Law relating to
POWERS OF ATTORNEY

Being a Commentary on the Powers of Attorney Act, 1882
[As amended by Act 55 of 1982]
and relevant provisions of the allied Laws

With

FORMS AND PRECEDENTS

by

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"Let every eye negotiate for itself, and trust no agent." There would have been a time when these words of *William Shakespeare* [(1564-1616), Much ado about nothing, 1598-9,II.i] had a meaning, but that seems to have lost its apposition through all the changing scenes of life. In today's busy life and in the complex mercantile world these words may only sound a good, honest but painful Shakespearean sermon. In the present complex age out of practical considerations and at times out of necessity wide and diverse dependence on another to get things done appears almost to be an indispensable necessity. Compulsions of specialized jobs which involves skill or, time constraints, often force people into delegation of authority on others. Whether it be conduct of litigation in Courts, administration of an estate or management of a business enterprise, sale of or negotiation regarding a land or property, representation in Government departments or a host of other human activities, domestic or commercial, quite often involve exercise of authority by one on behalf of another. This process of getting things done through another or substituted performance of acts gave birth to the concept of agency. The person who acts on behalf of another person (the principal) by his authority, express or implied, is called an agent and the relation between him and his principal is called agency. The legal consequence of agency is exercise of authority by one on behalf of another.

The general rule is that a person can do by an agent all that a person wants to do or is compelled to do excepting those that can be performed only personally. There is a distinction between employing someone else to carry on one's business and engage someone else to perform something, which is his business. A master delegates to his own servants the work of carrying on his own business; he may be said to delegate when he employs some outside person to act as his representative. [*Riverstone Meat Co. v. Lancashire Shipping Co.,* (1960) 1 All ER 193]. Delegation as the word is generally used does not imply a parting with powers by the person who grants the delegation, but points rather to a conferring of an authority to do things which otherwise the person would have to do himself. [*Huth v. Clarke*, (1890) 25 QBD 391]. An agent is, in fact, a conduit pipe connecting two persons. As regards third persons, agency is merely a mode by which a person can do acts through the

medium of another person. An act done by an agent, within the scope of his authority, binds the principal in the same manner as if the principal himself had done it.

The agency may be constituted by an express limited authority to do a particular act or a larger authority to do all acts falling within the class of description to which it belongs, or a general authority to act on behalf of the principal for all purposes. The authority given by the principal to the agent enabling the latter to bind the former by acts done within the scope of that authority, may be express or implied, in other words given by writing, words or conduct. In one case only is it necessary that the authority should be given in a special form. In order that an agent may make a binding contract under seal it is necessary that he should receive authority under seal. Such a formal authority is called a power-of-attorney. In a power of attorney, the authority given by a principal to his agent is an express authority enabling law to bind the former by the acts done by the latter, within the scope of that authority. What the power-of-attorney authorizes depend on its terms and the purpose for which it is executed.

A power-of-attorney holder is nothing but an agent as defined in Section 182 of the Contract Act. It differs from agency in that while in the case of agency the principal is only bound by acts of his agent, the holder of a power-of-attorney not only acts on behalf of the principal so as to bind the latter, but also acts in the name of the principal and uses his name in the instruments executed by him as the attorney. Prior to enactment of Powers of Attorney Act, an agent having authority to execute an instrument had to sign in the name of the principal if he was to be bound. If the agent signed the deed in his name albeit as agent, he was the person who was regarded as party to the document and not the principal. It was the agent alone that could enforce the deed and it was he who would be liable on it. It was to overcome this hardship that the Act was enacted. The Statement of Objects and Reasons states,—

> "As the law stands, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and where sealing is required must seal, in his principal's name. The first object of this bill is to render it legal for such donees to execute in and with their own names and seals.__."

The Act does not, however, confer on a person a right to act through agents. It presupposes that the agent has the authority to act on behalf of the principal, and protects acts done by him in exercise of that authority but in his own name. But where the question is as to the existence or the validity of the authority, it has no operation. It may be noticed that execution of power of attorney and its legal consequences, liability of donor and donee of the power, ratification and adoption of unauthorized acts, revocation and termination of authority and all other relevant aspects cannot be studied without having reference to the general law of agency, which has its base in Chapter X of the Contract Act.

The power of attorney is an important subject not only to the legal profession but also to all those who are concerned with Court affairs handled by the legal profession, company secretaries, registrars, trustees, etc. It is also important to all those who not being

directly able or capable of doing or performing something want to act and perform the same through another. The book has, therefore, been designed keeping in mind the utility of the subject to all those as aforesaid.

The book has been set out in 10 chapters. FIRST chapter, which is introductory in nature, gives a birds eye-view of the concept, mode of creation, legal consequences and general principles of agency. SECOND chapter deals with the Powers of Attorney Act, 1882 as amended by Central Act 55 of 1982 [The Power of Attorney (Amendment) Act of 1982] and attempts to analyze the provisions of the Act as also the impact of amendments. Nature, extent and scope of powers and rules and principles of construction are discussed in THIRD chapter. FOURTH chapter deals with authority of power-of-attorney holder to represent his principal in court, conduct cases and to make applications *etc*. To raise a presumption of execution of power-of-attorney under Section 85 of the Evidence Act or to satisfy the test laid down in the section, it is very essential that the document purporting to be a power-of-attorney must state that it was executed before a Notary Public and it must bear authentication by a Notary Public regarding the manner of execution or the persons executing the power of attorney. Chapter FIFTH deals with this aspect and not only Section 85 of the Evidence Act but also relevant provisions of the Notaries Act, 1952 have been referred to and discussed. Discussion as to registration of power-of-attorney and stamp duty on power-of-attorney finds place in SIXTH chapter. Termination, revocation and the question of revocability are discussed in chapter SEVEN. A *vakalatnama* being an authority in writing by a litigant to his lawyer is in essence a power-of-attorney. Chapter EIGHT deals with appointment of a pleader and *vakalatnama*. Chapter NINE, the last chapter, deals with forms and precedents and contains some specimen forms of the power-of-attorney and clauses thereof. The forms or clauses thereof may be adopted with alterations suitable to the need of the user. The book also contains useful appendices for handy reference.

The purpose of this book is twofold: to serve as a concise and handy reference book and a book of precedents on the subject. Apart from leading decisions from Privy Council, Supreme Court and various High Courts of India, foreign decisions have also been referred to wherever necessary. Material not forming part of the chapter but found relevant to the subject matter of the book have been annexed to the chapters they are relatable. The book may thus, be helpful not only to lawyers and legal practitioners but also to the mercantile community, businessmen, firms, banks, companies or even to the common man trying to make an acquaintance with the law on the subject.

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