XLI, rule 6, which rule seems to have been clearly intended in order that the executing Court might be compelled to exercise it in emergent cases for the benefit of the judgment-debtor (see also the pertinent observations of MOOKERJEE, J., in *Triboni Sahu* v. *Bhagwat Bux*(1) and *Rama Prosad* v. *Anukul Chandra* (2). We overrule the preliminary objection.

On the merits it is not the decree under appeal that is sought to be executed by the sale of immoveable property but another decree against the execution of which the decree under appeal refused to grant an injunction. The present petition is not for a temporary injunction but it is for stay of execution of the decree under appeal. The decree appealed against not being under execution, Order XLI, rule 5, does not apply and this petition is misconceived.

It is therefore dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Spencer.

PALANIAPPA CHETTIAR AND THREE OTHERS (DEFENDANTS NOS. 3, 5 TO 7), APPELLANTS,

v.

SHANMUGAM CHETTIAR AND TEN OTHERS (PLAINTIFF, DEFENDANTS NOS. 2, 4 AND 8 TO 15), RESPONDENTS.*

1918, March 28 and 1917, April 2.

Negotiable Instruments Act (XXVI of 1881), ss 26, 27 and 28—Agent, meaning of—Hundi or promissory note drawn or made by a trustee of a charity—Personal liability of trustee—Liability of charity property and other members of the family — Signature of trustee with vilasam of charity prefixed, effect of — Liability of non-executants.

A person drawing a hundi or bill of exchange or making a promissory note as trustee of a temple or of a charity is *personally* liable on such bill or note.

(1) (1907) I.L.R., 34 Calc., 1037. (2) (1914) 20 C.L.J., 512.

* Original Side Appeal No. 61 of 1915.

PALANIAPPA CHETTIAR v. SHANMUGAM CHETTIAR.

Rule of English Law as to bills drawn or notes made by churchwardens, overseers and others who describe themselves in their official capacities, applied. English and Indian cases, reviewed.

'Agent' referred to in sections 27 and 28 of the Indian Negotiable Instruments Act, means the agent of a person capable of contracting within the meaning of section 26, and when the agent is not liable, the principal is. A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of section 28.

When the agent of a Chetti firm in executing a negotiable instrument prefixes the firm's vilasam, this is a well understood indication that he is acting only as an agent and has been so recognized by the Courts; but when a man signs as trustee prefixing the charity vilasam, there is on the face of the document no clear indication that he contracts for any one else but himself.

APPEAL against the judgment and decree of KUMARASWAMI SASTRIYAR, J., in Civil Suit No. 217 of 1909.

The plaintiff sued to recover a sum of money due on a hundi, dated 31st July 1906, executed by the first defendant in plaintiff's favour and drawn on a certain firm called P.L.R.M. Firm at Madras. The first defendant was the hukdar of a chatram which was a family charity of the famiyl of the defendants Nos. 2 to 15 and was constituted in 1887 pursuant to a letter (Exhibit K) addressed to P.L.R.M. Firm which stated *inter alia* as follows :—

"As soon as this letter is received, on this date take Rs. 50,000, credit it separately under the style of P.R.P.L.S. for the choultry and carry on dealings separately under the said style for the said choultry. Maintain ledger and day book separately therefor. As it is arranged that our P. L. Palaniappan should supervise the said chatram work and building work, pay money to the hundis drawn by the said person for the said matters and enter it in account. For the matters connected with this, write to brother Palaniappan." The plaintiff was to give a release of his claims to a certain village which was part of the endowment of the choultry, and in consideration of such release, obtained the suit hundi drawn by the first defendant on the P.L.R.M. Firm. The Hundi ran thus :—

Rs. 17,000.

Siva is everywhere.

Sathirasangarakottai P.R.P.L.S.

Thirty-first July 1906—16 Audi Parabhava year. Chinnayya Chetty should pay at P.L. P.L. Shop in Madras, the amount of rupees seventeen thousand only with nadappu interest from this

date to Murayur P.L.S.S.'s order in respect of having left Seerserutamangalam village as belonging to chatram and debit it in P.R.P.L.S.'s account getting the payment endorsed.

P.R.P.L.S. Hukdar } Palaniappa Chetty.

The plaintiff, not having been paid the amount of the hundi sued to recover the amount with interest personally from the drawyer, who was originally the only defendant impleaded in the suit. The defendant contended that the hundi was not supported by consideration and was not intended to be operative, and also that in any event he was not personally liable but that the plaintiff should proceed only against the charity properties, that the suit was bad for non-joinder of necessary parties inasmuch as the other members of the defendant's family who were also hukdars in respect of the family charity were not impleaded in the suit. The original defendant died pending the suit, and thereupon the legal representatives of the deceased first defendant and the other members of the family were joined as defendants in the suit. The learned Trial Judge passed a decree in favour of the plaintiff for the amount claimed but held that the defendants were not personally liable and that the decree amount should be realized out of the charity properties. The defendants Nos. 2 to 7, who were the legal representatives of the first defendant, preferred an appeal against the decree, contending that the suit hundi was not supported by consideration and was not intended to be operative, while the plaintiff preferred a memorandum of objections, claiming that the first defendant was personally liable on the suit hundi and that the plaintiff was entitled to a decree against the first defendant's sons and grandsons, to be realized out of the joint family and other assets of the first defendant in their hands. At the hearing of the appeal, the vakil for the plaintiff-respondent stated that, if a personal decree against the first defendant were granted to him, he did not want a decree against the charity properties.

T. Narasimha Ayyangar for the appellant.

Hon. Mr. *S. Srinivasa Ayyangar* and *K. Bashyam Ayyangar* for the first respondent.

S. E. Sankara Ayyar for the second respondent.

K. Rajah Ayyar for the respondents Nos. 7, 8 and 11.

PALANIAPPA CHETTIAR v. SHANMUGAM CHETTIAR.

WALLIS, C.J.

M. Pathanjali Sastri for the respondents Nos. 4 to 6.

The Court delivered the following JUDGMENTS:—

WALLIS, C.J.—This is an appeal from a decree of KUMARASWAMI SASTRI, J., in a suit brought by the plaintiff on a promissory note executed by the first defendant describing himself as 'P.R.P.L.S. Hukdar,' plaintiff sought to make the first defendant personally liable on the note. The first defendant pleaded that the suit was bad for non-joinder of the other members of the family who as he alleged were also hukdars of the charity, that it was without consideration and that he was not personally liable. He died after the settlement of issues and the plaintiff then brought on the record not only his legal representatives but also the other members of the family to meet the objection of non-joinder and additional issues were settled as to their liability.

The learned Judge found on the first issue that the promissory note was not without consideration or intended to be inoperative, and we see no reason to differ from that finding.

The subsequent correspondence clearly shows the note was not intended to be inoperative. As regards consideration the note appears to have been given in consideration of the plaintiff's relinquishment of his claim to a certain village in favour of the family charity. The village was not one of those expressly dedicated to charity by the family. The plaintiff's father had claimed it and the plaintiff himself had been enforcing his claim to it with some success in the years preceding the execution of the promissory note. The appeal of defendants Nos. 3 and 5 to 7 therefore fails and is dismissed with costs of the plaintiff.

The learned Judge has given to plaintiff a decree against the charity properties in the hands of the defendants Nos. 2 to 15 and the plaintiff in his memorandum of objections claimed that the first defendant was personally liable on the suit note and that he was entitled to a decree against his sons and grandsons. He asked in the plaint for a personal decree against the first defendant and at the hearing of the appeal his vakil stated that if this were granted him, he did not want a decree against the charity properties; defendant No. 3 and the representatives of the deceased first defendant contended that the charity properties alone were liable, and that if this were not so, the other members of the family who had been joined as defendants were equally liable with them. The family charity was constituted

in 1887 pursuant to exhibit K a letter addressed to the P.L.R.M. firm at Madras in which it was stated that the family had set apart the three villages named and Rs. 50,000 for charity and the P.L.R.M. firm were directed to credit Rs. 50,000 separately under the style of P.R.P.L.S. for the charity and carry on dealings separately for the choultry under that style. The letter went on to say that only P. L. Palaniappa the first defendant was to supervise the chatram and buildings and that the P.L.R.M. firm were to honour the hundis drawn by the said person for the said matters and debit the accounts and to correspond with him.

The first defendant was accordingly provided with a book of blank hundis like a cheque book on one of which he executed the suit hundi on 31st July 1906, "In consideration of his abandoning his claim to the Seersenthamangalam village in favour of the châtram pay to Murayur P.L.S.S.'s (the plaintiff's) order Rs. 17,000 with Nadappu interest from this date and debit it in P.R.P.L.S.'s account entering the payment." The words 'P.R.P.L.S. Hukdar' were printed at the place for signature which the first defendant completed by signing his name Palaniappa Chetti.

The instrument satisfies the definition of a bill of exchange in section 5, and of a cheque in section 6 of the Negotiable Instruments Act and the first question is whether the learned Judge was right in holding that the first defendant, the drawer, was not personally liable.

Under sections 26 and 27 the drawer binds himself by drawing the bill himself or by his agent, and under section 28 an agent who signs a bill without indicating therein that he acts as an agent or that he does not intend to incur personal responsibility is liable personally. 'Agent' however in these sections means the agent of a person capable of contracting within the meaning of section 26 and when the agent is not liable the principal is: A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of section 28. Accordingly such trustees have been held personally liable by SUBRAHMANYA AYYAR, J., in *Pasupatia Pillai* v. *Sundarappier*(1), by KRISHNASWAMI

(1) (1907) 17 M.L.J., 615.

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WALLIS, C.J.

AYYAR, J., in *Aiyathurai Aiyar* v. *Dharmasena Aiyar*(1) and in *Kasivasi Somasundra Thambiran* v. *Venkata Narayana Pillai*(2) to which I was a party with SESHAGIRI AYYAR, J., and in *Swaminatha Aiyar* v. *Srinivasa Aiyar*(3) where the personal liability of the temple trustee on the promissory note was not questioned. The decision of SADASIVA AYYAR, J., in *Sundresa Gurukal* v. *Sambasiva Aiyar*(4) which the learned Judge has followed is opposed to these rulings and is not in my opinion supported by *Koneti Naicker* v. *Gopala Aiyar*(5) or by *Chapman* v. *Smethurst*(6) on which it was based, as in those cases the question was whether the agent or the principal was personally liable on the bill. *Sundresa Gurukal* v. *Sambasiva Aiyar*(4) was no doubt referred to with approval by KUMARASWAMI SASTRI, J., sitting with SADASIVA AYYAR, J., in *Ammalu Ammal* v. *Namagiri Ammal*(7) where Robinson's settlement *In re Gant* v. *Hobbs*(8) was referred to as supporting it. That case, however, like the case from which it differed was not a case of a negotiable instrument but of a covenant in a deed as to which other considerations are applicable. Moreover the observations in *Ammalu Ammal* v. *Namagiri Ammal*(7) were *obiter*, the only question there being the right of recourse against the deceased's estate on a promissory note executed by his executrix as to which the executrix's personal liability was not questioned. We have also been referred to *Krishna Chettiar* v. *Nagamalli Ammal*(9). That was a case in which the estate of a minor was held liable on a promissory note executed by his mother who was also his guardian but did not describe herself as such. The correctness of the decision in so far as it holds the minor's estate directly liable has been questioned by SADASIVA AYYAR, J., in *Ammalu Ammal* v. *Namagiri Ammal*(7). It does not, as I understand it, decide that the mother was not personally liable. The view I have taken is entirely in accordance with the English decisions. In *Byles on Bills*, 16th Edn., page 86, the learned author says:

"If persons who fill official situations as Churchwardens, Overseers, Surveyors, Commissioners, Managers of Joint stock banks,

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(1) (1911) M.W.N., 143.
(2) (1915) 26 I.C., 356.
(3) (1917) 32 M.L.J., 259.
(4) (1915) 2 L.W., 188.
(5) (1913) 25 M.L.J., 425 (F.B.)
(6) (1904) K.B., 1927.
(7) (1917) 33 M.L.J., 634.
(8) (1912) L.R., 1 Ch., 717.
(9) (1916) I.L.R., 39 Mad., 915.

and Agents and Secretaries to Companies give bills or notes on which they describe themselves in their official capacity they are nevertheless personally liable"

citing *Rew.* v. *Pettet*(1) the case of Churchwardens and other cases. Here the first defendant described himself as P.R.P.L.S. hukdar. 'P.R.P.L.' was the vilasam of the whole family. 'S' admittedly signifies chatram so that he described himself as hukdar of the P.R.P.L. chatram, a description which would not affect his personal liability on the note.

A further contention has however been raised that the use of the vilasam P.R.P.L.S. sufficiently indicated that he was acting as an agent within the meaning of section 28 for the whole family who are hereditary hukdars including himself. This would merely render the other members of the family liable as well as himself.

I do not however think that any clear indication can be gathered from this signature of an intention to make any one liable but himself. When the agent of a Chetti firm in executing a negotiable instrument prefixes the firm's *vilasam*, this is a well-understood indication that he is acting only as an agent and has been so recognized by the Courts. But when a man signs as hukdar prefixing the charity *vilasam* it appears to me that on the face of the document there is no clear indication that he contracts for any one but himself. If it were otherwise, it would be necessary to find whether the other hukdars had authorized him to draw hundis on their behalf. There is not even on the facts of the case any reason to find that he intended to draw the hundi on behalf of any one else. He was supervising the chatram and in charge of its funds, and it was *prima facie* for him to arrange for the payment of the money which the chatram had to pay to secure its title to the village.

The plaintiff does not desire to have recourse to the trust property and there is no need to consider whether it could properly be made liable in the present suit. The memorandum must be allowed and the decree varied by releasing the charity properties and making defendants Nos. 3 to 10 liable to the extent of the joint family properties in their hands with costs of the

(1) (1834) 1 Ad. & E., 196.

PALANIAPPA CHETTIAR v. SHANMUGAM CHETTIAR.

SPENCER, J.

plaintiff, first respondent. Time for tender and execution of sale-deed is extended by three months from this date.

SPENCER, J.—I entirely agree. I have no doubt that the first defendant made himself personally liable under the hundi (Exhibit A) and that the decree must be amended by releasing the charity properties and making the joint family assets in the hands of defendants Nos. 3 to 10 liable. To the authorities of *Pasupathi Pillai* v. *Sundra Aiyer*(1), *Aiyathurai Aiyer* v. *Sharmasiva Aiyer*(2), *Koneti Naicker* v. *Gopala Aiyer*(3), I would add that of *Sri Yerruganti Chinna Venkatanarayanan* v. *Kotagiri Venkata Narasimha*(4). I do not think that *Sundaresa Gurukkal* v. *Sambasiva Aiyer*(5) was correctly decided. The learned Judge, who decided it in quoting *Koneti Naicker* v. *Gopala Aiyer*(3), may have been misled by the clerical error consisting in the accidental omission of the 'not' between the words 'intention' and 'to incur personal responsibility' in the judgment of OLDFIELD, J., as reported both in the Law Journal and in the authorized reports.

I am prepared to follow *Krishna Chettiar* v. *Nagamani Ammal*(6) which does not appear to me to be inconsistent with *Sanka Krishnamurthi* v. *The Bank of Burma*(7) as it decided upon principles of Hindu Law, that a mother could make her minor son's estate liable for a debt incurred for purposes binding upon him but that there could be no personal decree against the defendant who, in that case, was the minor. I think that cases of guardians and managers of joint Hindu families signing promissory notes on behalf of minors should be distinguished from cases of agents, trustees and executors who sign on behalf of principals, trusts, or estates of deceased persons. The observations of the Judicial Committee in *Konwar Doorganath Roy* v. *Ram Chunder Sen*(8) to the effect that the manager of a debutter estate had an analogous right to that of the manager of an infant heir was not made with reference to a negotiable instrument.

The signature of the guardian of a minor or of the manager of an infant's estate to a contract is a substitute for the

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(1) (1907) 17 M L.J., 615.
(2) (1911) (1) M.W.N., 143.
(3) (1915) I.L.R., 38 Mad., 482.
(4) (1913) M.W.N., 1005.
(5) (1915) 2 L.W., 188.
(6) (1916) I.L.R., 39 Mad., 915.
(7) (1912) I.L.R., 35 Mad., 692.
(8) (1877) I.L.R., 2 Calc., 341 (P.C.).

signature of the ward or infant who is himself incapable of contracting and it has the effect of making the minor's estate liable when the contract is made for necessary purposes but the minor cannot be made personally liable thereby ; See *Sanka Krishnamurthi* v. *The Bank of Burma*(1). I do not understand *Krishna Chettiar* v. *Nagamani Ammal*(2) as going beyond this.

The case of agents signing negotiable instruments is especially provided for in section 28 of the Negotiable Instruments Act (XXVI of 1881). Cases of trustees, executors, churchwardens, etc., who sign promissory notes on behalf of inanimate objects such as trusts, temples, estates of deceased persons and parish vestries, etc., fall into a different class. In such cases there is a very strong presumption that the trustee, executor or churchwarden intended to incur an individual responsibility because he does not represent any other person in law. An incorporated company is however both in England and in India a distinct person and therefore the case of a Director of a company signing a promissory note in the name of the company is on a different footing again. So we find section 89 of the Indian Companies Act VII of 1913 raising a presumption that a person acting under the authority of a company and signing a promissory note in the name of the company means to make the company liable. In the present case not only is there no indication in the hundi that Palaniappa Chetty (first defendant) did not intend to incur personal responsibility but the fact that he signed as hukdar to the chatram makes it clear that he must be liable for the chatram debt, as the chatram, itself has no personal liability. First defendant's legal representatives are also liable to the extent of the family properties in their possession.

K.R.

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(1) (1912) 35 Mad., 692. (2) (1916) I.L.R., 39 Mad., 915.