

RAM MENIKA v. LEWISHAMY.

C. R., Badulla, 24,833.

1903.

June 17.

Signature by mark—Civil Procedure Code, s. 159—Proof of words adjacent to the mark.

Section 159 of the Civil Procedure Code only requires that the mark of a person which appears by the evidence in any case to have been written by the pen of another must be proved to have been so written by the authority of the person alleged to have made his mark; but it is not necessary to expressly prove that the words adjacent to the mark, explaining that it is the mark of the person who made it, were made at the request of such person.

AN action raised for the recovery of a certain quantity of paddy delivered to the defendant was resisted mainly on the strength of a document which purported to have been made by the plaintiff, acknowledging receipt of 22 pelas out of the 24 lent.

This document was stamped, and on the stamp appeared a ×, with the words "mark of Ram Menika thus" following the ×.

The Commissioner (Mr. R. N. Thaine) admitted the receipt after it was sworn to by the witnesses, and dismissed the plaintiff's claim for the 22 pelas, and entered judgment for him for the 2 pelas acknowledged to be still due.

The plaintiff appealed.

Bawa, for appellant.

1903. 17th June, 1903. LAYARD, C.J.—

June 17.

In this case the plaintiff sued the defendant for the recovery of 24 pelas of paddy or the value thereof as stated in the agreement filed with his plaint. The defendant pleaded delivery in terms of the agreement of 22 pelas of paddy, and admitted that 2 pelas were the balance due to plaintiff. The Commissioner has found against the plaintiff, holding the defendant had duly delivered 22 pelas of paddy. The plaintiff appeals from that judgment.

There is evidence which, if believed, duly establishes the delivery of the paddy. The Commissioner has, however, to a great extent relied upon the receipt produced by the defendant in arriving at the conclusion that the 22 pelas of paddy were duly delivered by the defendant. Appellant's counsel, however, relying on section 159 of the Civil Procedure Code, argued that the receipt was wrongly admitted in evidence, as it was not established that the words " mark of Ram Menika thus " adjacent to plaintiff's alleged mark were inserted on it with her authority.

The evidence shows that the receipt was written at Ram Menika's request, and was read and explained to her, and that she then placed her mark on the stamp. As the receipt was written and drawn at her request, and she put her mark to it, the presumption arises, unless she denies it, that she authorized the recording on the receipt adjacent to her mark the words intimating that it was her mark. It is further not shown that those words were written after she made her mark on the stamp, and there is no reason why I should presume that they were added without her authority. Even if such was not the case, I am of opinion, as at present advised, that all that section 159 of the Civil Procedure requires is that the mark of a person which appears by the evidence in any case to have been written by the pen of another must be proved to have been so written by the authority of the person alleged to have made his mark, and that it is not necessary to expressly prove that the words adjacent to the mark explaining that it is the mark of the person who made it were made at the request of such person.

I would affirm the judgment of the Commissioner and dismiss the appellant's appeal with costs.
