Present: Ennis J. and Shaw J.

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THE CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA, LTD., *v.* PALANIAPPA CHETTY *et al.*

501—D. C. Colombo, 45,463.

Chetty traders—Power of attorney by principal to agent—Agent signing his name with the principal's vilasam *prefixed.*

Muttiah Chetty was the agent of the firm M. M. P. L., of which defendant was a partner. The power of attorney recited that the principals were carrying on business under the name, &c., of M. M. P. L., and authorized Muttiah Chetty "to act for and on behalf and in the name of us and each of us . . . . . and of our said firm or otherwise." In an action on a promissory note signed by Muttiah Chetty with the initials of the firm annexed (M. M. P. L. Muttiah Chetty)—

Held, that the defendant (principal) was liable.

SHAW J.—Muttiah Chetty having been authorized by the power of attorney to sign in the name of the firm, he has properly done so by prefixing the *vilasam* to his name, and that signature binds the firm on the note.

THE plaintiff bank sued the defendants on the following promissory note:—

Rs. 16,000. Colombo, May 5, 1916.

On demand we, the undersigned, jointly and severally promise to pay to the order of the Chartered Bank of India, Australia, and China, at their office in Colombo, the sum of Rs. 16,000 for value received.

(Signed in Tamil) Mayna Moona Pana Lana Muttiah Chetty.
Moona Pana Lana Palaniappa Chetty.

The material parts of the plaint were as follows:—

1. The defendants are traders carrying on business in Colombo under the name, style, firm, or *vilasam* of Mayna Moona Pana Lana.

2. By their promissory note dated May 5, 1916, herewith filed, marked A, and pleaded as part of this plaint, the defendants and one M. P. L. Palaniappa Chetty, at Colombo, within the jurisdiction of this Court, jointly and severally promised to pay to the plaintiff bank on demand the sum of Rs. 16,000 at the office of the plaintiff bank in Colombo.

3. The said note was signed by Muttiah Chetty, the said Muttiah Chetty being at the date of the said note the agent in Colombo of the defendant, and, according to the well-established custom among Chetty traders, the name of the said Muttiah Chetty, with the initials of the defendants' firm prefixed thereto, was signed as one of the makers of the said note, to indicate that the said note was made and granted by the defendants.

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The plaintiffs relied on a power of attorney, the material portion of which is referred to in their Lordships' judgments. Five issues were framed at the trial, the one material to the present judgment being as follows:—

3. Did Muttiah Chetty sign the said note in the name and form authorized by the power of attorney in his favour?

The learned District Judge (Mr. L. M. Maartensz) held as follows:—

> The first defendant's contention on the third issue was that when a Chetty appointed an attorney by a written power of attorney, the attorney could not bind his principal unless he adopted the form of signature laid down by the text books. In other words, a Chetty agent appointed by a written power of attorney could not bind his principal by signing his own name and prefixing to it the *vilasam* of his principal, which is the custom of the Chetties.
>
> I am not prepared to accept this contention. The principle laid down that according to the custom of Chetties an agent may bind his principal by signing his own name with the *vilasam* of his principal prefixed thereto is not restricted to agents not appointed by a written power of attorney. I accordingly answer the third issue in the affirmative.

Judgment was entered against the first defendant as prayed for, and no order was made as regards the second defendant.

The first defendant appealed against the judgment.

Bawa, K.C. (with him *Tisseverasinghe*), for the appellant.—No person is liable as drawer, endorser, or acceptor of a bill who has not signed it as such. (Section 23, Bills of Exchange Act.) He may sign his own name or an assumed name or a firm name (*ibid.*). It is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person (section 91). It is immaterial by what hand the signature is attached, provided there be authority to sign, express or implied; but it must be the principal's signature, and not the agent's; and when the authority is express, it must be strictly construed. (*Carimjee Jafferjee v. Sebo*,[1] *Sinnatamby v. Johnpulle*,[2] *Muttu Caruppen Chetty v. Karuppen Kangany*,[3] *Attwood v. Manning*,[4] *Story on Agency 171.*)

It is common ground that in this case the defendants did not sign the note. The plaintiff's case is that the firm name of the defendants was attached to the note by Muttiah Chetty, an agent having express authority under a power of attorney to attach that name. Our case is that the signature is not the signature of the principals or of their firm by the hand of the agent Muttiah Chetty, but that it is that of the agent himself, or at the most his signature, naming the firm of the principals. This form of signature was clearly not authorized by the power of attorney, and the defendants are not

[1] *(1896) 2 N. L. R. 286.*
[2] *(1914) 18 N. L. R. 245.*
[3] *(1903) 6 N. L. R. 306.*
[4] *7 B. & C. 278.*

therefore liable. The agent cannot make the principals liable by signing in any other form, or to a greater extent than he is authorized by the power of attorney. (*Letchiman Chetty v. Peria Caruppen Chetty*,[1] affirming a judgment of Berwick D.J. in No. 76,376—D. C. Colombo.) A so-called "well-established custom among Chetty traders, according to which the signing by Muttiah Chetty of his own name with the initials of the defendants' firm prefixed thereto indicates that the said note was made and granted by the defendants, is pleaded by the plaintiff, and found to exist by the District Judge. The first of the cases in which this principle is laid down is *Sevugan Chetty v. Colappan Chetty*.[3] Berwick D.J., whose judgment was affirmed by the Supreme Court (*2 S. C. C. 193*), doubted the soundness of this decision, and thought that the decision turned on the "commercial usage of Chetties employed by persons on the Coast (whereby not the usage of Ceylon, but of India was meant). *Letchiman Chetty v. Peria Caruppen Chetty*,[1] already referred to, is entirely in my favour. This was a case entirely on all fours with the present. The agent, authorized by a power of attorney, there, as here, signed his own name, with the initials of the defendants' firm prefixed thereto. The Supreme Court held as follows: "The authority of Ramasamy Chetty (the agent) to bind the defendants must be determined by the express provisions of the power of attorney; and their power of attorney clearly did not authorize Ramasamy Chetty to bind the defendant by signing the note in his (Ramasamy's) name The authority of this case has not been affected by the other cases that followed it. They are: *The Bank of Madras v. Weerappa Chetty*, reported at different stages in *3 S. C. C. 136*, *4 S. C. C. 69*, and *7 S. C. C. 89*; *Walaayappa Chetty v. Supperamanian Chetty*,[3] *The Bank of Madras v. Sidemberam Chetty*,[4] *Meyappa Chetty v. Usoof*,[5] *Pettachi Chetty v. Yoosuf*,[6] *Kanappa Chetty v. Walathappa*,[7] *Letchimanan Chetty v. Sanmugam*.[8]

These decisions no doubt in effect held that a Chetty who signs his own name with the initials of his principal prefixed thereto binds his principal, but subject to certain important provisos, some of which are: (*a*) that the agent should have authority to bind his principal; (*b*) that the person signing should know that the initials did not represent the patronymic name of the person signing, but those of some person or persons who traded under the style of these initials; (*c*) that the signature was affixed by the agent with the intention of making it the signature of the firm.

In the first place, even if such a custom exists, it does not apply to a case where, as here, there is an express power in writing which alone must govern the matter (*Letchiman Chetty v. Peria Caruppen*

[1] *(1879) 2 S. C. C. 193.*
[2] *Ram. (1863-68) 209.*
[3] *(1881) 4 S. C. C. 91.*
[4] *(1883) 6 S. C. C. 153*
[5] *(1902) 5 N. L. R. 265* and *2 Browne 394.*
[6] *(1883) 6 N. L. R. 152* and *4 Bal. 156.*
[7] *(1903) 7 N. L. R. 339.*
[8] *(1903) 8 N. L. R. 121* and *1 Bal. 114.*

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Chetty (supra), Carimjee Jafferjee v. Sebo (supra). In the second place, the facts necessary to bring the custom into operation have not been proved in this case.

The custom itself is bad and vicious, and should not be given effect to. If the cases cited cannot be distinguished, I submit they should be reconsidered by a properly constituted Bench. Berwick D.J. has in his two judgments given good and sufficient reasons for not recognizing such a custom, not the least of them being that under the English law, which is our law on the subject, such a signature would not bind any person but the actual writer of it. Bills circulate throughout the world, and it is of the utmost importance that a clear title should appear on the face of the instrument. Being assignable and passing by mere endorsement, it is necessary that the parties to it should appear on the writing, for it is on the credit of the names appearing on it that it obtains circulation. It is for these qualities and on these considerations that it is distinguished from other contracts in writing. This signature on the face of it is ambiguous. The initials may be simply designative; for the agent so signing can, and ordinarily does, bind himself personally. (*Walaayappa Chetty v. Supperamanian Chetty (supra), Letchiman Chetty v. Sanmugam (supra), Sockalingam Chetty v. Cassim,*[1] *Muttu Caruppen Chetty v. Hamid,*[2] *Jeewunjee v. Muttiah Chetty,* 121—D. C. (Inty.) Colombo, 44,538, S. C. No. 26, October, 1916, since reported, *3 C. L. R. 220, Leadbitter v. Farrow,*[3] *Courtauld v. Saunders.*[4]) Or they may denote agency among Natucottai Chetties, and for this purpose certain facts have to be proved. It is intolerable that a usage peculiar to a mere fraction of the merchants or traders in Ceylon should be permitted to over-ride the law of Bills of Exchange, a law of international importance.

Even among this class of Chetties it has been held that in this case of deeds such a custom cannot be given effect to; that is, if a land is conveyed to M. M. P. L. Muttiah Chetty without any further description of agency, it has been held that the title to that land vests in Muttiah Chetty, and not in the firm of M. M. P. L., although the former was the agent of the firm of M. M. P. L. at the time, and purchased the land as such agent. (*Somasunderam Chetty v. Arunasalem Chetty,*[5] *Letchimanan Chetty v. Kannu Wappu.*[6]) Further, if the signature is that of the agent Muttiah Chetty, even if he made the note and received the money for his principals, they cannot be sued on the note, for bills form an exception to the general rule that evidence is admissible to charge undisclosed principals. (*Chalmers' Bills of Exchange 67, under s. 23; Dicey, Parties to Action 135.*)

The principal may be liable on the consideration, though not liable on the instrument.

[1] *(1910) 2 Cur. L. R. 206, 4 Leader 65.*
[2] *(1910) 2 Cur. L. R. 210.*
[3] *(1816) 5 M. & S., at 349.*
[4] *(1867) 16 L. T. N. S. 562.*
[5] *(1914) 17 N. L. R. 257.*
[6] *1 C. W. R. 155.*

Drieberg (with him *F. M. de Saram*), for respondent, relied on the cases cited by appellant, and contended they applied to the present case, and could not be distinguished. The Court was bound by the judgments, and the Courts have been consistently acting on this principle since 1866, and it is too late to unsettle it now. The plaintiff bank had knowledge of Muttiah Chetty's agency and the initials of the defendants' firm, as the power of attorney had been registered at the office of the plaintiff bank. If necessary, the case may be remitted to the Court below for any further evidence to be led on these points. The signature M. M. P. L. Muttiah Chetty, according to the series of decisions cited, means the firm of " M. M. P. L., by their attorney Muttiah Chetty " . It is common ground that the defendants were carrying on business under the firm, style, and *vilasam* of " M. M. P. L.," and that Muttiah Chetty was authorized to sign the firm name " M. M. P. L.," which the said Muttiah Chetty had signed in the form of signature adopted by him.

Cur. adv. vult.

March 13, 1917. ENNIS J.—

In this case the plaintiff sued the defendant-appellant on a promissory note for Rs. 16,000. The note was signed M. M. P. L. Muttiah Chetty and M. P. L. Palaniappa Chetty. M. P. L. Palaniappa Chetty is not a party to this case. The defendants were the partners in the firm of M. M. P. L., and Muttiah Chetty held their power of attorney, which authorized him " to act for and on behalf and in the name of us and each of us and of the survivors or survivor of us and of our said firm or otherwise."

The power contained a recital that the defendants were carrying on business " under the name, style, firm, or *vilasam* of Mayna Moona Pana Lana or M. M. P. L."

The second defendant died before the note sued upon was made. Judgment was given against the first defendant, who appeals.

The only point urged on the appeal was whether the note had been signed in the name and form authorized by the power of attorney (the third issue).

In the case of *Meyappa Chetty v. Usoof*,[1] Bonser C.J. said: " There are various cases in the *Supreme Court Circular* from which it appears that a custom has been proved as regards Chetty traders and firms, and that the Courts will take judicial notice of that custom, which is thus stated by Cayley C.J. in the case of *The Bank of Madras v. Weerappa Chetty*;[2] it is an equally well-known, and I may say invariable, custom for Chetties carrying on business in connection with India to carry it on under the designation of certain Tamil initial letters. Sometimes these initials represents a

[1] *(1902) 5 N. L. R. 265.*

[2] *(1881) 4 S. C. C. 69.*

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firm, sometimes an individual carrying on business without partners, as a single trader in England often styles himself in his business transactions as " So and So and Co."

In the case of *Somasunderam Chetty v. Arunasalem Chetty*,[1] Lascelles C.J. said: " It is true that our Courts have frequently recognized the custom of Natucottai Chetties trading in Ceylon with regard to signing commercial documents. The firm has a *vilasam* or trade style, consisting usually of the initials of the persons who constitute the firm, and an agent signing in Ceylon on behalf of his firm usually prefixes these initials to his own name. Examples of the recognition of this practice with regard to commercial documents may be found in *Sevugan Chetty v. Colopan Chetty*,[2] *Letchiman Chetty v. Peria Carpen Chetty*,[3] *The Bank of Madras v. Virappa Chetty*,[4] *Walaayappa Chetty v. Supperamaniam Chetty*,[5] *The Bank of Madras v. Weerappa Chetty*,[6] and in other cases. But there is no case which goes the length of holding that a conveyance of immovable property to a Chetty with the initials of the firm prefixed to his name vests title in the firm or in the persons constituting the firm."

In that case it was held that the attorney held the property in trust for the firm.

No question as to the authority of Muttiah Chetty to sign for his principals, or his intention to sign for them when executing the note, has been raised in the case; the question is merely whether he signed in the form authorized in the power of attorney. On this point there is not only the custom of Chetty firms, but the express terms of the power. The custom was fully discussed in the case of *The Bank of Madras v. Virappa Chetty*,[4] which came before the Supreme Court on several occasions, and twice before a Full Bench of three Judges. (*3 S. C. C. 136, 4 S. C. C. 69, 7 S. C. C. 89.*) Judicial notice has since been taken of the custom. As to the terms of the power of attorney, the firm, style, or *vilasam* is expressly mentioned as M. M. P. L., and the attorney is expressly authorized to sign in the name of the said firm or otherwise. Muttiah Chetty has signed M. M. P. L. and added his own name. On the issues in the case it seems to me the learned District Judge is right in giving judgment for the plaintiff. On appeal, however, it was argued that Muttiah Chetty by adding his own name to the firm *vilasam* bound himself and that only one person could be bound by the signature on a note. The case of *Leadbitter v. Farrow* [7] was cited. That case is certainly an authority for the proposition that the agent may be responsible, if it be not clear that he has signed as agent only; but I am not satisfied that it is a sufficient authority for the proposition that the principal is not liable.

[1] *(1914) 17 N. L. R. 257.*
[2] *Ram. (1863-68) 209.*
[3] *(1879) 2 S. C. C. 193.*
[4] *(1880) 3 S. C. C. 136.*
[5] *(1881) 4 S. C. C. 91.*
[6] *7 S. C. C. 89.*
[7] *(1816) 5 M. & S. 349.*

In the present case the note having been signed on the authority of the defendant with the intention of binding the defendant, and with the firm name, the name of the agent having been added in accordance with the Chetty custom, the principal, in my opinion, cannot deny his responsibility. It is suggested that an action might lie against him for the consideration and not on the note, but the policy of the Code of Civil Procedure is to prevent multiplicity of actions (sections 33, 34, and 36), and I can see no reason to interfere on appeal when, on the admissions implied in the issues and proof of the authority, no further evidence would be required to bind the principal.

I would dismiss the appeal, with costs.

SHAW J.—

This action was brought to recover from two Indian Coast Chetties, Palaniappa Chetty and Narayanan Chetty, carrying on business under the *vilasam* of Mayna Moona Pana Lana, the sum of Rs. 16,000 and interest due on a promissory note dated May 5, 1916.

The note is signed " M. M. P. L. Muttiah Chetty " and " M. P. L. Palaniappa Chetty."

This M. P. L. Palaniappa Chetty is not the Palaniappa Chetty who was a member of the firm of Mayna Moona Pana Lana, and if such a person exists at all, which does not appear in the proceedings in the case, he has not been sued by the plaintiffs on the note.

Muttiah Chetty was, however, admittedly the agent and attorney in Colombo of the firm of Mayna Moona Pana Lana, appointed by the partners of the firm of Palaniappa Chetty and Narayanan Chetty by power of attorney dated December 16, 1911.

Narayanan Chetty is proved to have died in December, 1915, prior to the making of the note, and the District Judge has given judgment against the surviving partner Palaniappa Chetty, holding that Muttiah Chetty had signed the note on behalf of the firm and as authorized by the power of attorney. From this judgment Palaniappa Chetty appeals.

The defence raised at the trial and in the notice of appeal that Muttiah Chetty's agency was determined by the death of Narayanan Chetty was not persisted in at the appeal, and the only question for our determination is whether Muttiah Chetty's signature on the note is a signature as agent for the firm of M. M. P. L., and whether it is in the form authorized by the power of attorney.

The power of attorney recites that Palaniappa Chetty and Narayanan Chetty are carrying on business in the Island of Ceylon " under the name, style, firm, or *vilasam* of Mayna Moona Pana Lana, or M. M. P. L., " and proceeds to appoint Muttiah Chetty " to be the attorneys and attorney of us and each of us and the survivors and survivor of us and of our said firm, to act for and on behalf and in the name or names of us and each of us and the survivors and

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survivor of us, and of our said firm or otherwise, for all and each and every or any of the following purposes, that is to say: To make, draw, endorse, accept, and discount bills of exchange, promissory notes, cheques, drafts, and orders for money."

The sections of the Bills of Exchange Act, 1882, which also apply to promissory notes that have special bearing on the case, are the following:—

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such; provided that—

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for and on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Although an ordinary contract, entered into by an agent for an undisclosed principal, is binding on the principal when discovered, and he can be sued upon it, the same rule does not apply to bills of exchange and promissory notes. For, subject to the qualification that the name of the firm is equivalent to the names of all the persons liable as partners in it, no person whose name is not on a bill or note is liable to be sued on it (*Lindley on Partnership, 7th edition, page 209*). In order, therefore, that a bill or note may bind the firm, it is necessary that it should be signed in the name of the firm, or in the names of all the partners, by some one who is authorized so to sign. Thus, it is not sufficient to bind Jones & Co. that an agent should sign "Agent for Jones & Co."; but it must be clear that he signs Jones & Co.'s name on their behalf as agent. Where a note was signed by A, B, and C, "Director of the X. Co.," it was held to be the personal note of the persons who signed it (*Courtauld v. Saunders*[1]). As Lord Ellenborough said in *Leadbitter v. Farrow*,[2] "is it not an universal rule that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it for another, or by procuration of another, which are words of exclusion. Unless he says plainly, 'I am the mere scribe,' he becomes liable."

In the present case Muttiah Chetty, who signed the note, was authorized under the power of attorney to sign notes in the name of

[1] *(1867) 16 L. T. N. S. 562.* [2] *(1816) 5 M. & S. 349.*

the firm of M. M. P. L. It is the custom of Indian Chetties, who carry on an extensive business in Ceylon, financing traders and doing a large business here in bills and notes, to carry on their businesses under certain initial letters, which are affixed to the names of the partners and other authorized agents. This custom has been proved and recognized in numerous cases, of which I will mention *Sivugan Chetty v. Colopan Chetty*,[1] *Letchiman Chetty v. Peria Carpen Chetty*,[2] *The Bank of Madras v. Weerappa Chetty*,[3] *Walaayappa Chetty v. Supperamanian Chetty*,[4] *The Bank of Madras v. Weerappa Chetty*,[5] *and Meyappa Chetty v. Usoof*.[6]

In the earliest case mentioned it was said that the signature by the agent Palaniappa Chetty, of the initials of the firm preceding his name, was the same as if he had written "Ka Ru Chu. by their attorney Palaniappa Chetty," and this statement has been adopted and approved in many of the subsequent cases.

I am of opinion therefore that in the present case Muttiah Chetty, having been authorized by the power of attorney to sign in the name of the firm, he has properly done so by prefixing the *vilasam* to his name, and that that signature binds the firm on the note.

We were referred by counsel for the appellant to the case of *Letchimanan Chetty v. Sanmugam*[7] as an authority that the signature was that of the agent himself, and not that of the firm. That case was of a somewhat unusual character. The defendant had borrowed money on a promissory note from M. A. R. A. R. Letchimanan Chetty, who had previously been agent for a firm M. A. R. A. R. Letchimanan sued on the note and recovered judgment, and on an application for a writ of execution, it was objected that Letchimanan was agent only, and that a firm of M. A. R. A. R. was still being carried on by the executors of the late partners, who had not authorized the action. The Court held that Letchimanan could bring the action, as the defendant had either contracted personally with him or with him as agent for undisclosed principals, in which latter case he could still sue as agent. Whether this last statement is correct when applied to a contract created by a negotiable instrument I need not discuss, but Layard C.J., in giving judgment, expressly recognized the liability of a firm who had authorized such an agent to sign, saying: "No doubt our Court has recognized ever since 1866 that a Chetty who signs his principal's initials binds his principal, provided the agent has authority to bind the principal."

Other recent cases were cited, of which I will mention *Sokalingam Chetty v. Mohamadu Cassim*,[8] *Muttukarapen Chetty v. Hamid*,[9] and *Somasunderam Chetty v. Arunasalem Chetty*,[10] in which a person

[1] *Ram. (1863-68) 209.*
[2] *(1879) 2 S. C. C. 193.*
[3] *(1880) 3 S. C. C. 136.*
[4] *(1881) 4 S. C. C. 91.*
[5] *(1881) 4 S. C. C. 69.*
[6] *(1902) 5 N. L. R. 265.*
[7] *(1903) 8 N. L. R. 121.*
[8] *(1910) 2 C. L. R. 209.*
[9] *(1910) 2 Cur. L. R. 210.*
[10] *(1914) 17 N. L. R. 257.*

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who signed with the *vilasam* of a firm prefixed to his own name has been allowed to sue on a contract. None of these cases was regarding negotiable instruments, and it was held that the contract was with the agent personally. In the first two the members of the firm were dead before the contract was made, and it was therefore clear that, notwithstanding the use of the *vilasam*, the former agent was contracting personally, and in *Sokalingam Chetty v. Mohamadu Cassim*,[1] Wood Renton C.J., and in *Somasunderam Chetty v. Arunasalm Chetty*,[2] Lascelles C.J., expressly recognized the established custom that a Chetty agent signing on behalf of a firm does so by prefixing the initials of the firm to his own name.

I think the decision of the District Judge is correct, and would dismiss the appeal, with costs.

Appeal dismissed.