

1903.  
 March 30.

MUTTAIYA CHETTY v. KARUPAIYA KANKANI.

D. C., Colombo, 14,404.

*Principal and agent—Power of attorney—Appointment of two persons to act jointly—Authority of one agent to bind his principal by promissory notes made by himself only—Personal introduction of agent by principal to creditor—Notice of existence of power of attorney—Duty of creditor.*

Where a power of attorney appointed two persons to act jointly and to sign promissory notes, and the principal personally introduced one of his agents to the plaintiff and requested the plaintiff to supply him with money and cloth, and in the course of such introduction disclosed to the plaintiff that such agent had been appointed by a written instrument,—

*Held*, in an action brought by the plaintiff against the principal, (1) that under the power of attorney granted, one of the agents only could not bind the principal by promissory notes signed by himself alone; (2) that an authority to an agent to borrow money and purchase goods on behalf of his principal does not include an authority to sign promissory notes; and (3) that as the plaintiff took the agent's promissory notes, after he was affected with knowledge of the power of attorney, without ascertaining for himself whether or not the agent was given the power to make promissory notes on behalf of the defendant, the plaintiff was not entitled to sue the defendant.

**T**HIS was an action by the payee of four promissory notes against the defendant as the maker thereof.

The defendant denied that he made them. The notes appeared to have been signed as follows: "Vayi Karu Karupaiya Kankani, by his attorney Suppaiya." It was admitted that the notes were signed by Suppaiya; but it was contended that the power of attorney under which he purported to sign for the defendant was a joint one in favour of Suppaiya and Vellasamy, and that Suppaiya had no authority to act alone.

The power of attorney set forth that, as Karupaiya Kankani was about to leave the Island, he was desirous of appointing "some fit and proper person as my attorney to manage and transact all my business and affairs in the said Island during my absence," and it ran on as follows: "I do hereby appoint V. E. K. R. Vellasamy and V. E. K. R. Suppaiya my true and lawful attorney and attorneys in Ceylon during my absence therefrom to act for me and on my behalf, &c.....; to purchase for me any estates my said attorneys shall think fit and proper.....; to invest the moneys belonging to me upon such security as my said attorneys shall consider good and sufficient.....; to sign, &c., promissory notes, and generally to perform all such other acts which my said attorneys shall think necessary or proper to be done....., it being my intent and desire that all matters and things respecting the same shall be under the full management, control, and direction of my said attorneys."

The Acting District Judge (Mr. N. E. Cooke) found as follows:—

1908.  
March 30.

“ I do not think that the defendant would have questioned the authority of Suppaiya to make and endorse the notes, but for the fact that he afterwards found that Suppaiya had misappropriated moneys raised on the notes. It appears that when the defendant left for India he entrusted to Suppaiya and Vellasamy money and goods to the amount of about Rs. 30,000, and during his absence money and goods to the amount of about Rs. 30,000 came into their hands; that hearing that Suppaiya was raising moneys largely he returned to the Island, and on looking into Suppaiya's account found that Rs. 3,000 was not accounted for. He prosecuted Suppaiya for misappropriating that sum. Suppaiya was convicted, and he is now undergoing sentence.

“ As the defendant then claimed to be entitled to all moneys that came into Suppaiya's hands, he cannot now be allowed to repudiate the authority of Suppaiya to act alone for him.

“ Judgment for the plaintiff for Rs. 2,033, with interest, will be entered.”

The defendant appealed.

*Van Langenberg*, for appellant.

*H. J. C. Pereira*, for respondent.

30th March, 1908. LAYARD, C.J.—

The appellant in this case appeals against a judgment of the District Judge, in which he was held that the promissory notes sued on by the plaintiff were binding on defendant, although only executed by a certain Suppaiya, one of two attorneys appointed by the defendant.

The instrument appointing Suppaiya and another person attorneys of the defendant in this case is similar to the one produced in D. C., Kandy, No. 14,376 (6 N. L. R. 285), in which we gave judgment to-day, holding that the authority given by such instrument could only be exercised jointly by the two attorneys appointed by it, and that they could not each of them act separately under it. In that case we followed the judgment of the Collective Court, reported in 1 *Lorenz*, 108.

Following those decisions, Suppaiya had no authority, under the power of attorney granted by defendant, by which he, acting alone, could bind the defendant by signing promissory notes on his behalf.

It is however suggested by defendant's counsel that the defendant introduced Suppaiya to plaintiff before leaving the Island, and asked plaintiff to lend Suppaiya money on his behalf and give him cloth whenever he asked for it. It is argued that by this introduction the respondent held out that Suppaiya was

1903.  
 March 30.  
 LAYARD, C.J.

his sole attorney, and was authorized to sign promissory notes on behalf of the defendant. Assuming there was such an introduction, and that the plaintiff's evidence is true that the defendant informed him that he had appointed Suppaiya his attorney, and that the defendant asked the plaintiff to lend Suppaiya money and give him cloth whenever he demanded it, and told plaintiff that he would settle accounts with plaintiff on his return from India, the words alleged to have been used by the defendant disclosed to the plaintiff that Suppaiya had been appointed his attorney by some instrument or other, and the plaintiff had therefore notice of the existence of such an instrument, and ought to have called upon Suppaiya to produce it before accepting promissory notes signed by him on defendant's behalf. Even if he had not such notice, the words alleged by the plaintiff to have been used by the defendant did not disclose an authority to Suppaiya to sign negotiable instruments on behalf of the defendant, for an authority to an agent to borrow money and purchase goods on behalf of his principal does not include an authority to sign promissory notes on behalf of the principal. In the case of a loan of money the right to recover would expire in three years from the date of the loan under the Prescription Ordinance, whilst an action on a promissory note is not barred under that Ordinance until six years have elapsed from the date of the note. Further, a promissory note, being a negotiable instrument, passes by endorsement and delivery, and the defendant might be unable possibly to ascertain on his return from India into whose hands the promissory note had come. If the defendant had intended that Suppaiya should sign promissory notes on his behalf, he could not have added the words "I will settle claims with you on my return," because the liability to pay for money borrowed on a promissory note might have passed to a third party other than the payee, if the payee had endorsed the note and delivered it to the third party.

The respondent's counsel has asked me to allow the plaint to be amended by inserting therein counts for money lent and for goods sold and delivered, and to allow him the indulgence of a new trial to support the amended cause of action. This is objected to by the appellants' counsel as coming too late. I do not think that we would be justified in appeal in allowing the amendment suggested.

In my opinion the judgment of the District Judge must be set aside and the plaintiff's action dismissed with costs. The plaintiff is reserved liberty to bring a fresh action for goods sold and money lent, should he be so advised. I desire to record, however, that at present there is nothing before me to show that he could successfully establish such a claim.

1903.

March 30.

MONCREIFF, J.—

I am of the same opinion. According to the plaintiff the representation made by the defendant was that Suppaiya had authority to borrow money and buy goods; but that such authority was contained in a power of attorney. The plaintiff was thus affected with knowledge of that power of attorney, and it was his duty to do what is (as I believe) done by all prudent men engaged in commerce, ask for the production of the power and ascertain for himself whether Suppaiya had power to make promissory notes on the defendant's behalf. If he had done so, he would have found out, or at all events he ought to have found out, that Suppaiya had no such power. I agree with the order made by the Chief Justice.

WENDT, J.—

I also agree, and would only add one word as to the third issue framed at the conclusion of the evidence. I am of opinion there was no foundation for the contention that the plaintiff ratified the acts of Suppaiya in making the promissory notes in defendant's name. The defendant merely prosecuted him for misappropriating a sum of money which Suppaiya had in his own account shown to be in his hands to defendant's credit, and the account produced in the Police Court proceedings made no reference whatever to promissory notes.

