

Present: Schneider A.J.

1919.

MENIKRALA v. SEERALA.

38—C. R. Anuradhapura, 9,619.

Promissory note—Signature over a stamp on the top.

Where a maker of a promissory note signed over the stamp at the top of the note, and there was clear indication that he meant that to be his signature to the note,—

Held, that the note was duly signed.

THE facts appear from the judgment.

H. V. Perera, for plaintiff, appellant.—The case of *Mohamadu v. Rowter*,¹ which the Commissioner purported to follow, was really decided on the ground that the genuineness of the maker's signature had not been established.

The law does not require the maker of a promissory note to put his signature on any particular part of the document. The Bills of Exchange Act merely requires that the note should be signed by the maker (section 83 (1)). Whether a note is signed or not is a question of fact. Where the maker's signature appears on any part of the document, the question is whether he intended to vouch his promise by such signature (*Perera v. Arnolis*²). In the present case the intention is clear on the face of the document.

June 4, 1919. SCHNEIDER A.J.—

This is an action founded upon an instrument which runs as follows:—

“ Dated the 10th of May, 1916. The purport of the promissory note caused to be written and granted by W. Seerala is as follows, to wit: Having received from M. Gamarala the sum of fifty rupees, and having promised to pay unto the said creditor or his heirs on production of this note and on demand by me or my heirs the said sum, together with interest thereon at the rate of twenty-five cents per ten rupees per month, and thus promising and having received the sum of fifty rupees in the presence of the under-mentioned witnesses, I set my usual signature on two five-cent stamps and granted the same.

“ Witnesses to this: Kandate, Vel-Vidane, and Appurala. ”

The two witnesses have signed at the bottom. Below the signature of the witness are the following words: “ Written by Appurala. Vel-Vidane of Punchi Hal Numillowa. ”

¹ (1913) 16 N. L. R. 301.

² (1913) *Wijewardene's Reports* 6.

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On the top are two five-cent stamps which bear the mark of Seerala. The learned Commissioner, upon evidence adduced before him, states that he has no hesitation in declaring that the plaintiff actually lent the sum, but holds that defendant did not sign the document in question, on the ground that the signature of the maker was on the top of the document and not at the bottom. He dismissed the plaintiff's action. He says that he is obliged to follow the decision reported in 16 N. L. R. 301 and also the decision reported in 4 *Balasingham* 140. I think the learned Commissioner has misunderstood those decisions. The decision which he refers to as reported at page 301 of volume XVI. of the *New Law Reports* is the case of *Mohamadu v. Rowter*.

In that case Pereira J., in the course of his judgment, says: "It would appear that the signature was intended for the cancellation of the stamp, and nothing more," and he decided the case upon the footing that there was no evidence that the signature was that of the person who impeached it. In this case there is clear indication that the person who put his signature on the stamps at the top of the document meant that to be his signature to a promissory note for Rs. 50, because he expressly states so in the body of the document. The case which the learned Commissioner refers to as reported in 4 *Balasingham* 141 is considered and commented on in *Perera v. Arnolis*¹. If the learned Commissioner had been directed to this case, his decision might have been other than it has been. As Wood Renton C.J. points out in that case: "The general rule of law, as Withers J. pointed out in the case of *Maythin v. David Sinno*,² is that, if a man intends by his signature to vouch the promise embodied in a promissory note, and to give effect to it, it means little on what part of the paper containing the engagement the signature has been placed."

Looking at the document in this case there can be no doubt that the defendant in placing his signature at the bottom of the document intended that signature to be his signature to a promissory note in terms of the document.

I therefore set aside the decree appealed from, and order judgment for plaintiff as prayed for, with costs. The costs to be fixed by the Commissioner.

The plaintiff will also have the costs of this appeal.

Set aside.

¹ (1913) *Wijewardene's Reports* 6.

² (1897) 4 *Bal.* 141.