

[FULL BENCH.]

1906.
November 19.*Present:* Sir Joseph T. Hutchinson, Mr. Justice Wendt, and
Mr. Justice Middleton.WAIRAVEN CHETTY *v.* JUSSAN SAIBO.*D. C., Kandy, 16,908.**Promissory note—Signature by attorney—Form of signature—Custom—
Bills of Exchange Act, s. 26 (1).*

Where a promissory note was signed as follows: "Meeyanna Kawanna Dawdo Kanny Saibo's attorney Jana Mohamadu Kanny Saibo," and it was contended that Dawdo Kanny Saibo was not liable on the note, but that the attorney was personally liable under section 26 (1) of the Bills of Exchange Act, the Supreme Court directed the issue to be tried—Whether the signature was in the form usually adopted in similar circumstances in Ceylon by an attorney in executing an instrument in the name of the principal.

THE plaintiff, the endorsee of a promissory note, sued the defendant, the administrator of the late of the estate Meeyanna Kawanna Dawdo Kanny Saibo, who, the plaintiff alleged, made the note through his attorney Jana Mohamadu Kanny Saibo.

The note was signed thus: "Meeyanna Kawanna Dawdo Kanny Saibo's attorney Jana Mohamadu Kanny Saibu."

The defendant contended that the signature did not bind Dawdo Kanny Saibo, his intestate, but that it bound the attorney personally.

The District Judge (J. H. de Saram, Esq.), following the judgment of the majority of the Supreme Court in *Carimjee Jafferjee v. Sebo* (1), held that the signature bound Dawdo Kanny Saibo, and that the defendant, as his administrator, was liable to pay the amount of the note.

The defendant appealed.

Walter Pereira, K. C., S.-G., for the defendant, appellant.

Van Langenberg, for the plaintiff, respondent.

Cur. adv. vult.

19th November, 1906. WENDT J.—

It is impossible, as the record stands, to decide the question whether Dawdo Kanny Saibo is liable on the note sued upon, the parties not being agreed as to the exact significance of the signature by which

plaintiff seeks to bind him. We therefore think the case should go back for trial of the following additional issue, viz., Is that signature in the form usually adopted in similar circumstances in Ceylon by an attorney in executing an instrument in the name of his principal? 1906. November 19. WENDT J.

In addition to any evidence which the parties may adduce upon this issue, the District Judge will be at liberty to consider the evidence already on record.

All costs hitherto incurred to be costs in the cause.

Sir J. T. HUTCHINSON C.J. and MIDDLETON J. agreed.

Case remitted for further hearing.

