RE MANDRU GADABA. — TYABJI, J.

criminal matters, and for deciding all questions under the Indian Penal Code "a person who is intoxicated shall be dealt with in the same way as if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will." I therefore think that it is very doubtful, even if the charge had been under section 302, and the case had to be decided on the materials before us, whether the accused should not be considered to have come under exception 4 to section 300. But remembering that the trial was under section 304 and not under section 302, I feel no doubt in giving expression to the opinion that the conviction ought not now to be altered to one under section 302, and that the sentence ought not to be enhanced.

My learned brother's view is different from mine on the question involved in the revision case; and I need hardly say that I cannot feel entire confidence in the correctness of my opinion on learning of his views. But whether my views are right or wrong I feel no doubt as to them. I am clearly of opinion that we should not interfere in revision and that the sentence should be confirmed.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Oldfield.

1913. July 28, 29 and 30 and August 19.

R. P. KONETI NAICKER AND TWO OTHERS (APPELLANTS IN SECOND APPEAL No. 103 OF 1911 ON THE FILE OF THE HIGH COURT—DEFENDANTS NOS. 3 TO 5), APPELLANTS,

v.

J. GOPALA AYYAR AND ANOTHER (RESPONDENTS IN THE ABOVE SAID SECOND APPEAL—PLAINTIFFS), RESPONDENTS.*

Negotiable Instruments Act (XVI of 1881), sec. 28—Promissory note by agent, without any indication of execution as agent—Personal liability of executant.

Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the promissory note according to section 28 of the Negotiable Instruments Act.

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* Letters Patent Appeal No. 167 of 1912.

Merely describing oneself in the note as the holder of a power-of-attorney from another does not show that the power included a power to sign promissory notes or that the note was signed in pursuance of the power.

Applicability of English law on the subject considered.

APPEAL under article 15 of the Letters Patent against the judgment of SADASIVA AYYAR, J., who differed from SUNDARA AYYAR, J., on appeal against the decree of F. H. HAMNETT, the District Judge of Madura, in Appeal No. 50 of 1910, preferred against the decree of K. V. DESIKA ACHARIYAR, the District Munsif of Madura, in Original Suit No. 457 of 1908. For the judgments of SUNDARA AYYAR and SADASIVA AYYAR, JJ.: See *Konetti Naiker* v. *Gopalaiyar*(1).

This was a suit for Rs. 748 upon a promissory note executed by the third defendant in favour of the two plaintiffs who sued not only the third defendant and his sons, the fourth and fifth defendants, but also defendants Nos. 1 and 2 as whose agent, the plaintiff alleged that the third defendant executed the promissory note. The plaintiffs also alleged that they were dealing in cloths, that the mother of the first defendant, when the first defendant was a minor, bought cloths from the plaintiffs for the benefit and use of the first and second defendants, that after first defendant attained majority, the first defendant executed to the third defendant a power-of-attorney and that the third defendant acting under the power-of-attorney executed the suit promissory note for balance due in respect of the purchase made by the first defendant's mother. First and second defendants denied that the purchase was for their benefit or use and stated that the third defendant had no authority under the power-of-attorney to execute the note. The third defendant pleaded that he was not personally liable inasmuch as he executed the promissory note as agent of the first and second defendants. The fourth and fifth defendants adopted the third defendant's defence and added that since the cloths were not purchased for their benefit or use as admitted by the plaintiffs they were not liable in a suit on the note as sons of their father. The District Munsif raised the necessary issues and framed an additional issue in the following terms :—

"Is the third defendant liable as 'maker' of the note on the note standing as it is, it not purporting to be executed by third defendant as agent."

(1) (1912) 23 M.L.J., 417.

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The District Munsif dismissed the suit as against defendants 1 and 2 but allowed it as against defendants 3 to 5. On appeal by defendants 3 to 5 against plaintiffs alone, the District Judge confirmed the Munsif's decree. In Second Appeal No. 103 of 1911 filed by defendants 3 to 5 against plaintiffs alone, SADASIVA AYYAR, J., confirmed the judgments and decrees of the lower Courts, while SUNDARA AYYAR, J. reversed the decrees against the third defendant as maker of the note and remanded the suit to the District Munsif for trial on the other issues: see *Koneti Naiker* v. *Gopalaiyar*(1). As the result of this difference of opinion, the Second Appeal was dismissed with costs under section 98 of the Code of Civil Procedure. Defendants 3 to 5 thereupon preferred this Letters Patent appeal against the plaintiffs only. The terms of the promissory note are fully given in the judgment of the learned CHIEF JUSTICE in the Letters Patent appeal.

S. Varadachariar for *S. Gopalaswami Ayyangar* for the appellants.

B. Sitarama Rao for the respondents.

WHITE C.J.

WHITE, C.J.—The main question we have to determine is whether the party who signed the promissory note in question as maker is personally liable thereon. The following is a translation of the note:—

"12th August 1907 corresponding to 28th Audi Plavanga. Promissory note executed to you both, (1) Gopalaiyar and (2) Nagasamier, sons of Soothi Seshaiyar, residing in No. 1 Police Station lane, Madura town, by R. P. Konati Nayudu Garu, son of Nanjundappa Nayudu Garu, agent, holding power-of-attorney from the Zamindar Dorai Rajah Avargal and residing in Vellikurichi village, Mana Madura taluk, Madura district.

"Amount due to you including principal and interest up to date upon settlement of account of dealings which was standing against the name of Rani Chakkani Ammal on cloths, etc., having been purchased ere this for the Vellikurichi palace, is Rs. 694-6-0. On demand, I promise to pay this sum of Rupees six hundred and ninety-four and annas six with interest at Rs. 5-8-0 per cent. per mensem from this date either

1) (1912) 23 M.L.J., 417.

to you or order and shall take this back with the endorsement of payment thereon.

(Signed) R. P. KONATTI NAYUDU."
(in Telugu).

The contention for the appellant was that the Zamindar was liable on the note and not the party who signed it.

Section 28 of the Indian Act (Negotiable Instruments Act, 1881) makes the party who signs liable unless there is, on the note, an indication that he signs as agent, or that he does not intend to incur personal responsibility.

The words in the instrument before us which are relied on as affording the required indication are the words in the body of the note "agent holding power of attorney from the Zamindar." If I had to decide the question entirely on the words of the instrument, leaving out of consideration the English decisions I should be prepared to hold, as a matter of construction, that there is no indication on the note that the maker signed as agent or that he did not intend to incur personal responsibility. He is described as holding a power-of-attorney from the Zamindar. It is not stated that the power-of-attorney included a power to sign promissory notes, or that the note was signed in pursuance of the power. There are no words added to the signature indicating that the maker signed in the capacity of agent.

It was suggested that the law as laid down in the English cases, before the English and Indian Acts, was not the same as the law under the Acts and that the English cases which supported the respondent's contention that the maker was personally liable could not be relied on. I do not agree.

The Indian Negotiable Instruments Act was passed in 1881 one year before the English Bills of Exchange Act, 1882. The latter enactment was drafted by Sir M. D. Chalmers and was based on his Digest of the law of Bills of Exchange published by him in 1878. In the preface to the third edition of his book on the Act he states that for the most part the propositions of the Act were taken word for word from the propositions of the Digest. He goes on to observe that, since the Act, the cases decided before the Act are only law in so far as they can be shown to be correct and logical deductions from the general propositions of the Act. This statement is consistent with the observations on the same subject, made by Lord HERSCHELL in

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Vagliano v. *The Bank of England*(1), and seems to me to be equally applicable to the Indian Act.

Sir M. D. Chalmers states in his introduction to his first edition of the Indian Act that it reproduces in a statutory form the English Common law of negotiable instruments with scarcely any modifications. Elsewhere he observes that as the Indian Act, in so far as it deals with any subject, adopts and enforces English law almost in its entirety, it is conceived that in matters relating to negotiable instruments which are untouched by the Act (and which do not come within the scope of the Indian Contract or Evidence Acts) English law would be looked to and followed as a guide. The question of the liability of the maker of a note who disclaims personal responsibility on the ground that he signed as agent is, as it seems to me, not a matter "untouched by the Act." It is specifically dealt with in section 28.

The language of the section of the English Act (section 26) no doubt differs from that of the corresponding section of the Indian Act (section 28). It declares that a person who signs and adds words to his signature indicating that he signs for and on behalf of a principal, or in a representative character, is not personally liable, whilst section 28 of the Indian Act declares that an agent who signs is personally liable unless he indicates on the instrument that he signs as agent or that he does not intend to incur personal liability. It might be said that in view of this difference of language the onus on the party who seeks to avoid personal responsibility on the ground he signed as agent is heavier under the Indian than under the English enactment. I do not, however, attach importance to this variation of language because, I think the legislature intended in both enactments to reproduce the English Common law, though the language used for the purpose of carrying out their intention is different.

In dealing with this question we are, in my opinion, warranted in considering the English decisions before the Indian Act, bearing in mind that they are only law "in so far as they can be shown to be correct and logical deductions from the general propositions" in the Indian Act, in the same way as an

(1) (1891) A.C. 10 at p. 144.

English Court would be warranted in considering the English decisions in an English case.

Perhaps the strongest case in the appellant's favour is one since the Act, the decision of the Court of Appeal, overruling, CHANNELL, J., in *Chapman* v. *Smethurst*(1). The Court held that the man who signed was not personally liable but in that case the facts were very different from those in the present case. There, at the foot of the note was the rubber stamp of the Company and under those words the defendant wrote the words J. H. Smethurst, Managing Director. There, it was admitted the defendant had the Company's authority to sign the note. The note was made in the name of the Company by a person acting under the authority of the Company, as allowed by section 47 of the Companies Act, 1872. In *Alexander* v. *Sizer*(2), where it was held that the man who signed the note was not personally liable, it was signed "For (certain parties) John Sizer, Secretary." *Lindus* v. *Melrose*(3), was again a very different case from this. There the note was signed by certain persons who described themselves as directors, and it was held that the note was binding on the Company and that the directors were not personally liable. In *Aggs* v. *Nicholson*(4), the two directors who signed the note, without additional words, described themselves in the body of the note as directors of the Society and they promised to pay by and on behalf of the society. They were held not personally liable. *Dutton* v. *Marsh*(5), was held to be on the other side of the line, and the parties who signed were held personally liable. In that case, though they described themselves as directors in the body of the note, they did not promise to pay *on behalf of the Company* and they signed the note without any addition to their signatures, though the Company's seal was affixed at the corner of the note with "witnessed by L.L."

I do not propose to discuss further the numerous authorities cited in the able arguments which were addressed to us. So far as the English cases go the weight of authority seems to me clearly on the side of the respondent.

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(1) (1909) 1.K.B., 927. (2) (1869) L.R., 4 Ex., 102.
(3) (1857) 27 L.J., Ex., 326. (4) (1856) 25 L.J., Ex., 348.
(5) (1871) 6 Q.B., 361.

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The question came before the late KRISHNASWAMI AYYAR, J., in *Aiyathurai Aiyar* v. *Dharmasiva Aiyar*(1). The learned Judge held that the man who signed the note was personally liable. In that case, the indications in that note that the man who signed it did not intend to make himself personally liable would seem to have been stronger than the indications in the case before us.

It seems to me that, reading the note in question as a whole, on the construction of the instrument, and on authority, the maker is personally liable.

As to the minor point that the Munsif was wrong in framing an additional issue which raised the question of the liability of the third defendant as maker of the note, I agree with SADASIVA AYYAR, J., that it was open to the Munsif to do this.

A further point was taken that there was no consideration for the note as between the maker and the payee, and that the only consideration for the transaction was a debt due to the payee by a third party. In the course which the case took before the Munsif this point did not arise and was not considered. I do not think we are called upon to consider it now.

I think the appeal should be dismissed with costs.

AYLING, J.

AYLING, J.—I agree. The point is not free from doubt, but on a careful consideration of the terms of the promissory note I am of opinion that there is no indication therein that the maker signed as an agent or did not intend to incur personal liability.

OLDFIELD, J.

OLDFIELD, J.—I concur in the statement of the law contained in the judgment of the learned Chief Justice. With reference to the wording of the note it is material not only that its maker describes himself in a manner which does not imply any intention to incur personal responsibility, but also that his promise to pay is unqualified by any reference to his alleged principal. The appeal must be dismissed with costs.

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(1) (1911) 1 M.W.N., 143.