

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

[www.ijlra.com](http://www.ijlra.com)

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INTERNATIONAL JOURNAL

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# **POWER OF ATTORNEY – BANK OF BENGAL VS.**

## **RAMANATHAN**

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### **ABSTRACT**

A power of attorney is the act by which someone, the principal, authorizes another individual, usually their lawyer or close family member, to act on their behalf for legal purposes. Under this definition, the person who serves as the agent does not need to be professionally licensed or experienced in law. It can be an effective tool for anyone who wants to give up day-to-day responsibility but still retain some control over their affairs. Power of Attorney in India is an essential legal document that allows someone to represent another person in a legal matter. If you have any property or concerns like investment, business, etc., you may want to sign a power of attorney over for someone else or appoint someone else as your agent.

In this project, the researcher will analyze, understand, and comment on the case of *Bank of Bengal vs. Ramanathan* of Privy Council, which mainly deals with the concept of the power of attorney and authority of a power of attorney to create a valid pledge. The researchers will also highlight the court's findings and the reasoning applied concerning the Indian Evidence Act, 1872. To conclude the research, the researcher will use the support of various articles, journals, law commission reports, relevant case laws, websites, extracts from books, and other academic material which will be cited in the project.

*Keywords: Power of Attorney, Evidence.*

## INTRODUCTION

A power of attorney is the act by which someone, the principal, authorizes another individual, usually their lawyer or close family member, to act on their behalf for legal purposes. Under this definition, the person who serves as the agent does not need to be professionally licensed or experienced in law. It can be an effective tool for anyone who wants to give up day-to-day responsibility but still retain some control over their affairs.

A properly executed power of attorney will specify what powers are granted to the agent and what restrictions may exist on those powers. By setting these limits, the principal can avoid potential conflicts and lawsuits if they give an agent too much power. If a power of attorney is not specific enough, it could create confusion and lead to court battles.<sup>1</sup>

An extraordinary power of attorney may restrict the agent's authority in certain areas, such as permitting him to sell only some stocks or authorizing him to travel only within a particular region. It also might restrict his ability to withdraw money from savings accounts but allow him unlimited access to credit cards or charge accounts. Power of attorney may be set out in the form of a separate letter or added on to a power of attorney, providing that the particular instrument is signed and witnessed by two or more people.<sup>2</sup>

It does not have to be witnessed. It also does not have to be executed in writing. Instead, one party can give another person the authority verbally and inform them verbally about limits placed on the agent's authority. Power of Attorney in India is an essential legal document that allows someone to represent another person in a legal matter.

A power of attorney is legally binding when signed by the donor, who gives power to their attorney. The donor has to sign the POA before a notary public or a lawyer. The donor doesn't have to be physically present at this time but will have to sign later on in front of witnesses.<sup>3</sup> The POA authorizes attorneys to conduct legal proceedings on behalf of the donor and do specific things like enrolling your business or buying a property or property. In this paper, the author will discuss a landmark judgment of the privy council in the year 1915 in *Bank of Bengal v Ramanathan* AIR

<sup>1</sup>Powers of Attorney, 2 CAN. L. REV. 132 (1902).

<sup>2</sup>Pierce, Richard J. "COMPARING THE COMPETITION LAW REGIMES OF THE UNITED STATES AND INDIA." *National Law School of India Review*, vol. 29, no. 1, Student Advocate Committee, 2017, pp. 48–69, <http://www.jstor.org/stable/26459200>.

<sup>3</sup>Power of attorney format IndiaFilings, <https://www.indiafilings.com/learn/power-attorney-format/> (last visited Dec 31, 2021)

1915 PC 121, analyzing the changes in the concept of power of attorney in the past decade.

## The Case

To determine whether Lutch Manan Chetty, who has since passed away and is now represented by the petitioners, had the authority to enter into the transaction with the plaintiff bank on which it seeks to enforce its claim against Lutch Manan Chetty, this appeal is being brought from Lower Burmah's Chief Court. Lutchumanan Chetty was born and raised in Madras, and he spent most of his time in the city. He was a member of the well-known Chetty moneylending caste.

He ran a large and presumably prosperous Angoon money lending company via agents going by the name and style of "Ana Roona Laina," or simply "A. R. L. Chetty." He had two partners before 1904, but he became the company's sole owner that year when one died and the other retired.<sup>4</sup> To represent him in legal matters, he selected Ramaswamy Chetty, who was identified in the document as "at present of Rangoon," as his attorney under the "style or firm of Ana Roona Laina or A. R. L." Chockalingam Chetty was appointed as the defendant's attorney and agent by Ramaswamy on May 15th, 1905, using the authority granted to him in his appointment.

Chockalingam has been in charge of the firm's money lending operations in Rangoon since his work. In May of 1908, the transaction that forms the foundation of this claim was concluded. One Hassam (or Hashim) Ebrahim, whom Chockalingam had previously done business, approached him for financial aid around this time, indicating that he was a member of the company.<sup>5</sup> As part of the agreement, Chockalingam agreed to pledge his firm's credit with the plaintiff bank for Ebrahim to open a cash credit account and obtain advances not exceeding Rs 50,000 from the bank and that to ensure the due repayment of this amount with interest, he would sign a promissory note in favor of the defendant's firm, which Chockalingam would guarantee.<sup>6</sup>

A bank is prohibited from opening cash credits secured by any negotiable instrument from any individual or partnership firm that "does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in a general partnership," according to the *Presidency Banks Act (XI. of 1876, s. 37, cl. e)*.<sup>7</sup> Ebrahim signed a promissory note for Rs. 50,000 on May 23rd,

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<sup>4</sup>Bank of Bengal v Ramanathan, AIR 1915 PC 121.

<sup>5</sup>*ibid.*

<sup>6</sup>Supra note 4.

<sup>7</sup>According to Section 37 cl. e: "The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance- (e) nor shall they discount or buy, or advance and

1908, by this legislation and the bank's practice, favoring "A. R. L. Chocka lingam Chetty," the name under which the defendant's company allegedly operated in Rangoon. Chockalingam signed this banknote and sent it to the institution.

As a result, both Ebrahim and the Chetty business were jointly and severally responsible on the note for advances made to Ebrahim on his cash credit account, one as the drawer and the other as the endorser. Chockalingam also provided a letter of assurance on behalf of his company to the plaintiff bank simultaneously and on the same day. In the short time since the account was created, it seems that Ebrahim has withdrawn a sizable quantity of money from it.

His assets were transferred to the official assignee when he was declared bankrupt. He is said to have gone on the run himself.<sup>8</sup> When Ebrahim failed to pay the money owed to the plaintiff bank, it launched this case in the Chief Court of Lower Burmah in its original civil jurisdiction, citing the plaintiff's failure to pay. Denying power on Chockalingam's behalf to participate in the transaction effectively defends the lawsuit.

## The Proceedings

First heard ex parte due to the defendant's failure to show up in court; however, after the ex parte decree was overturned, the matter was brought to trial as a contentious cause on January 17th, 1912, before Ormond, J. who established the problems as well as taking some of the evidence heard it. However, the defendant provided no evidence other than submitting a power of attorney and an instrument substituting Chockalingam for Ram Swamy. The court found the defendant liable for the act even though the agent had not been given express authorization to enter into a transaction of this maturity. Because of this, he ruled in favor of the plaintiffs.

But that's not what the Appellate Court agreed with.<sup>9</sup> If ensuring other people's loans were deemed "an essential" occurrence of the firm, it wouldn't be so much a money lending business as an insurance company, according to the erudite judges. As a result, the case was dismissed. This verdict, in the Lords' judgment, cannot stand. The underlying problem seems to have escaped the notice of the experienced judges. They seem to have misunderstood the nature and scope of the

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*lend, or open cash-credits on the security of any negotiable instrument of any individual of partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership;"*

<sup>8</sup>*ibid.*

<sup>9</sup>Pierce, Richard J. "COMPARING THE COMPETITION LAW REGIMES OF THE UNITED STATES AND INDIA." *National Law School of India Review*, vol. 29, no. 1, Student Advocate Committee, 2017, pp. 48-69, <http://www.jstor.org/stable/26459200>.

powers assigned to the agent, as well as the heart of the business that he organized and managed on behalf of the defendant in the lagoon.

## **The Reasoning**

Their Lordships want to briefly refer to the main sections of the authority relevant to the situation at hand. The defendant (Lutchmanan Chetty) begins by stating that he was once carrying on the business of bankers and moneylenders in Rangoon in co-partnership with two other individuals and that due to the death of one partner and the retirement of the other, he was then unilaterally carrying on the same business under the title of Chetty, and that he was desirous of appointing Ramaswamy Chetty his attorney for.

Either with or without pledge of the security placed with the agent by constituents for cash granted to them, the authorization to borrow is conferred in plain and broad terms. He was running a broad money lending company. Thus, it is essential to remember that he funded both Chetties and others. The agent indicates that he has the power to make a loan on your behalf. The company's credit and the capacity to borrow suggested that the firm might be used as collateral for getting loans from others to constituents, which was an important detail to keep in mind. To save time and effort, he allowed the lender to lend money straight to the borrower.<sup>10</sup>

This power is being construed according to a standard established in the landmark case of *Bryant, Powis*, that when an act "purporting to be done under the authority of an attorney is challenged as exceeding the authority conferred by the power, it is necessary to show that the authority in question is to be found within the four corners of the entire instrument on a fair construction" of the whole instrument."<sup>11</sup> According to their Lordships, the authority to carry out transactions of the type at issue is found in the document itself, as a necessary consequence of the nature of the business entrusted to the agent's general management. It would have been impossible to run a moneylender or a financier's firm without this kind of power.

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<sup>10</sup>Bank of Bengal v Ramanathan, AIR 1915 PC 121.

<sup>11</sup>Bryant, Powis and Bryant Ltd vs. Banque du Peuple (1893) AC 170.

## The Judgement

The evidence presented shows that the agent was trusted for three years to operate as if they had full power on behalf of the company. As the records show, Chockalingam carried out similar transactions between May 1905 and May 1908 without anybody questioning his authority. In addition, there is evidence that the agent pledges the credit of the principle in this way among these Chetty money lending organizations. Defendant argued that there was no evidence that he benefited from the transaction in issue. They believe that if authority is established, the principal's simple fact does not get any advantage does not exonerate him from his obligation.

Though it should be noted that the plaintiff bank's argument was premised on the defendant bank's books of accounts showing receipt of commission on the transaction, Chockalingam was not summoned to back up his claim that he didn't get the commission. The defendant was not called to show those books either. Their Lordships view that the Chief Court's decision should be overturned.<sup>12</sup>

## The Case And The Indian Evidence Act

If or whether a party's power of attorney holder/agent may serve as a credible witness in court proceedings on behalf of that party is now at issue. No provision in CPC 1908 prohibits the holder of a power of attorney from being cross-examined by the parties to the proceedings as a witness.<sup>13</sup> A power of attorney does not restrict the holder from testifying on behalf of his principal, the plaintiff, or the defendant in court unless he fails to meet the requirements set out in Section 118 of the Indian Evidence Act 1872.<sup>14</sup>

To be taken as evidence, a power of attorney must be attested or validated by a Notary Public by Indian Evidence Act section 85.<sup>15</sup> Power of attorney holders is permitted to testify as witnesses in the case of *Kailash Devi vs. Matadeen Agarwal*. Because he appeared as the power of attorney and the parties to suit did not choose to present as witnesses in the box, his statement in court cannot be

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<sup>12</sup>Powers of Attorney, 2 CAN. L. REV. 132 (1902).

<sup>13</sup>Akbarbhai Kesarbhai Sipai vs. Mohanbhai Ambabhai, C/SA/183/2014.

<sup>14</sup>Section 118, The Indian Evidence Act, 1872, "All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

<sup>15</sup>According to Section 85: "Presumptions as to powers-of-attorney-The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, [Indian ]Consul or Vice-Consul, or representative of the [Central Government], was so executed and authenticated."

disregarded or stated that the testimony of such witness must not be read in evidence.<sup>16</sup>

State of Rajasthan High Court concluded that a general power-of-attorney-holder might present, plead, and act on behalf of the party. Still, he cannot become a witness on behalf of the party in the case of *Shambhu Dutt Shastri vs. State of Rajasthan*.<sup>17</sup> When he's on stage, he can only do it himself. The authority to testify on behalf of oneself cannot be delegated. To testify in a courtroom is a whole new experience. If a person has an unrestricted general power of attorney, that person cannot testify on behalf of the plaintiff as if they were the plaintiff.<sup>18</sup>

Authenticated powers of attorney are adequate evidence of execution under Section 85, according to the Kerala High Court in *Damodaran Suran vs. Kesavan Meenakshy*. No doubt, the presupposition may be disproved. If the assumption is not challenged, the document is admissible in court as a document signed by the person who claims to have signed it.<sup>19</sup>



<sup>16</sup> Kailash Devi vs. Matadeen Agarwal, AIR 2001 Raj 306,

<sup>17</sup>Shambhu Dutt Shastri vs. State of Rajasthan, 1986 (2) WLN 713

<sup>18</sup>Smt. Samta Sanghi vs Shri V.G. Siddharth, W.P NO.3261/2016.

<sup>19</sup>Damodaran Suran vs. Kesavan Meenakshy, WP(C) No. 27619 of 2007(K).

## CONCLUSION

A power of attorney is a legal document that allows someone, the principal, to empower another person. Generally, their lawyer or a close family member acts on their behalf. It is unnecessary for the person acting as the agent to be a member of the legal profession or have any prior legal knowledge. This may be a helpful tool for those who don't want to relinquish control of their daily lives. The agent is allowed to do, and what limitations may be placed on those powers are laid forth in an adequately prepared power of attorney. Because of these constraints, principals may prevent disputes and litigation that may arise if they provide an agent with excessive authority. This might lead to a legal struggle if a power of attorney isn't explicit enough.

It's possible to give an agent limited authority over the principal's money or health care by creating a specific power of attorney on their behalf. An extraordinary power of attorney may limit the agent's authority in particular areas, such as allowing him to sell only a certain number of stocks or allowing him to travel only inside a specific geographic region. Savings account withdrawals may be restricted, but credit cards and other charge accounts are not likely to be affected in any way. As long as the separate document is signed and witnessed by at least two persons, it may be used as a "special power of attorney" in addition to a standard power of attorney.<sup>20</sup>

It is unnecessary to have a witness sign a specific power of attorney. It doesn't even have to be written down. Simply orally appointing an agent and informing them of any restrictions on their ability may suffice. In India, a power of attorney is a critical legal instrument that enables one person to act on behalf of another in court. If you have any investments, businesses, or other assets, you may wish to nominate someone else as your power of attorney. When the donor signs a power of attorney granting authority to the attorney named in the document, it becomes legally enforceable. Signing the Power of Attorney (POA) requires the donor to appear before a notary public or a lawyer. As long as the donor is not in the room, they do not need to sign at this time.

The POA allows lawyers to represent the donor in legal proceedings and do specific tasks on the donor's behalf, such as registering a corporation or purchasing a property or property. In this

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<sup>20</sup>Powers of Attorney, 2 CAN. L. REV. 132 (1902).

article, the author examined how the idea of power of attorney has evolved over the last decade in light of a critical privy council decision from 1915 in the case of *Bank of Bengal v Ramanathan AIR 1915 PC 121*. The concept of power of attorney under various laws, including the Indian evidence act, has changed. The ratio is given in the above case still stands.

## **Bibliography**

### *Articles referred:*

1. Implied Authority of Agent to Purchase Personal Property: By Floyd R. Mechem
2. The Law of Evidence: By Edmund M. Morgan

### *Books Referred:*

1. William Payson; Prince Richardson, Jerome. *Law of Evidence* (8).
2. Law of Evidence by A. K. Jain

### *Acts Referred:*

1. The Indian Evidence Act, 1872
2. The Power of Attorney Act, 1882

