

damage likely to accrue by the demolition of that portion of the building standing on the site in dispute including depreciation in value owing to loss of simmetry was Rs. 5,795; on the lower scale he found that the actual loss would be Rs. 3,505.

This Letters Patent Appeal again coming on for hearing the Court delivered the following:

JUDGMENT.—We think that Rs. 3,505 will be a sufficient compensation in the circumstances of the case on the basis on which the amount is calculated in paragraph 12 of the Subordinate Judge's finding. The decree will be modified accordingly. The mandatory injunction will not be issued until this amount has been deposited in Court. The money will be deposited by the plaintiffs within a fortnight of the reopening of the Court and the defendants will remove so much of the building as stands on the land of the plaintiffs within two months from the date of the deposit. There will be no order as to costs.

RAMANATHAN
v.
RANGA-
NATHAN.

ABDUR
RAHIM,
SADASIVA
AYYAR AND
NAPIER, JJ.

N.B.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Bakewell.

CHALLA BALAYYA (DEFENDANT), APPELLANT,

v.

KANUPARTHI SUBBAYYA (PLAINTIFF), RESPONDENT.*

Negotiable Instruments Act (XXVI of 1881), sec. 27—Promissory note executed under the authority of a marksman but not marked by him—validity of—Applicability of section 226 of the Indian Contract Act (IX of 1872).

The law of agency as stated in section 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto.

APPEAL against the order of J. W. HUGHES, the District Judge of Cuddapah, in Appeal No. 140 of 1914, preferred against the decree of A. S. VIRASWAMI AYYAR, the Acting District Munsif of Cuddapah, in Original Suit No. 513 of 1913.

1917,
January 10.

* Appeal Against Order No. 288 of 1916.

BALAYYA
v.
SUBBAYYA.

This was a suit upon a promissory note in favour of the plaintiff executed in the following manner :—

“ Nishani mark of Challa Subbayya.”

Plaintiff's case was that these words were written by another on behalf of the executant, namely, Chella Subbayya the defendant, while the defendant contended that he did not give any such authority and that in the absence of a separate mark, there was legally no execution of the promissory note. The District Munsif dismissed the suit without going into the merits, on the ground that as there was neither a signature nor an actual mark there was no valid execution. On appeal by the plaintiff the District Judge held that the words

“ Nishani mark of Challa Subbayya ”

written on the authority of the defendant was equivalent to execution by him and reversed the decree and remanded the suit for disposal on the merits. The defendant appealed.

I. V. Ramanuja Rao for the appellant.

M. Patanjali Sastri for *B. Somayya* for the respondent.

The following JUDGMENT of the Court was delivered by

OLDFIELD, J.

OLDFIELD, J.—The suit promissory note purports to be executed by defendant-appellant in virtue of the words on it

“ Nishani mark of Challa Subbayya.”

There is in fact no separate mark. The plaintiff contends that the absence of one is immaterial and that he is at liberty to prove that the words referred to were written with defendant's authority and therefore constituted a valid execution of the instrument.

As regards the first point, we cannot see and have not been shown authority for holding that any separate mark is essential, if the writing relied on is in fact written with authority.

As regards the second, no case has been cited to the effect that the ordinary law of agency stated in section 226 of the Indian Contract Act is inapplicable to negotiable instruments; and section 27, Negotiable Instruments Act, is to the contrary effect, its restrictive portion being irrelevant in the present connection. *Radhakrishna v. Subraya* (1) relied on by appellant, was decided with reference to the execution of a will and the special wording of section 50, Indian Succession Act. It therefore lays down no general rule. We accordingly agree with the lower

(1) (1917) I.L.R., 40 Mad., 550.

Appellate Court that plaintiff is at liberty to prove the execution of the suit note by defendant's authority and that the case must be remanded in order that he may have an opportunity to do so. The appeal against order is dismissed with costs.

BALAYYA
v.
SUBBAYYA.
—
OLDFIELD, J.

N.R.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, and Mr. Justice Sankaran Nair.

K. HAJEE ABDUL LATHEEF SAHIB AND ANOTHER
(PLAINTIFFS), APPELLANTS,

1912,
November 15.

v.

THE OFFICIAL ASSIGNEE OF MADRAS (DEFENDANT),
RESPONDENT.*

Insolvency proceedings—Order disallowing a claim to goods seized by the Official Assignee after adjudication—Suit to set aside the order, maintainability of.

No suit lies to set aside an order made by the Insolvent Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication.

Followed in *The Official Assignee of Madras v. Mangayarkarasu Ammal*. †

APPEAL against the judgment of WALLIS, J., in Civil Suit No. 206 of 1911.

The Official Assignee of Madras attached and took possession of certain goods in the custody of the plaintiffs alleging that the sale of such goods to them by the insolvent was a collusive and fraudulent transaction. The plaintiffs moved before WALLIS, J.,

* Original Side Appeal No. 4 of 1912.

† *Appeal Against Order No. 103 of 1917.*

Sir John Wallis, Kt., Chief Justice, and Mr. Justice Kumaraswami Sastriyar.

1917,
August 9.

JUDGMENT.—The point raised in this appeal was decided by one of us (the CHIEF JUSTICE) in Original Suit No. 206 of 1911 on the file of the High Court on the Original Side and the decree was affirmed in Appeal in *Abdul Latheef v. The Official Assignee of Madras*(1). Following that decision, we allow the appeal and reverse the order and restore the decree of the Munsif with costs throughout.