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February 24.

## MEYAPPA CHETTY v. USOOF.

D. C., Colombo, 15,696.

*Action on promissory note—Civil Procedure Code, chap. 53—Cross claim antecedent to date of promissory date—Leave to defend unconditionally—Custom among Chetty traders—Meaning of "R. M. M. S. T. Meyappa Chetty."*

Under chapter 53 of the Civil Procedure Code, a defendant sued upon a promissory note may set up by way of defence a cross claim on a cheque bearing date antecedent to the date of the promissory note.

When the defendant swears to facts which if true constitute a good defence, he should be allowed to defend unconditionally, unless there is something on the face of the proceedings which leads the Court to doubt the *bonâ fides* of the defence.

According to the custom of Chetty traders and firms, "R. M. M. S. T. Meyappa Chetty," means that Meyappa is the agent of the firm of R. M. M. S. T.

**A**CTION on two promissory notes for the aggregate sum of Rs. 1,500 made by the first defendant in favour of the second and third defendants and endorsed by them to the plaintiff, who designated himself "R. M. M. S. T. Meyappa Chetty."

Summons being served, the second defendant averred in his affidavit that nothing was due to the plaintiff; that the plaintiff, R. M. M. S. T. Meyappa Chetty was the attorney of R. M. M. S. T. Arunasalam Chetty; that the said Arunasalam Chetty was the principal of the firm of R. M. M. S. T.; that this firm was indebted to him in the sum of Rs. 1,600, being money lent to it by second defendant's cheque, dated 20th June, 1900; and that, setting off the Rs. 1,500 claimed by the plaintiff as due on the promissory notes, there was still due to the second defendant from the plaintiff a sum of Rs. 100.

The second defendant moved, under chapter 53 of the Civil Procedure Code, for leave to appear and defend the suit.

The Additional District Judge (Mr. F. R. Dias) made the following order:—

"There is nothing to show that the plaintiff has anything to do with the person to whom the second defendant says he made the payment, and I do not believe this defence is made *bonâ fide*. Leave to defend will be allowed to the second defendant only, on his giving security for the full amount of the plaintiff's claim."

The second defendant appealed.

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*Wadsworth*, for appellant.—The plaintiff's affidavit filed with the plaint merely avers that Rs. 1,500 is due, but not due to him personally. The second defendant says that plaintiff is the agent of one Arunasalam Chetty, who is the principal of a firm styled R. M. M. S. T. It is a well-known custom among Nattukotte traders to sign one's own name after the initials of other persons, and such signature, as for example R. M. M. S. T. Meyappa Chetty, has been construed to mean the firm of R. M. M. S. T. by their attorney Meyappa Chetty (*Walayappa Chetty v. Suppramanian Chetty*, 4 S. C. C. 91; *Bank of Madras v. Weerappa Chetty*, 4 S. C. C. 70; *Bhikkajee & Co. v. Muttiah Chetty*, 4 S. C. C. 111). Chapter 53 of the Civil Procedure Code must be read strictly, and no allowance made for plaintiff when he says that money is due. These words should not be construed to mean that money is due to him personally (*Annamalai v. Allian*, 2 N. L. R. 251).

24th February, 1902. BONSER, C.J.—

This is an action by a firm R. M. M. S. T. by their agent Meyappa Chetty against the makers and endorsers of two promissory notes for Rs. 1,000 and Rs. 500 respectively.

The appellant, in whose favour the notes were made, endorsed the notes in blank and handed them to the plaintiff as representing his firm. The notes were dishonoured at maturity, and this action is now brought. The appellant set up this defence: "There is due to me from you, the plaintiff firm, the sum of Rs. 1,600, which I advanced to you on a cheque dated June 20, 1900, a date antecedent to the making and endorsing of the promissory notes."

It has been held by this Court that such a state of things, a cross claim, is a defence which can be set up to an action on a promissory note under chapter 53. The only question therefore is as to the *bonâ fides* of the defence. The District Judge declined to admit the defence on the ground that, although the defendant had pledged his oath to the fact that the plaintiff's firm owed him Rs. 1,600, yet there was no connection proved between Meyappa Chetty and the firm.

It seems to me that the way in which Meyappa Chetty sued shows that he was the agent of the firm. 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*, 4 S. C. C. 70 :—

"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 represent a 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.’ As pointed out by Mr. Lawson in his judgment in the case 42,165, D. C., Colombo, ‘ A. Ru. Su. Veiy. R. Muttu Ramen Chetty ’ would mean, according to the common usage, ‘ Ana Runa Suna Veiyana Rana and Coy. by their attorney or agent or representative Muttu Ramen.’ ”

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Applying that to the present case, it seems clear that Mayappa is the agent of the firm R. M. M. S. T. The defendants have sworn in their affidavit that he is the attorney of the firm of that name, and that from that same firm there is due to them Rs. 1,600. Of course, if that turns out untrue, they are liable to be prosecuted for perjury. It seems to me that the policy of the law in regard to summary procedure is to require a sworn statement of facts which if true will be a defence to the claim, and the idea evidently was that a defendant who might readily put in an untrue defence in an ordinary action would hesitate to swear to that defence in an action under chapter 53. The rule would appear to be that, when the defendant does swear to facts which if true constitute a good defence, he should be allowed to defend unconditionally, unless there is something on the face of the proceedings which leads the Court to doubt the *bond fides* of the defence. The defendant gets leave to appear at his own peril, the peril of being indicted for perjury if his defence is found to be untrue.

Applying that rule here, the defendant in this case will be allowed to defend unconditionally, but I trust that if his defence proves untrue the District Court will direct a prosecution.

WENDT, J.—I agree.

