

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Ag. Chief Justice and Mr. Justice Sūh.

1916.

August 31.

VARDAJI KASTURJI MARWADI AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS *v.* CHANDRAPPA BIN PIRAJI KSHIRSAGAR AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

Power-of-attorney, construction of—Whether special or general—Agent's authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908), Order III, Rule 2 (a)—High Court Rule III under section 122 of the Civil Procedure Code (Act V of 1908).⁽¹⁾

A power-of-attorney was issued in plaintiff's favour in the following terms :
" Accordingly, I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond, nothing has been paid to me. As the time in respect of it is about to expire, and it is necessary for me to go to my native place, I have constituted and appointed the above-named person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement, and to pass receipts for me, and on my behalf to sue and to receive process, and to do all such acts in this one matter as I, if present, would have done, or could have done or would have been permitted to do or would have been called upon to do." The question being raised whether the power-of-attorney was a general power-of-attorney within the meaning of Rule III of the rules made by the High Court under section 122 of the Civil Procedure Code, 1908, or a special power-of-attorney,

Held, that the power was a special power-of-attorney, inasmuch as the agents' authorisation extended not to any class of business or employment, but was restricted to the doing of all necessary acts in the accomplishment of one particular purpose.

Charles Palmer v. Sorabji Jamshedji,⁽²⁾ applied; *Venkataramana Iyer v. Narasinga Rao*,⁽³⁾ not followed.

* Second Appeal No. 727 of 1915.

⁽¹⁾ Rules made by the High Court of Bombay under section 122, and published in the *Bombay Government Gazette*, September 15, 1910, Part I, p. 1496.

Rule III : Clause (a) of Rule 2, Order III, be amended to read as follows :—

" Persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties."

⁽²⁾ (1886) P. J. 63.

⁽³⁾ (1914) 38 Mad. 134.

SECOND appeal against the decision of E. H. Leggatt, District Judge of Dharwar confirming the decree passed by V. B. Halbhavi, Subordinate Judge at Hubli.

Suit on mortgage.

The plaintiff Shrinivas on the strength of a power-of-attorney from one Vardaji Kasturji filed this suit to recover a sum of money due on a mortgage bond dated the 14th May 1898. The terms of the power-of-attorney were :

" I Vardaji Kasturji Marwadi . . . hereby give authority to Shrinivas Gurrao Deshpande . . . to act in the following one matter . . . Accordingly, I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond nothing has been paid to me. As the time in respect of it is about to expire and it is necessary for me to go to my native place, I have constituted and appointed the above person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement and to pass receipts for me, and on my behalf to sue and to receive process and to do all such acts in this one matter as I, if present, would have done or could have done or would have been permitted to do or would have been called upon to do."

The defendant contended that the suit was not maintainable as the power was not such as was necessary under the amendment to Order III, Rule 2, Civil Procedure Code, 1908, made by the High Court in Notification No. 2030, Rule III, published on 15th September 1910 at page 1496 of the Bombay Government Gazette.

Both the lower Courts held that the power was a special power-of-attorney and dismissed the plaintiff's suit.

The plaintiff preferred a second appeal.

Coyajee with *Nilkant Atmaram* for the appellants :— This is a suit by a Muktyar. The lower Courts have held that the power-of-attorney is not adequate.

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Under Civil Procedure Code (Act VIII of 1859) the provision for granting power was too narrow: see sections 16 and 17.

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Under the Code of 1882, sections 36 and 37 provide for "to do any act": see *Sadashiv Rayaji v. Maruti Vithal*.⁽¹⁾

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Stamp Act (II of 1899), section 2, clause 21 and Schedule I, Article 48 show that the power-of-attorney would be a general one: see *Venkataramana Iyer v. Narasinga Rao*.⁽²⁾

The present Civil Procedure Code (Act V of 1908), Order VI, Rule 17 is liberal, but our High Court under section 122 has made it narrow by retaining the provision in section 37 of the Code of 1882.

We submit when the authority extends to a single act, it is special and when to all acts connected with a particular employment it is general: see Story on Agency (9th Edn.) page 17, para. 17.

G. S. Mulgaonkar for the respondent:—The power-of-attorney in question is a special one. It is for one particular act or transaction and even though several acts have to be done towards the accomplishment of that transaction it does not cease to be a special one and become converted into a general one. Our High Court has held a similar power-of-attorney to be a special one: see *Charles Palmer v. Sorabji Jamshedji*.⁽³⁾

Forms given in High Court Circulars for 1903, page 156 and for 1912 page 50, show that the power-of-attorney in question is a special one.

The case of *Venkataramana Iyer v. Narasinga Rao*⁽²⁾ is not supported by the texts on which the decision is based.

⁽¹⁾ (1890) 14 Bom. 455.

⁽²⁾ (1914) 38 Mad. 134.

⁽³⁾ (1886) P. J. 63.

BATCHELOR, Ag. C. J.:—The only question which arises for decision in this appeal is whether the power-of-attorney filed by the plaintiffs is a general power of attorney within the meaning of Rule III of the rules made by this High Court under section 122 of the Civil Procedure Code, and published in the Bombay Government Gazette of September, the 15th, 1910, at p. 1496. The rule in question is made in substitution of the provision occurring in clause (a) of the 2nd Rule of Order III of the Civil Procedure Code. That clause, as enacted by the Legislature, allowed the appearance as a recognised agent of a person holding a power-of-attorney authorising him to make and do such appearances, applications or acts in any Court as are required or authorised to be made or done by a party. The direction by which this clause has been replaced owing to the Rule made by the High Court is this: The recognised agents or parties by whom such appearances, applications and acts may be made or done are “Persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties.”

We have no concern with the question whether the grantor of the power was or was not a resident within the local limits of the original Court's jurisdiction. That is a point which has not been considered. We must assume for the purposes of the argument that the grantor of the power was not resident within such local limits. Upon that footing all that we have to decide is whether the power is a general power-of-attorney within the meaning of the Rule or, as held by the learned Judge below, a special power. The operative words

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of the document are as follows: after reciting the transfer of a certain mortgage the author proceeds:

“Accordingly, I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond, nothing has been paid to me. As the time in respect of it is about to expire, and it is necessary for me to go to my native place, I have constituted and appointed the abovenamed person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement, and to pass receipts for me, and on my behalf to sue and to receive process, and to do all such acts in this one matter as I, if present, would have done or could have done or would have been permitted to do or would have been called upon to do.”

It appears to me clear upon the authorities that this power must be pronounced to be a special power-of-attorney, inasmuch as the agent's authorisation extends, not to any class of business or employment, but is restricted to the doing of all necessary acts in the accomplishment of one particular purpose, namely, the realization of one particular debt. The authorities upon this point are conveniently collected in *Venkataramana Iyer v. Narasinga Rao*,⁽¹⁾ a decision which was cited to the learned Judge below, and has been cited here in favour of the appellants. In regard to the actual decision, it is enough for me to say, with all respect, that I am unable to concur in it, as, in my view, the authorities set forth in the report justify rather the conclusion that the document then before the Court was a special power-of-attorney. The authorities referred to are extracts from recognised text-books bearing upon this question. In *Parsons on Contracts*, the special agent is defined as one authorised “to do one or two particular things,” while a general agent is one authorised “to transact all his principal's business or his business of a particular kind;” and in *Story's work on Agency*, though the learned author

(1) (1914), 38 Mad, 134.

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employs a slightly different phraseology, it seems to me that the substantial distinction is identically the same. In Lord Halsbury's *Laws of England*, Vol. I. p. 152, the distinction is expressed as follows. "A special agent is one who has authority to act for some special occasion or purpose which is not within the ordinary course of his business or profession. A general agent is one who has authority, arising out of and in the ordinary course of his business or profession, to do some act or acts on behalf of his principal in relation thereto; or one who is authorised to act on behalf of the principal generally in transactions of a particular kind, or incidental to a particular business." In Leake⁽¹⁾ what I regard as the same distinction is expressed in these terms: "Agents are distinguished in respect of authority as general and particular or special agents. The former expression includes brokers, factors, partners, and all persons employed in a business or filling a position of a generally recognised character, the extent of authority being apparent from the nature of the employment or position; the latter denotes an agent appointed for a particular occasion or purpose, limited by the appointment."

The point is, I think, not one susceptible of much elaboration, and I must content myself with saying that the recognised text-book writers seem to me to concur entirely as to the line of distinction between a general and the special agency, and in my view, the distinction drawn by all of them leads to the conclusion that the particular document now before us is a special and not a general power. It seems to me perfectly immaterial that it authorises the doing, not of one act, but of several acts, for the distinction is not between one act and several acts, but between an agency for a particular piece of business and an agency

(1) Page 322 (6th Edn.).

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for all business or all business of a certain class. Here the agent is authorised to attend only to a particular business arising on a special occasion, and is not authorised to transact all his principal's business or even all his business of a legal character. This conclusion seems to me to receive support from this Court's decision in *Charles Palmer v. Sorabji Jamshedji*,⁽¹⁾ where the original power-of-attorney conferred only authority to do all acts necessary for securing the execution of a particular decree. This Court decided that such a power was insufficient, and that the power required by law was a general power-of-attorney in the form prescribed at p. 186 of the then High Court Circulars. Now the form prescribed in that form was a form authorising the agent to appear, sue or answer, and to receive all process, in any suit, appeal, or other judicial proceeding whatsoever in any Court.

On these grounds I am of opinion that the learned District Judge was right in holding that the instrument now in suit was a special power-of-attorney, and his decree must, therefore, be confirmed, this appeal being dismissed with costs.

SHAH, J. :—I agree.

Decree confirmed

J. G. R.

⁽¹⁾ (1886) P. J. 63.