

Present: Pereira J.

MOHAMADU v. ROWTER.

81—C. R. Colombo, 29,763.

Promissory note—Name of maker written over the stamp—Stamp affixed at top right hand corner—Note not duly signed—Cancellation of stamp.

Although the Bills of Exchange Act does not require a promissory note to be signed at any particular place on the paper on which it is written, the signature must nevertheless be so placed as to govern or authenticate every material and operative part of the instrument.

A note which was not signed at the foot by the maker, but which purported to bear over a stamp affixed at the top right hand corner the mark of the maker with his name in full written across it, was held not to have been duly signed by the maker. In view of the provision of the Stamp Ordinance as to cancellation of stamps, there was no reason to suppose that the signature was not intended merely to cancel the stamp on the note as a preliminary to its execution.

PEREIRA J.—Had the stamp been at the foot of the document the single act of signing across it may be tantamount to the execution of the document and the cancellation of the stamp, but that can hardly be said to be the effect of the cancellation of the stamp in the present case.

THE facts appear sufficiently from the judgment.

H. A. Jayewardene (with him *F. H. B. Koch*), for the defendant, appellant.—The defendant has not signed the note. The mark put by him on the top right hand corner amounts only to a cancellation of the stamp, as was pointed out in *Maythin v. David*.¹ The signature of a document like this should be so introduced as to govern or authenticate every material and operative part of the instrument. The judgment on which the Commissioner relies, *Caton v. Caton*,² is in my favour.

A. St. V. Jayewardene, for the plaintiff, respondent.—It is not necessary for the validity of a note that it should be signed at the lower right hand corner, though that is the usual place. Counsel cited *Byles on Bills 110*, *Taylor v. Dobbins*,³ *Domingu Appuhamy v. Epetagedera Vidane*.⁴

Cur. adv. vult.

¹ (1907) 4 Bol. 141.

³ (1720) 1 Strange 399.

² (1867) L. R. 2 Eng. & Ir. Cases 127; L. R. 2 H. L. 143.

⁴ (1899) 1 Tam. 7.

1913.

June 2, 1913. PÉREIRA J.—

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The first question in this case is whether the promissory note sued upon has been duly executed by the defendant. The note has not been signed at the foot of it, but there is what purports to be a mark made by the defendant on a stamp affixed at the top right hand corner of the note, with the defendant's name in full written across the stamp. Now, if the decision in the case of *Maythin v. David* ¹ is to be followed, clearly the note has not been duly signed. The Bills of Exchange Act, 1882, does not require a promissory note to be signed at any particular place on the paper on which it is written. All that it requires is that the note should be signed by the maker. In the same way the Statute of Frauds, which requires certain documents to be signed by the party executing them, does not enact that the signature should be placed on any particular part of the document, but it was held in *Caton v. Caton* ² that the signature should be so placed as to govern or authenticate every material and operative part of the instrument. The signature on the promissory note sued upon can hardly be said to be so placed. The signature does not appear to have reference to any part of the writing on the paper. It occurs at an unusual place, and there is no indication by means of a connection with brackets enclosing the writing, or some such device, that it is intended to govern the writing. On the other hand, looked at in the light of the Stamp Ordinance of 1893, which applies to the case, it would appear that the signature was intended for the cancellation of the stamp and nothing more. Under the Stamp Ordinance (section 11) it is the duty of every person signing as party any instrument required by the Ordinance to be stamped to see that the stamp affixed thereon is distinctly cancelled before he signs the instrument. Of course, cancellation of the stamp after the instrument is signed by the party executing it does not render the cancellation any the less effectual (see section 8), but the duty is cast upon the party signing an instrument to see that the stamp is cancelled before he signs the document. That being so, the mark on the stamp in this case may well be deemed to be the preliminary act of cancelling the stamp. Had the stamp been at the foot of the document the single act of signing across it may be tantamount to the execution of the document and the cancellation of the stamp. but that can hardly be said to be the effect of the cancellation of the stamp in the present case.

I am, however, not inclined to think that the plaintiff has proved that the defendant placed the mark on the stamp. The witness Sinnatambu does not support the plaintiff, and the note has not been identified by the witness Abdulla. On the whole, the balance of testimony appears to be on the side of the defendant. I set aside the judgment and dismiss the plaintiff's claim with costs.

Set aside.

¹ (1907) 3 *Bal.* 141. ² (*L. R. Eng. & Ir. Ap. Cas.*, vol. XI., p. 12; *L. R.* 2 *H. L.* 113.