1913.

Present: Pereira J. and Ennis J.

ANOHAMY *et al. v.* PEDRIS *et al.*

353—D. C. Tangalla, 1,251.

Proof of deed signed by a cross—"Signature"—"Mark"—Evidence Ordinance, ss. 68 and 69.

In order to prove a deed signed by means of a cross or mark, if no attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the mark of the person executing the document was made by him on the document.

The word "signature" in section 69 of the Evidence Ordinance must be taken to include a "mark."

THE facts appear sufficiently from the judgment.

Bartholomeusz, for the plaintiffs, appellants.—The word "signature" in section 69 does not include a mark. Handwriting means the forming of letters with the hand, and does not mean a cross or a mark. It is impossible to prove a mark if the attesting witnesses are dead. This is a *casus omissus*, and the Court should be satisfied with reasonable proof of the deed. The Interpretation Ordinance does not affect the interpretation of this section. Counsel cited *Amir Ali on Evidence—Commentary to section 69; 1 Tamb. 28.*

Bawa, K.C., Acting S.-G., for the defendants, respondents, not called upon.

February 20, 1913. PEREIRA J.—

There is very strong evidence of possession by the defendants of the land in claim, and it was only by proving deed No. 4,105 of March 21, 1885, that the plaintiffs could succeed. Their contention that the defendants' possession must be taken as having enured to their benefit is maintainable only on the assumption that they were co-owners of the land in dispute, and they could not be co-owners unless the deed referred to was duly executed by the two women, Sipilihami and Lokuhami. Now, sections 68 and 69 of the Evidence Ordinance provide that in order to prove a deed required by law to be attested, if no attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. In the present case it may be assumed that it has been proved that the signature of one attesting

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witness is in his handwriting, but the marks of the persons executing the document have not been shown to have been made by them on the document. It has been argued that the latter provision of section 69 does not apply to the case of a person who signs, so to say, by means of a cross or mark. There is no reason to suppose that it was the intention of the Legislature to render a deed executed by such an individual easier of proof than one executed by a literate person; and, moreover, section 2, sub-section (17), of the Interpretation Ordinance, 1901, provides that the word " sign " with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include " mark " with its grammatical variations and cognate expressions. That being so, the word " signature " in section 69 of the Evidence Ordinance must be taken to include a mark. The case cited to us from *Tambyah's Reports* (*vol. I., p. 28*) was decided long anterior to the passing of the Interpretation Ordinance, 1901.

I would dismiss the appeal with costs.

ENNIS J.—I agree.

Affirmed.