 20 of the Interpretation Act, 1889, enacts that in Acts of Parliament " expressions referring to writing shall, unless the contrary intention appears, be construed as including reference to printing, lithography, photography, and other modes of representing or reproducing words in a visible form." I do not think that this definition of the word " written " affects the meaning to be given to the words of section 92 (1) to the extent suggested by Mr. Ranganathan. I do not suppose that Denning L. J. overlooked these provisions of the English Acts when he expressed his views in the cases I have referred to. As a matter of language, giving the words their ordinary meaning, when a document is required to be signed, or when a person's signature is required on a document, the person's name should be written by hand with a pen or pencil. That was the view of Evershed M. R. and Denning L. J. in *Goodman v. J. Eban Ltd.*[1]. If the signature of a partnership is required, one of the partners should write the name of his firm with his own hand, or it should be written by hand by a duly authorised agent. A so-called signing by stamping the name of the firm without anything to verify it, as in the present case, is no signing at all.

We are being asked in this case by the plaintiffs to extend the meaning of the word " signed " to a limit which has never yet been reached, as far as I am aware, in any decided case. One must be careful not to introduce a new rule where one is dealing with documents to which the Bills of Exchange Ordinance applies, for, as is observed in Chalmers' Bills of Exchange (12th Edition) page 274 " Legal analogies must be applied with caution to bills which are the creation of custom, and where it is of the utmost importance that a clear title should appear on the face of the instrument." I doubt whether in the case of a bill of exchange even a facsimile reproduction of a person's signature would be sufficient, although it might be considered valid for the purposes of the Solicitors' Act and other Acts. The negotiability of such instruments as bills, notes and cheques would, I think, be seriously affected if the use of rubber stamps in the manner adopted in this case were to be countenanced.

I would accordingly hold that the endorsement in question is invalid, and allow the appeal of the 2nd and 3rd defendants with costs.

DE SILVA, J.—I agree.

Appeal allowed.

[1] *(1954), Q. B. 550.*