MARKING OR CERTIFICATION OF A CHEQUE BY THE DRAWEE BANK — THE LEGAL CONSEQUENCES

"Marking or certification of a cheque" by a drawee banker, at the request more often of the drawer of a cheque and less frequently of the payee or a subsequent holder is a well known practice in Malaysia, Singapore, Ceylon, India, Canada, the United States and South Africa. In England, the practice of marking cheques except as between "banker" and "banker" for clearing purposes has been discouraged for a long time and is now rarely resorted to.[1] Lord Chorley has stated that "the efforts of the Institute of Bankers (London) have prevented this practice from developing in England."[2] In Canada and the United States, the practice of certifying or marking a cheque at the request of anyone who presents it for that purpose, is common and well recognised.[3] In South Africa it is said to be used extensively.[4] In Australia the marking of cheques has now been replaced by the issue of "bank cheques".[5] Marking or certification of a cheque is resorted to for a variety of purposes, e.g. the settlement of Income Tax liability, the payment of customs duties for the clearance of dutiable goods, transactions between vendor and vendee etc., and usually takes one or other of the following forms:— "Marked good for payment", "certified good" which statement is normally signed by an authorised bank official. The legal effect of such marking has been judicially stated to be to "give the cheque additional currency by shewing on the face that it is drawn in good faith on funds, sufficient to meet its payment and by adding to the credit of the drawer that of the banker on which it is drawn."[6] More recently the Supreme Court

1. Resolution of the London Clearing Bankers 1920. See *Questions on Banking Practice,* Institute of Bankers (London) 10th Ed., pp. 194-5; Paget, *Law of Banking,* 7th Ed., p. 301.
2. *The Modern Law Review* (1948), vol. 11, p. 251.
3. Falconbridge, *Banking and Bills of Exchange in Canada,* 7th Ed., p. 860. Brannan, J.D., *Negotiable Instruments Law* (in the United States), 7th Ed. by F. K. Beutel, p. 242.
4. Cowen, *The Law of Negotiable Instruments in South Africa,* 4th Ed., p. 108.
5. *Australian Bank of Commerce Ltd.* v. *Perel* (1926) A.C. 737 at 740-1. See Riley, E.B., *The Law Relating to Bills of Exchange in Australia,* (1964), p. 71. From the point of view of the drawer of a cheque, however, this practice is open to the objection that it involves him in additional bank charges as well as overdraft interest which is precisely what he intends to avoid through the mechanism of marking. Further, an exporter of goods from Singapore, who expects to receive funds from his banker on presentation of shipping documents under a confirmed irrevocable letter of credit may in the meantime wish to settle a debt due from him with a marked cheque, without obtaining an overdraft from his bank.
6. *Gaden* v. *Newfoundland Savings Bank Ltd.* (1899) A.C. 281 at pp. 285-6.

of India considering the legal effect of such marking or certification on cheques observed, "certification is a method adopted when a bank on which a cheque is drawn verifies the customer's account on which it is drawn and indicates on the cheque that there are enough funds in his account to meet that cheque." [7] They held, however, that such a payment (i.e. by a certified cheque) was really "a payment in cash, although in form, a payment by cheque."[8] While the business efficacy of this arrangement is well understood and acted upon with confidence both by businessman and banker alike,[9] yet the legal effect of this device still seems to be uncertain, notwithstanding its widespread use in diverse jurisdictions in the Commonwealth and the United States.[10]

That certain legal consequences arise from the marking or certification of a cheque is also not in doubt.

"If a cheque is certified or marked by the drawee bank at the request of the payee or other holder, the amount of the cheque being charged by the bank to the drawer's account, and if the holder does not there and then require payment, the drawer is discharged from all liability either on the cheque or on the original consideration for which it was given. The drawer's whole contract is that upon due presentment the cheque will be paid, if the holder so desires. The holder's whole right is to present the cheque and receive the money. The holder has no right as between himself and the drawer to present the cheque for any purpose except payment, and if, when he presents the cheque and ascertains that the bank is prepared to pay it, he elects not to draw the money at once, he thereby accepts, in place of payment, the bank's undertaking to pay. The drawer's whole obligation is performed, and the amount of the cheque is withdrawn from his control and charged to his account, and he is therefore discharged from liability on the cheque." [11]

Furthermore, the drawer of a cheque which has been marked or certified by the drawee bank either at his request or that of a payee

7. This need not always be so as the drawee bank may make the certification without debiting the drawer's account. See *Bank of Baroda* v. *Punjab National Bank Ltd.* (1944) A.C. 176; *Thomas Cook & Sons* v. *Adicappa Chetty* (1932) 34 Ceylon New Law Reports 443; *Broadhead* v. *Royal Bank of Canada* (1968) 70 D.L.R. (2nd) 445; (1968) 2 O.R. 717 (H.C.J.).

8. *Sita Ram* v. *Bombay Bullion Association Ltd.* (1965) Company Cases 526. A.I.R. (1965) p. 1628. Especially important is the fact that the Supreme Court of India considered that the *Bank of Baroda* case (1944) A.C. 176 was not binding on them.

9. "Their Lordships are not unconscious that bankers regard their word as their bond, and honour their signature even though they might have an answer in law... In any case the court here called on to decide how the law at present stands. It is not the arbiter *on* questions of banking ethics or good banking policy as a matter of business. The high standards of bankers are too firmly established to be shaken." *Per* the Judicial Committee of the Privy Council in *Bank of Baroda* v. *Punjab National Bank Ltd.* (1944) A.C. 176 at pp. 193-4.

10. See footnotes 3, 4 and 5 above.

11. Falconbridge, *op. cit.,* p. 862. This passage was approved by Grant J. in *Broadhood* v. *Royal Bank of Canada* (1968) 70 D.L.R. (2nd) 445; 1968 O.R. 717. See also the editorial note in *Journal of the Canadian Bankers' Association,* vol. 9, p. 323.

or subsequent holder cannot thereafter countermand payment on that cheque.[12]

Notwithstanding these weighty observations, what is yet in doubt, however, is the legal liability which a drawee banker incurs to a payee or a holder of a cheque by reason of such "marking or certification". In England marking or certification having been discouraged,[13] the legal position is stated to be as follows: "It may be taken that the marking of *a* cheque at the instance of the customer does not, in this country (i.e. England) involve any direct or immediate liability on the part of the banker to a payee or any subsequent holder of the cheque."[14] The authority relied upon for this proposition is the decision of the Judicial Committee of the Privy Council in *Bank of Baroda* v. *Punjab National Bank Ltd.*[15] That case, however, does not deal exhaustively with the various issues arising under this head, and whatever may be the position in England, this statement of the law, it is conceived, does not correctly represent the legal position in other jurisdictions, where this practice is widely used.[16] It is, therefore, desirable to consider in some detail, the legal liability, if any, of a banker marking or certifying a cheque at the request of a drawer, a payee or a holder and especially the liability of such banker to a subsequent holder, (whether a holder in due course or not who takes it for value on the faith of such marking or certification). This inquiry may well be made under the following heads:

(1) *May a cheque be accepted?* The starting point of this inquiry must necessarily be the leading case of *Bank of Baroda* v. *Punjab National Bank Ltd.*[17] which on this matter is regarded as conclusive of the position in English law.[18] Two earlier English decisions on the

12. Falconbridge, *op. cit.,* p. 870, where it is stated, quoting *Commercial Automation Ltd.* v. *Banque Provincial in Canada* (1962) 39 D.L.R. (2nd) 316 (Quebec S.C.) that "if a cheque has been certified by the drawee bank at the request of the holder it is considered as duly paid and it follows that thereafter the drawer cannot countermand payment."

    See Paget, *op. cit.,* p. 305 where it is observed that, "the view among bankers is that the customer has no power to countermand payment of a cheque which a banker has marked at his request, and this is probably correct." See further, *Keyes* v. *Royal Bank of Canada* (1947) 3 D.L.R. 161 for direct judicial authority on the matter.

13. See footnotes 1 and 2 above.

14. Paget, *op. cit.,* p. 301. It is important to note that the learned author restricts his opinion only to the legal effect of a cheque marked or certified at the request of the drawer and does not deal with the position where such marking or certification is effected by the drawee bank at the request of the payee or holder. A well known and distinguished authority on the English Law of Banking observes, that notwithstanding the decision in the *Bank of Baroda* case, "it does not follow that all claims by third parties in respect of marked cheques must necessarily fail." Holden, *Law and Practice of Banking,* Vol. 1, p. 246. See *Broadhead* v. *Royal Bank of Canada* (1968) 70 D.L.R. (2nd) 445 for judicial confirmation of this point.

15. (1944) A.C. 176.

16. See footnotes 3, 4 and 5 above.

17. (1944) A.C. 176.

18. Paget, *op cit.,* pp. 301-6. Chorley, *Law of Banking* (1967), 5th Ed., p. 40. Chalmers, *Bills* (1964). The learned author concedes, however, that "at common law there is no objection to the acceptance of a cheque, if the holder likes to take it in lieu of payment," pp. 247-8.

matter pointing in the same direction may be briefly adverted to. "In ordinary parlance there is no acceptance of a cheque. The bank which pays the money alone stands in the position of the acceptor. If the bank gives credit it simply honours the cheque and pays the money."[19] These observations may now be regarded as being superceded by the more authoritative decision of the Privy Council in *Bank of Baroda* v. *Punjab National Bank Ltd.*[20] the essential facts of which were as follows:— One Ghose, a customer of the Bank of Baroda drew a cheque on his account with that bank for Rs. 275,000/-, in favour of Mitter or order. This cheque drawn on 13 June 1939 was postdated to 20 June 1939 and on its face were written the words "Marked good for payment on 20/6/1939" and signed for and on behalf of the Bank of Baroda by their Manager, Amin. On the same date (i.e. 13/6/1939) the Punjab National Bank Ltd. discounted this cheque for Mitter and gave him their own cheque on the Imperial Bank of India, Calcutta, for an equivalent amount. When the Punjab National Bank Ltd. presented Ghose's cheque to the Bank of Baroda on the due date, i.e. (20/6/1939) it was dishonoured with the answer, *"Not* arranged for". In an action by the Punjab National Bank against the Bank of Baroda, the court of first instance, (Pankridge J.), and the entire Court of Appeal in India, unanimously held that the Bank of Baroda were liable as 'acceptors' of the cheque. The Chief Justice, with whom the other judges agreed, expressly held that the marking or certification contained therein amounted to an 'acceptance' of the cheque within the meaning of Section 7 of the Indian Negotiable Instruments Act, 1881 (identical with Section 17(1) and (2) of the U.K. Bills of Exchange Act).

On appeal, the Judicial Committee considered that the main question fell into two parts:

(1) whether it was legally competent to accept a cheque as if it were a bill within s.7 of the Indian Negotiable Instruments Act, 1881?

(2) whether certification constituted such an acceptance?

On the first point they said, "Now it is to be noted that so far as their Lordships know, there is no case in the books of the acceptance of a cheque. This is an arresting fact at the outset especially when the myriad cheques which have been drawn and paid during all these years are considered."[21] After stating that "it is not necessary categorically to hold that a cheque can never be accepted; it is enough to say that it is done only in very unusual and special circumstances" (which were not specified) the Privy Council went on to say, "Their Lordships repeat that no case is reported in England or India so far as they are aware of a banker being held liable *or even sued as acceptor*

19. Lord Alverstone C.J. in *Macbeth* v. *North and South Wales Bank* (1908) 1 K.B. 13 at p. 18. See *Keene* v. *Beard* (1868) 8 C.B.N.S. 372.

20. (1944) A.C. 176.

21. *Ibid.,* pp. 183-4.

of a cheque drawn upon him." [22] In this respect it is to be regretted that Their Lordships' attention was not drawn to their own earlier decision in the much older Ceylon case of *Adicappa Chetty* v. *Thomas Cook & Sons*[23] where that experienced and distinguished commercial lawyer Lord Atkin, delivering the opinion of the Judicial Committee of the Privy Council stated, "No doubt also a cheque may be accepted, however unusual such a transaction is." [24] The facts of this case were briefly as follows. P. had an account with Thomas Cook & Sons (Bankers) Ltd. (now merged with the National and Grindlays Bank Ltd.). P. who wished to borrow money from Adicappa Chetty, the plaintiff in this action drew several cheques in favour of the latter each of which was certified and signed by Davies, the Manager of the defendant bank as follows:— "Payment of the cheque guaranteed on ... (a future date)." In reliance of this certification, the plaintiff lent to P. the various sums represented by these cheques. In the meantime Davies' frauds (including this) were discovered by his superiors and he was suspended from duty. On presentation on the due dates each of these cheques certified as above, was dishonoured by the drawee bank. The plaintiff sued the bank for the recovery of the amounts, represented by each of the cheques. The power of attorney granted to Davies gave him authority to "draw, endorse, negotiate, retire, pav, or satisfy any bills of exchange." The word "accept" was omitted. Oddly enough, both plaintiff and the defendant bank contended that the certification of the cheques by Davies amounted to an acceptance thereof by the defendant bank. The plaintiff sought to read the word "accept" into the power of attorney suggesting that it had been omitted by a typist's error, while the defendants attempted to make this certification an acceptance of the cheques so as to place it outside the actual authority of Davies, the Bank manager. The Supreme Court of Ceylon held that these instruments were Bills of Exchange under section 3(1) of the Bills of Exchange Act, 1882, and that the "certification" contained therein, amounted to an acceptance thereof under Section 17 of the Act.

Fischer C.J. said, "As to the effect of the endorsement (which is *how* be regarded the certification to be) it would seem to be clear that the endorsements constituted acceptance of bills of exchange and that the four cheques, from being merely cheques under Section 73 of the Bills of Exchange Act, 1882, became bills of exchange under Section 3(1) of the Act." [25]

The Court, however, concluded that Davies, the Manager of the defendant Bank did not under the power of attorney granted to him, have *actual* authority to accept bills and, therefore, the defendant bank

22. *Ibid.,* p. 188

23. (1932) 34 Ceylon New Law Reports 443. This important decision of the Privy Council does not appear in the English Law Reports. Hence it was not brought to their Lordships' notice in the *Bank of Baroda* case. The writer of this article drew the attention of the present editor of Paget's Law of Banking who now refers to it in that work., as well as in his new edition of *Byles on Bills,* p. 278. See Paget, *op cit.,* p. 304.

24. *Ibid.,* p. 448. It is of interest to note that seven superior court judges (four in India and three in Ceylon) independently came to the conclusion that marking or certification amounted to an acceptance.

25. (1930) 31 Ceylon N.L.R. p. 385 at p. 390.

were not liable. It was precisely on this basis also that the Judicial Committee of the Privy Council dismissed the plaintiff's appeal. Lord Atkin said, "No doubt also a cheque may be accepted, however, unusual such a transaction is. Their Lordships find it unnecessary to decide whether this was an acceptance or not, for whatever it be called it appears to them not to be within any of the express powers given (to Davies) by the power of attorney." [26]

It, thus, clearly emerges from the observations of the Judicial Committee of the Privy Council in the two leading cases discussed above that there is no objection in point of law, to the acceptance of a cheque, by a drawee banker. The unqualified and dogmatic statements by English text writers to the contrary[27] would, therefore, seem to be inconsistent with these and other judicial decisions, as well as an oversimplification of the matter.

It is submitted that a cheque may lawfully be accepted by the drawee bank so as to render the latter liable as an acceptor to a payee or a subsequent holder.

Does the usual form of marking or certification amount to an acceptance? This was the second point raised in the *Bank of Baroda* case. In that case, the marking was in the following form; it was written on the face of the cheque, drawn on 13/6/1939, "marked good for payment on 20/6/1939" and was signed, "For the Bank of Baroda Ltd., M.P. Amin, Manager." The genuineness of Amin's signature was not in doubt. The position was, however, complicated by the fact that the cheque in question was postdated. Said Lord Wright: "But behind all these considerations lies the circumstance that the cheque was postdated." [28] Having observed that "it was not necessary categorically to hold that a cheque could not be accepted," Their Lordships came to the conclusion that "this case can, however, be decided simply and sufficiently on the ground that the obstensible authority of the manager did not extend to cover the certifying of postdated cheques, and that in the present case the manager had no actual authority to do so. The bank accordingly was not bound. This in itself would be a sufficient ground for rejecting the respondent's claim."[29]

26. (1932) 34 Ceylon N.L.R. 443 at p. 448.

27. See *Byles on Bills,* 22nd Ed. p. 278. Paget, *op. cit.,* pp. 301-2. Chorley, *Law of Banking,* 5th Ed., p. 40, where it is stated, overlooking the decision of the Privy Council in *Adicappa Chetty* v. *Thomas Cook & Sons (Bankers) Ltd.* (1932) 34 Ceylon N.L.R. 443, that, "there is no case in the books of the acceptance of a cheque."

    Cf. Chalmers, *Bills of Exchange* (1964), pp. 247-248 where the learned author observes that "a cheque is not intended to be accepted", though it is conceded that "at common law there is no objection to the acceptance of a cheque, if the holder likes to take it in lieu of payment," *ibid.*

28. (1949) A.C. 176 at p. 192. If by this it is intended to mean that a postdated cheque cannot be accepted it is submitted with respect that it does not correctly represent the legal position. A cheque is a bill. A bill is not invalid by reason that it is postdated. Section 13(2) Bills of Exchange Act. Indeed it is precisely a bill payable on a future date which is the appropriate instrument requiring acceptance.

29. (1944) A.C. 176 at p. 193.

In the Ceylon case of *Adicappa Chetty* v. *Thomas Cook & Sons* the cheques there involved were not tainted with the turpitude of postdating, and accordingly the Privy Council decided the case solely on the point that the bank manager had no actual authority to accept bills. Lord Atkin said, "Their Lordships find it unnecessary to decide whether this was an acceptance or not, for whatever it be called it appears to them not to be within any of the express powers given by the power of attorney." [30] His Lordship added, however, that "anything less like the ordinary business conception of an acceptance in form and intention than this contract it would perhaps be difficult to find",[31] though he did not elaborate on this statement which with respect must be regarded as obiter. It would seem pretty clear, therefore, that neither the *Bank of Baroda* case nor the *Ceylon* case expressly decided that a cheque could not be accepted; on the contrary these two decisions are in fact authority for the proposition that a cheque, like any other bill of exchange is capable of being accepted. In the *Bank of Baroda* case the cheque was postdated and, therefore, the manager of the bank had no ostensible authority to accept such a cheque while in the *Ceylon* case the bank manager had no actual authority to accept a bill.[32] The point that emerges from these two leading decisions of the Privy Council is that a bank manager has no ostensible authority to accept bills (including cheques whether postdated or not) but granted that actual authority to do so is available, in law, here is no reason why marking or certification of a cheque, as resorted to in the above two cases should not amount to an acceptance, having regard to the definition of the term "acceptance" in Section 17(1) the Bills of Exchange Act which enacts that "the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer", while subsection (2) thereof provides that "the mere signature of the drawee without additional words is sufficient to constitute an acceptance." If, therefore, a bank official marking or certifying a cheque, has actual *as opposed to ostensible authority to accept a bill,* and, therefore a cheque, his signature on behalf of the bank would amount to an acceptance, under the Bills of Exchange Act Section 17, notwithstanding the use of any additional words such as "marked good for payment" or "certified good on 20/6/1939" which for this purpose may be disregarded as being extraneous.

There is authority for the proposition that a cheque may be accepted and that the drawee banker who does so may be liable as an acceptor to a holder, particularly to a holder in due course. A recent Canadian decision is directly in point and is of considerable interest.[33] In this case the drawer's signature on a cheque was forged. The cheque was made payable to the order of T. an identifiable payee. The drawee bank stamped on its reverse, "accepted by teller" which was authenticated by an authorised signature. Thereafter, this cheque was indorsed by the payee to the Royal Importing Co. Ltd. who gave value for it in good faith. Before presentation of this cheque, however, the cus-

30. (1932) 34 Ceylon N.L.R. p. 448.

31. *Ibid.*

32. Had such authority been present, the Privy Council would have been obliged to consider whether there was acceptance of the cheques or not.

33. *Broadhead* v. *Royal Bank of Canada* (1968) 70 D.L.R. (2nd) 445.

tomer of the bank whose signature had been forged, closed his account with the defendant bank. Upon presentation later, the cheque was dishonoured by the drawee bank. In an action by the plaintiffs, the Manitoba Court of Appeal held, (a) that the plaintiffs had all the rights of a holder in due course by virtue of Section 54 of the Bills of Exchange Act, 1882 (U.K.) ;[34] (b) the drawee bank were acceptors of the said cheque; (c) they were, therefore, liable to the plaintiffs.

In the United States, marking or certification of a cheque constitutes an acceptance thereof.[35]

(2) *Is the drawee banker liable to a holder in tort for a negligent misrepresentation ?*

Dealing with the particular form of marking involved in the *Bank of Baroda* case, the Privy Council stated, "They might be construed as words of representation, as to the genuineness of the cheque and of the signature. If the cheque had not been postdated, the certification might also be held to include a representation as to the then sufficiency of the drawer's account." If such representation amounted to a guarantee by the drawee bank, a holder cannot clearly rely on it for want, both of privity and of consideration, for as the Privy Council pointed out, "if it was to be construed as a representation that on the due date there would be funds available, it necessarily amounted to a promise, and the want of consideration would be fatal to its enforceability."[36] Granted that such marking or certification amounts to a representation, as was admitted also in the older English decision in *Gaden* v. *Newfoundland Bank Ltd.*[37] is the drawee bank liable in tort for a negligent misrepresentation? In view of the recent decision of the House of Lords in *Hedley Byrne & Co. Ltd.* v. *Heller and Partners' Ltd.*[38] it may well be that he may be so liable.[39]

(3) *Is the drawee bank liable to a holder by virtue of custom or usage?*

It has been pointed out above[40] that in various jurisdictions where the common law prevails, marking or certification of a cheque is a well accepted mercantile practice. It may well be, therefore, that a drawee banker may be liable to a holder on the basis of such custom. In the *Bank of Baroda* case, both the High Court of India and the Judicial Committee of the Privy Council denied the existence of such a custom.[41]

34. The plaintiff could not qualify to be a holder in due course because of the forgery of the drawer's signature, but was entitled to the rights of such a holder under the principle of estoppel established by Section 54 of the Act.
35. U.S.C. Art. 3 411 (1) which states "Certification of a cheque is acceptance, where a holder procures certification, the drawer and all prior parties are discharged."
36. (1944) A.C. 176 at p. 191.
37. (1899) A.C. 281.
38. (1963) 2 All E.R. 575.
39. See Chorley, *op. cit.,* p. 41 footnote 2 in support of this view.
40. Footnotes 3 and 4 above.
41. 1944 (A.C.) 176 at p. 190.

Lord Wright stated that "Their Lordships, agreeing with his decision (i.e. that of the Chief Justice of the High Court of India) that the evidence of custom is insufficient, as they think it is both in the number and quality of the witnesses and in the certainty and precision of the evidence given, cannot in view of the decision which he had previously expressed on the issue of custom, treat the sentence as intended to find a legally binding custom."[42] His Lordship went on to say that, "In one essential matter, however, the evidence is not merely too weak to support a custom but is directly opposed to it. The cheque in question was postdated."[43] It is submitted that in jurisdictions where this practice is well founded, such as in Ceylon, Canada, and Malaysia there may well be that "certainty and precision" as to afford sufficient evidence of custom or mercantile usage as to render a drawee banker liable on the basis of custom.

(4) *Is the drawee banker liable on the basis of an estoppel?*

In the *Bank of Baroda* case the Privy Council observed, "Nor could the certification be construed as an estoppel on which the respondent could claim... because that doctrine is limited to a representation as to an existing fact."[44] Even assuming that the representation is as to an existing fact, it would seem that estoppel will not avail a plaintiff against a drawee bank. Lord Chorley says, "It might be argued that the representation[45] would create an estoppel, but no action will lie upon a bare estoppel, and since the holder could not sue the bank upon the cheque even if the account were in funds, there appears to be no duty upon which an action could be founded."[46] A more serious objection to founding a cause of action based on estoppel is stated to be that estoppel may be used only as "a shield and not as a sword."[47] Since that decision, however, there have been further developments in this respect and it may well be that the principle could no longer be asserted with the same dogmatic effect.[48] A banker it is conceived may well be liable on this ground as well.

(5) *Is a banker who marks or certifies a cheque liable to a holder under Section 56 of the Bills of Exchange Act?*

This section provides that "where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course." Two questions here arise. (1) When does a person sign as an indorser, (2) What liability is imposed on such indorser?

42. *Ibid.,* p. 190.

43. *Ibid.*

44. *Ibid.*

45. Chorley, *Law of Banking,* 5th Ed., p. 41.

46. *Ibid.*

47. Denning, L.J. in *Combe* v. *Combe* (1951) 2 K.B. 215.

48. Allan (1963) 79 L.Q.R. 238. Jackson (1965) 81 L.Q.R. 84, 223. Trietel, *Law of Contract* (1970), 3rd Ed., p. 108 footnote 84.

The answer to the first question is provided by Section 32 of the Bills of Exchange Act, which states "that an indorsement must be written on the bill itself and signed by the indorser. The simple signature of the indorser on the bill, without additional words is sufficient."

The answer to the second question is to be found in Section 55 of the Act according to which an "indorser of a bill by indorsing it engages that on 3ue presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken."

In *Adicappa Chetty* v. *Thomas Cook & Son (Bankers) Ltd.*[49] the Supreme Court of Ceylon held that the marking or certification there involved, amounted to an endorsement by the bank so as to render them liable to a holder in due course under Section 56 of the Bills of Exchange Act. This was, however, denied by the Privy Council only on the ground that the bank manager under the authority given to him had no power to endorse cheques on behalf of the bank. In this respect the Privy Council, were with respect erroneous, as the power of Attorney granted to Davies, specificially included the power to endorse bills on behalf of the bank, which Their Lordships apparently overlooked.

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49. (1932) 34 Ceylon N.L.R. p. 443.

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