1935 *Present:* **Dalton S.P.J. and Koch J.**

ARUNACHALAM CHETTIAR *v.* RAMANATHAN CHETTIAR.

235—D. C. Colombo, 2,767.

Registration of Business Names—Person carrying on two businesses—Application for registration—Filling in particulars—Failure to denote any other business occupation—Meaning of expression business occupation—Application for registration by attorney on behalf of principal outside Ceylon—Ordinance No. 6 of 1918, ss. 4 (1) (e), 4 (2), and 5.

Plaintiff carried on the business of a money lender, rice merchant, and copra merchant under one *vilasam* and the business of a rice merchant under another *vilasam*.

He registered both business names and in registering the business under the former *vilasam* filled in the particulars required by section 4 (1) (*e*) of "any other business occupation" as "nil".

***Held*, that he had not failed to comply with requirements of section 4 (1) (*e*) of the Ordinance.**

***Held, further*, that under section 4 (2) of the Ordinance there was no requirement that the plaintiff should set out the business carried on under the latter *vilasam* as it was a separate and distinct business.**

The statement required under section 5 for the purposes of registration may be signed by the attorney of a person who is carrying on business in Ceylon but who is resident outside the Island.

THE plaintiff was a Chetty resident in South India and carrying on business in Ceylon through local agents in Colombo. He claimed as carrying on business in Colombo under the business designation or *vilasam* of R. M. A. R. A. R. R. M. Arunachalam Chettiar to recover from the defendants the sum of Rs. 55,870.50 on a mortgage bond.

It would appear that plaintiff carried on the business of money lender, copra and rice merchant under the above-mentioned *vilasam*, and the business of rice merchant only under a separate *vilasam*, viz., A. R. A. R. R. M. He registered both businesses under the Business Names Registration Ordinance. The particulars supplied under the provisions of section 4 of the Ordinance for the business R. M. A. R. A. R. R. M. were set out in the form (exhibit D 1), which was signed by the plaintiff's attorney.

Paragraph 11 of the form is based on the requirements of section 4 (1) (*a*) of the Ordinance which requires the applicant, when an individual, to set out any other business occupation he may have. Against this the word "nil" was inserted. It was contended on behalf of the defendant that the plaintiff should have stated that he had another business occupation, viz., the business of A. R. A. R. R. M.

The learned District Judge held that the failure to furnish the particulars required by section 4 was a default within the meaning of section 9 and dismissed the plaintiff's action.

Hayley, K.C. (with him *N. Nadaraja* and *S. J. V. Chelvanayagam*), for plaintiff, appellant.—Plaintiff traded under two names or *vilasams*. He sent his application for the registration of his business names in two documents, D 1 and D 2. Under heading 11 "other business occupations

of the applicant" plaintiff had entered "nil". Subsequently plaintiff had sent amended applications (in forms P 3 and P 4) which supplied the omission. The Registrar would not entertain the amended applications except as applications to register a change of business. The learned District Judge held with the defendant that plaintiff had made default in terms of section 9 in not giving information of his other business occupation which he was required to do in paragraph 11 of the form, and also on the ground that the forms were signed by the plaintiff's attorney which he was not empowered to do by section 19.

My submission is that there is no default. For if there was it was sufficiently cured by the later documents P 3 and P 4 which were duly submitted to the Registrar before action was filed. If he had any other business occupation he had to state it. He has given all the information required. Can it make any difference whether it has been done in one form or two forms? If the Ordinance requires that certain information should be given, there will be compliance with the provisions of the Ordinance if it was supplied in two forms. The failure to fill cage 11 does not amount to a default; it is a mere omission. In the construction of the Ordinance the most favourable construction should be put in favour of the freedom of the individual rather than of restriction (*35 N. L. R. at p. 206*). Action cannot be brought only while one is in default. But the register can be subsequently corrected before action is filed. (*David & Co. v. de Silva*[1]; *S. P. A. Anamalai Chetty v. Thornhill*[2]; *Jamal Mohideen v. Meera Saibo*[3]; *125 D. C. Colombo, 2,597.*[4])

Even without section 19 there is nothing in the Ordinance to prevent the documents being signed by a person who is authorized to sign. (*Re Whitely, 32 Chancery D. 335,* followed in *Jackson v. Knapper, 35 Chancery D. 162.*) There is nothing in section 5 to indicate that the words by *his attorney* cannot apply.

The word "shall" in sections 4 and 6 is not peremptory as invalidating the whole business. Where it has reference to time or formality the enactment shall be regarded generally as directory unless it has the words which make the thing void (*Stroud's Dictionary, 2nd ed., vol. III., p. 1851; Bosanquet v. Webster*[5]). The refusal of the Registrar to accept the later documents does not affect our case.

H. V. Perera (with him *A. E. Keuneman* and *D. W. Fernando*), for defendants, respondents.—The two documents D 1 and D 2 cannot be read together—one does not refer to the other. From the fact that the Registrar accepted the documents, it cannot be argued that there was sufficient compliance.

The section applicable to the present case is section 4, sub-section (2).

[DALTON J.—According to you where is the defect?]

It is submitted that it is in the alternative—in the failure to fill cage 5 or the failure to fill cage 11. If plaintiff identifies the businesses as one and states that in cage 2, then he need not state the other business occupation in cage 11.

[1] *32 N. L. R. 99.*
[2] *33 N. L. R. 41.*
[3] *8 C. W. R. 98; 22 N. L. R. 268.*
[4] *5 C. L. Rec. 26.*
[5] *Queen's B. 93.*

[KOCH J.—Here are two businesses owned by one person ?]

Then he must state the other *vilasam* under which he is trading in cage 5, *i.e.*, any other business name. In this case the two businesses cannot be regarded as distinct and separate. They must be regarded as one business activity (Bertram C.J.'s judgment in *Jamal Mohideen v. Meera Saibo et al.*[1]). The second business is only subsidiary to the first.

Section 19 of the Ordinance does not empower the local manager of a business to sign. There is no transference of obligation to some one else—a criminal responsibility is cast on the local manager for the failure to perform the duties imposed by the Ordinance.

Hayley, K.C. (in reply).—There is only one interpretation possible for section 19.

As regards the question whether these two businesses were one or separate, although there was an issue, no evidence was led to show that the business carried on under this *vilasam* of A. R. A. R. R. M. was the same or part of the same business carried on under the *vilasam* R. M. A. R. A. R. R. M.

The Ordinance has made provision for any other business occupation or any other business name. The submission of the two documents is the more correct thing to do. Plaintiff may have failed to give full answers to the questions. In such a case the Ordinance provides for a penalty to be imposed—section 8. For that reason a whole business should not be ruined.

Cur adv. vult.

December 5, 1935. DALTON S.P.J.—

This appeal raises questions that deal with the construction of certain sections of the Registration of Business Names Ordinance, No. 6 of 1918, a piece of war time legislation that has given this Court several difficult questions to answer. It is difficult to think that those responsible for it ever foresaw the uses to which it would in time be put.

The appellant is the plaintiff in the action. He is a Chetty residing in South India, but carrying on businesses through local agents in Colombo. He claims, as carrying on business in Colombo under the business designation or *vilasam* of R. M. A. R. A. R. M. Arunachalam Chettiar, to recover from the defendants, as the representatives of the estate of S. S. N. R. M. Ramanathan Chettiar, deceased, the sum of Rs. 55,870.50, the amount of capital and interest due by the deceased on a mortgage bond. Various defences were raised, but for the purpose of this appeal it is sufficient to state that the learned trial Judge found in favour of the plaintiff on all of them except issue 8. He found that plaintiff had failed to comply with the provisions of Ordinance No. 6 of 1918, and whilst in default he could not proceed to recover this money he had lent to the deceased man. His action was therefore dismissed. Incidentally also he came to the conclusion, so I understand, that although plaintiff's conduct had been *bona fide* in all respects, under the Ordinance there was no provision for him under the circumstances to cure his default. There is no provision, as in the English Statute (*6 & 7 Geo. V. C. 58*), upon which the Ordinance is based, for the Court to grant any relief.

[1] *22 N. L. R. 268.*

The plaintiff has never been to Ceylon, but he has carried on here, through attorneys or local managers, businesses of money lending and the purchase and sale of rice and copra for a lengthy period. In 1918 the evidence shows they were old business at that date. In that year as a result of this Ordinance, he purported to register the names under which they were carried on. One business was that of money lending combined with the purchase and sale of rice and copra. This was carried on under the *vilasam* of R. M. A. R. A. R. R. M. The second business was that of a rice merchant only and was carried on under the *vilasam* of A. R. A. R. R. M. Although little evidence has been led on the point, there is, I think, no dispute as to these two businesses being in 1918, quite separate and distinct, with different local managers. The learned trial Judge seems quite satisfied on the point, and is satisfied that there has been no attempt on the part of appellant to conceal any business of his. This action is, as I have stated, brought by him, trading as R. M. A. R. A. R. R. M. Arunachalam Chettiar, and we are concerned in this case with an alleged default in the registration of that business name.

On April 28, 1919, appellant made application to have the *vilasam* R. M. A. R. A. R. R. M. registered in respect of the business of importing and dealing in rice and copra and money lending carried on under that *vilasam,* on the same day making a similar application in respect of the rice business carried on under the *vilasam,* A. R. A. R. R. M. The particulars supplied under the provisions of section 4 of the Ordinance for the business R. M. A. R. A. R. R. M. were set out in the form (exhibit D 1), which was signed by the appellant 's attorney for his principal in the usual way. According to the case as argued in the lower Court, and according to the finding of the trial Judge, paragraph 11 of that form is defective. There was no suggestion raised in the lower Court of any other defect in the particulars supplied.

Paragraph 11 of the form is based upon one of the requirements of section 4 (1) (*e*) of the Ordinance which requires the applicant, when an individual, to set out any other buisness occupation he may have. Against this question the word "nil" was inserted. It was urged in the lower Court that applicant should have stated that he had another buisness occupation, namely, the business of A. R. A. R. R. M. The trial Judge agreed with this contention, and held that the failure to give this information was a failure to furnish a particular required by section 4 and was a default within the meaning of section 9.

There is evidence to show that just prior to the commencement of this action, the legal advisers of the plaintiff anticipated the possibility of some such defence as this being raised in the action. On February 5, 1935, an attempt was made to cure this alleged defect in respect of paragraph 11 by sending in a fresh application form (exhibit P 3). This purports to show that the business of R. M. A. R. A. R. R. M. was one of banking, no doubt the old money lending buisness described by a more high sounding term, and under paragraph 11 was inserted the following sentence: "Rice buisness is carried on under the name of Ana Roona Ana Roona Ravenna Mana (A. R. A. R. R. M.)". Therefore whoever was responsible for sending in the application form P 3 to the Registrar of Buisness Names appears to have had, at that time at any

rate, the same view of the nature of the particulars required to be supplied in paragraph 11 of the form, as counsel for defendants and the learned Judge had at the trial. Counsel for appellant has urged that there is no defect in the information furnished by plaintiff in the form D 1, either in paragraph 11 or in any other paragraph or requirement.

In my opinion the requirement of section 4 (1) (*e*) set out in paragraph 11 of the form has been misread in the lower Court. All it requires is that any other business occupation of the individual, in this case Arunachalam Chettiar, must be set out. The business name he sought to register in D 1 was the *vilasam* R. M. A. R. A. R. R. M. Had he any other business occupation than the occupation or occupations carried on under the business for which that business name was sought to be registered? It has been read by counsel for defendants and the learned Judge in the lower Court as if paragraph 11 required applicant to state not only any other business occupation he may have but also the name, if any, under which that other business occupation is carried on. Plaintiff's failure to disclose in the cage 11 of the form the fact that he was carrying on another business under the *vilasam* A. R. A. R. R. M. has in fact been held to be his dafault which prevents him bringing this action. In my opinion, and I understand counsel for respondents on the appeal agrees with me to this extent, there is no requirement, in respect of the particulars required to be furnished in paragraph 11, for any such *vilasam* or business name to be disclosed.

Is there, however, any defect in paragraph 11 of the form D 1, as a result of the plaintiff's attorney inserting the word "nil" in respect of the requirement to disclose any other business occupation? It will be noted that the form disclosed in paragraph 2 that he was amongst other things a rice merchant. That was, so the form states, part of the business carried on under the *vilasam* of R. M. A. R. A. R. R. M. Had he any business occupation other than his occupation as rice merchant, copra merchant, and money lender set out in paragraph 2 of the form? He had, it is true, another separate business as rice merchant carried on under another *vilasam,* and it is possible therefore that a very precise person might urge that he should again state in paragraph 11 that he was a rice merchant. It would, however, under the circumstances here, be merely a repetition of something already set out in the form of particulars furnished. On the facts here, I am quite unable to see that his failure to do so was a failure to disclose any particular required by section 4 (1) (*e*), and a default within the meaning of section 9.

Mr. Perera, in his argument on behalf of the respondents, was unwilling to abandon any argument raised on their behalf in the lower Court which had been accepted as correct by the trial Judge, but he has only advanced the alleged defect in paragraph 11 of the form as an alternative. His main ground for upholding the conclusion of the trial Judge that there was a failure to comply with the provisions of section 4 of the Ordinance and so a default within the meaning of section 9, was based upon an alleged defect in the form of particulars furnished in respect of paragraph 5. The form D 1, he states, in paragraph 5, requires the applicant to disclose any other business name or names under which the business is carried on. In reply to that question, the applicant stated "nil",

whereas, according to the argument, he should have disclosed the *vilasam* of A. R. A. R. R. M. as another business name under which the business was caried on.

It is to be noted that although the trial Judge specially calls attention to the fact that the alleged failure of plaintiff's attorney to comply with the provision of the Ordinance was most strenuously and fully argued, it has never been suggested until the case came in to the Court of Appeal that there was any failure to supply any particulars as required in paragraph 5 of the form. Further, such a suggestion seems to be inconsistent with the position taken up by the defendants in the lower Court, and upheld by the learned trial Judge inasmuch as one reason for the dismissal of the action was a default on the part of the plaintiff to furnish particulars of another business occupation outside the business carried on under the *vilasam* R. M. A. R. A. R. R. M. Paragraph 5 of the form is based upon the requirement set out in section 4 (2) of the Ordinance. If a business is carried on under two or more business names, each of those business names must be stated. The case in England, for example, of a money lender carrying on his money lending business under different names in different places is or was not uncommon, and is a case that would be covered by the provision.

The other business names which are required to be disclosed under this provision are other names, if any, of the business which is being registered. Plaintiff in D 1 sought to get the business name R. M. A. R. A. R. R. M. registered in connection with the business he carried on under that name. He did not carry on that business under any other name. Defendants made no attempt, for example, to show that the rice business carried on under the *vilasam* of A. R. A. R. R. M. was the same or part of the same business carried on under the *vilasam* R. M. A. R. A. R. R. M. It was open of course to them to seek to prove he was doing so, but no attempt was made and I understood in the course of the argument before us it was not denied that the two businesses carried on under the two *vilasams* were quite separate and distinct.

If then the rice business carried on under the *vilasam* A. R. A. R. R. M. was not the rice, copra, and money lending business carried on under the *vilasam* R. M. A. R. A. R. R. M., particulars of which plaintiff's attorney was giving in the form D 1, but a separate and distinct business, then there was no requirement for plaintiff to set out in paragraph 5 the business carried on under the former *vilasam,* and there was no failure to comply with the provisions of section 4 (2) of the Ordinance.

In this connection we were referred to the judgment of Bertram C.J. in *Jamal Mohideen & Co. v. Meera Saibo and others*[1]. He is there construing the word "business" as used in section 9 of the Ordinance, and states that in his opinion it means the aggregate of the commercial transactions carried on by the partners in that case. If that opinion can be availed of to assist one in the construction of the first word "business" in section 4 (2) of the Ordinance, it is, I think, sufficient to say, as argued by Mr. Hayley for the appellant, that the opinion of Bertram C.J. is inconsistent with the decision of the Privy Council in *David v. de Silva*[2], and is so over-ruled. There it was held that whereas there was a default

[1] *22 N. L. R. 268 at p. 274.*

[2] *35 N. L. R. 201*

in respect of the accountancy business carried on by the individual J. E. David, there was no default in respect of the timber business carried on by him.

A further ground of appeal relates to the trial Judge's finding that plaintiff has failed to comply with the provisions of the Ordinance, inasmuch as the application form D 1 is not signed by him personally. He has therefore, it is held, furnished no particulars at all of the business name under which he carries on business, as required by the Ordinance.

Section 5 of the Ordinance provides that the statement required for the purpose of registration must in the case of an individual be signed by him. Section 19 enacts amongst other things that if an individual resides outside the Colony and his business is carried on in the Colony in his name by a local manager, the latter shall be personally liable for all obligations attaching to the individual, and in case of any default in respect of any obligation under the Ordinance the local manager is subject to the same liabilities and penalties as the individual.

The form D 1 is furnished and signed by plaintiff's attorney in Ceylon. The power of attorney (exhibit D 5) shows he was the local manager of the business carried on under the *vilasam* R. M. A. R. A. R. R. M. There is an obligation upon him to furnish the particulars required by the Ordinance. Mr. Perera has failed to satisfy me that he is not empowered under the Ordinance to complete and sign the form containing the particulars. It is conceded that he is required to supply the information, but suggested he can only do so by sending the form out of the Island to be signed by the individual in person wherever he may be. He is required under penalty to do something but has himself no power to carry out the obligation. I regret I am unable to agree with the learned Judge as to his construction of sections 5 and 19 of the Ordinance on this point. Whether or not, as Mr. Hayley has argued, even in the absence of section 19 from the Ordinance, the local manager or attorney would have power to sign the statement it is not necessary to decide. I would hold therefore that there has been no failure to comply with the provisions of the Ordinance in this respect and would hold that this ground of appeal also must succeed. If the trial Judge was correct on this point it would of course have been decisive of the matter before him.

It is not, in view of my conclusion set out above, necessary to deal with further matters argued before us, such as the meaning of the word "default" as used in section 9, whether any default alleged has in fact been cured by furnishing the form P 3 before action was brought, or to consider whether the opinion of Darling J. in *O'Connor and Ould v. Ralston* [1] that the word "default" means not furnishing any particulars at all and does not mean furnishing insufficient particulars, is correct or not.

The trial Judge held that there was *primâ facie* evidence that plaintiff's business, in respect of which the action was brought, was duly registered and that the onus was on the defendants to satisfy him to the contrary. The correctness of that ruling has not been questioned. For the reasons I have given, I would hold that defendants have failed to show any default in furnishing a statement of particulars in regard to the registration of this business name and therefore they fail on this issue.

[1] *(1920) 3 K. B. 451.*

The appeal must therefore be allowed and judgment will be entered with the usual decree to be drawn up in favour of the plaintiff for the amount claimed with costs in both Courts.

KOCH J.—I agree.

Appeal allowed.