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Miller, ex parte.

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MILLER, EX PARTE.

SIGNATURE: *By mark.*

The mark of one who cannot write is not *prima facie* a signature unless the person who writes the name writes his own name as a witness to it. But it may be proved as genuine by other testimony, though there be no attesting witness to it.

APPEAL from *Desha* Circuit Court.

J. A. WILLIAMS, Judge.

*X. J. Pindall* and *James Murphy* for appellant.

The court erred in excluding evidence that the parties who signed the petitioners' names by mark had authority so to do. *Sec. 4524, Mansf. Dig.; 38 Ark., 278; Mansf. Dig., sec. 6344.* The petitioners in presenting their petition to the court adopted the signatures.

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SMITH, J. A petition for the prohibition of the sale of intoxicating liquors within three miles of a certain church in Desha county was presented to the County Court. Some of the signatures thereto were by mark, not attested by any witness. On the hearing in the Circuit Court, the petitioners tendered evidence to prove that these signatures were genuine and that the persons who write the names of the signers by mark were thereunto properly authorized. But the court refused to permit such testimony. The petitioners also offered to show that if the signatures by mark were counted, the petition contained a majority of the adult inhabitants residing within the territory mentioned. The court denied the prayer of the petition.

The proposed evidence was competent. The Code of Civil Practice, in laying down the rules for its construction, defines signatures or subscriptions to "include mark, when the person cannot write, his name being written near it and witnessed by a person who writes his own name as a witness." *Mansf. Dig.*, sec. 6344. In *Watson v. Billings*, 38 Ark., 278, it is said by Mr. Justice EAKIN that since the adoption of the Code, the mark of one who cannot write, is not to be considered a signature or subscription, unless the person writing his name writes his own name as a witness. This only means that such a signature is not to be taken, *prima facie*, as genuine without other proof of signing. It was not intended to exclude such proof.

Reversed and remanded for further proceedings.