APPELLATE CIVIL.

Before Costello and Biswas JJ.

SUKUMAR BANERJI

v.

RAJESHWARI DEBI.*

1938

Jan. 11, 12; *April* 25.

Will—Foreign will—Probate—"Proved and deposited"—Indian Succession Act (XXXIX of 1925), ss. 228, 239.

S. applied to the District Judge of 24-*Parganás* for grant of letters of administration in respect of a will made by U, who died within the French territory at Chandernagore, leaving properties, which consisted of monies due to her from persons residing in British India.

The distribution of the properties in the manner directed by the will was left to S. The will was written by the *notaire* of French Chandernagore according to the dictation and in the presence of U and was properly executed and attested according to the law prevalent there. The will did not contain the signature, mark or thumb impression of U, as she was lying sick at the time of making the will. An authenticated copy of the will was made over to S on the death of U. Evidence was given by the *notaire* of French Chandernagore who stated that the will was a valid will according to the French law and it was not necessary to prove it before the Court. He also stated that the original will was in his office as under the French law it could not be parted with. The District Judge, however, directed S to have the will proved and deposited in Chandernagore Court. S thereupon made an application to that Court stating that the terms of the will could not be carried out in British India until it has been proved before the Chandernagore Court. On that the judicial functionary at Chandernagore made an order that as "the *notaire* had the function of authenticating an act in law such as the will, no judgment is necessary to prove the genuineness or validity of a document made out by the *notaire*". He also stated that there was no occasion to declare the authenticity of the will of U.

Held: (*i*) that the will of U had been proved to be a valid will according to the French law and it was competent to the Court to grant probate under the provisions of s. 239 of the Indian Succession Act;

(*ii*) that the conditions required by s. 228 of the Indian Succession Act have been substantially complied with for the purpose of granting letters of administration.

In the Goods of *Therese Henrieth Aimée Deshais* (deceased). In the Goods of *the Countess de Vigny* (deceased) (1); *Bhâurâo* v. *Lakshmibái* (2); In the Goods of *Lemme* (3); In the Goods of *Von Linden* (4) and *Sushilabala Dassi* v. *Anukul Chandra Choudhury* (5) referred to.

*Appeal from Original Decree, No. 50 of 1937, against the decree of T. H. Ellis, District Judge of 24-*Parganás*, dated Oct. 5, 1936.

(1) (1865) 4 Sw. & Tr. 13; 164 E. R. 1419.
(2) (1895) I. L. R. 20 Bom. 607.
(3) [1892] P. 89.
(4) [1896] P. 148.
(5) (1918) 22 C. W. N. 713.

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The word "proved" in s. 228 of the Indian Succession Act was not intended to be the equivalent of "admitted to probate" but to mean authoritatively established as being valid according to the law of the place where it was made.

APPEAL FROM ORIGINAL DECREE preferred by the applicant for letters of administration.

The facts of the case and the arguments in the appeal appear in the judgment.

Ramaprasad Mukhopadhyaya and *Apurbadhan Mukherjee* for the appellant.

Sarat Chandra Basak, Senior Government Pleader, *amicus curiae.*

Cur. adv. vult.

COSTELLO J. This is an appeal from a decision of the District Judge of the 24-*Parganâs*, dated October 5, 1936, whereby he dismissed an application made by one Sukumar Banerji, for grant of letters of administration in respect of the will made by a lady named Uma Shashi Debi. The application was on the basis of a petition which was filed on May 19, 1936. In that petition it is set forth that Uma Shashi died at a place called Barasat within the French territory at Chandernagore on February 4, 1936, leaving a will directing distribution of her properties. The will is dated January 31, 1936, from which it would appear that her chief, if not her only, assets consisted of some monies due to her on the basis of a *hâtchitâ* from two persons named respectively Sree Nath Adhya, living at Hari Sabha Lane, Kidderpore, and Pran Krishna Mukherji, of Singur, Apurbapur. No executor was named in the will, but the distribution of the property was left to Sukumar Banerji, who was the younger brother of the testatrix to be disposed of in the manner directed by the will. The will had been written out by the notary of Chandernagore, Sadhu Charan Mukherji. It appears from what is stated in the will itself that the notary took down the provisions of the will at

the dictation of Uma Shashi who, at the time of the will, was lying sick and so was not capable of signing her name or giving her thumb impression. The petition states that the said will was written by the *notaire* of French Chandernagore according to her direction and in her presence and was properly executed and attested according to the law prevalent there (para. 2). In para. 3 it is stated that:—

> On her death an intimation of the same being given to the *notaire* an authenticated and duly proved copy of her last will and testament under the seals and signatures of the *notaire*, the Presiding Judge of the Tribunal and the Administrator of Chandernagore was duly made over to your petitioner and the said copy is annexed herewith.

It is important to notice the opening para. of the will which is in these words:—

> I, the undersigned, Sadhu Charan Mukherji, inhabitant of Sadhupara, Chandernagore, am the *Notaire* of the town of Chandernagore. Sreemati Uma Sashi Debi, wife of late Jogendra Chandra Mukherji of Baraset in the said city, by caste Brahman, and without any occupation, has this day appeared before me in the presence of the witnesses (1) Chura Mani De, son of late Mahesh Chandra De, by caste Tili, by profession trader of Baraset, Chandernagore, (2) Krishna Chandra De, son of late Sarat Chandra De, by caste Tili, by profession trader of Baraset, Chandernagore, (3) Dhirendra Nath Das, son of Kedar Nath Das, by caste Tantubai, by profession medical practitioner of Hazinagore in Chandernagore and (4) Shailendra Nath Nandi, son of late Hari Charan Nandi, by caste Tili, by profession trader of Baraset in Chandernagore who are all of full age and are lawfully competent witnesses.

The importance of that opening paragraph is this that it indicates the particular kind of will which was being made under the provisions of French law as laid down in the Code Napoleon wherein are described the several methods of making a last will and testament. We find from Richard's translation of the Code that para. 969 lays down that a will may be an *olographe*, or made by public act or in the mystic form. Article 970 provides that:—

> An *olographis* will shall not be valid unless it be written throughout, dated and signed by the hand of the testator: it is not subjected to any other formality.

Article 971 provides that:—

> The will by public act is that which is received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses.

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Article 972 says that :—

If the will is received by two notaries, it is dictated to them by the testator, and it must be written by one of such notaries, as it is dictated. If there be only one notary, it must equally be dictated by the testator, and written by such notary. In both cases, it must be read over to the testator in presence of the witnesses. Express mention of the whole must be made.

Then Article 973 states that :—

This will must be signed by the testator; if he declare that he knows not how or is unable to sign, express mention shall be made of his declaration in the act, as well as of the cause which prevents him from signing.

Article 974 provides that :—

The will must also be signed by the witnesses; nevertheless in the country it shall suffice that one of the two witnesses signs, if the will is received by two notaries, and that two of the four witnesses sign if it is received by one notary.

The will with which we are now concerned falls within the provisions of Arts. 972 and 973. It was made in the presence of one notary, it was dictated by the testatrix, it was written by the notary and it was read over to the testator in the presence of witnesses. It was, however, not signed by the testatrix. The will itself says that :—

The testatrix declares that she is literate but that due to extreme weakness on account of her illness she is unable to sign her name. So the witnesses only sign along with me, the *notaire*. And this will is read over to everyone present. All this is done in the presence of the witnesses.

The will had previously stated :—

I, the *notaire* having read over this will to the testatrix after taking it down at her dictation, the lady delcared that the writing has been in accordance with her statements. All this has been done in the presence of the witnesses.

And then follow the signatures of all the four witnesses and then the signature of the notary. It is perfectly clear that it was a valid will as coming within the provisions of the Code Napoleon to which I have referred. I have stated that the assets of the testatrix comprised a debt due to her from a person living in Kidderpore and so there was moveable property belonging to the testatrix within the jurisdiction of the District Judge of the 24-*Parganâs*

and it was on that account that the application was made by Sukumar Banerji for the grant of letters of administration. When the matter came before the learned District Judge on the 19th May, and 21st May, 1936, he seems to have heard some argument by a pleader on behalf of the applicant. He then recorded the order, "I will hear him again on May "23, 1936." On that date the pleader was heard by the learned Judge, who put on record the following observations :—

I am not satisfied (*i*) that the will is a legal document, it was never signed by the testatrix ; (*ii*) that it was even properly " proved " in a French Court and (*iii*) that the copy is an authenticated copy receivable in evidence in British India. Petitioner is to examine the notary to prove these points on 1. 6. 1936.

After some delay, due to applications for adjournment for some reason or other, the notary, Sadhu Charan Mukherji, was ultimately examined as a witness on August 6, 1936, and then the learned Judge stood the matter over until the following day and on the 7th August, after he had heard the pleader for the applicant, he recorded this statement in the order sheet—

The difficulties attendant on this application have not been solved by the examination of the *notaire*. Section 228 of the Succession Act is the only provision under which I can act. It records "when a will has been proved and deposited in a Court....." In the present instance the *notaire* claims that the document in question requires no proof. This is a far different thing than proof.

Further, the will has never been deposited in a Court at all. So it is impossible to hold that s. 228 has been complied with.

The ruling *Sushilabala Dassi* v. *Anukul Chandra Choudhury* (1) affords no help.

The best course is to keep this application pending and in the meantime direct the applicant to have the will proved and deposited in Chandernagore : this will solve the difficulty.

Thereupon the learned Judge postponed the matter until September 11, 1936. On that date there was an application for further adjournment. Ultimately the pleader for the applicant was heard on October 2, 1936, when the learned Judge reserved

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his decision. Finally, on October 5, 1936, the learned Judge gave a judgment which is the matter with which we are now concerned.

Put quite shortly the matter resolves itself into this. Originally the learned Judge was minded to give the applicant an opportunity of having the will proved and deposited in the French Court at Chandernagore. What was in fact done, however, was that an application was made to the President du Tribunal de la Justice de Paix a Competence Etendue de Chandernagore in the form of a petition dated September 8, 1936, in which it is set forth that the District Judge of Alipore could not order the carrying out of the terms of the will in British territory until it had first of all been proved before the Court of the place where it was made. On that, the Judicial functionary, who describes himself as "Juge De Paix a Competence Etendue De Chander-"nagore," made an order or at any rate put an endorsement on the petition, to the following effect after having seen the petition :—

> In view of the fact that the notary had the function of authenticating an act in law such as the will, no judgment is necessary to prove the genuineness or validity of a document made out by the notary or for the purpose of being executed.

Finally he stated that for these reasons there was no occasion to declare the authenticity of the will No. 37 of January 31, 1936.

I have to some extent paraphrased the order made by the functionary, because the official English translation does not, in my opinion, precisely represent the original statements which are in the French language. It is important to observe two things with regard to the order made by the judicial functionary in question. It begins, as I have stated, by giving the description as "Juge De Paix a "Competence Entendue de Chandernagore" and it finishes by saying "Fait au Palais De Justice a "Chandernagore." It seems to us, having regard to the form of the order made upon the petition which was presented to the Juge de Paix a Competence

Entendue de Chandernagore on September 8, 1936. it must be taken that the will with which we are concerned was placed before a competent Court and it was "deposited" with that Court even if only for a comparatively short space of time. The learned District Judge of the 24-*Parganâs* seems to have been under some misapprehension as to the nature of the proceedings which took place in Chandernagore as a result of the order made by him on August 7, 1936, whereby he directed the applicant to have the will proved and deposited in the Chandernagore Court in order, as he said, "to solve the difficulty." That the learned District Judge was under a misapprehension seems to be apparent from this passage in his judgment :—

> On October 2, 1936, the applicant has once more come before this Court, this time armed with orders passed by the President Judge of the Court of Justice of Peace in Chandernagore. The document filed shows that so far from the applicant approaching the French Court in order to have the will proved as he was directed to do by this Court and as is stated in his petition of September 11, 1936, the applicant approached the Justice of the Peace at Chandernagore for a declaration that the will in question was an authenticated deed and need not be approved by any judgment.

Then he makes a quotation from a document which was filed before him in these terms :—

> Consequently the petitioner prays, Sir, to kindly declare that this deed of Public Notary of January 31, 1936, No. 37 is an authenticated deed and it is not all necessary to be approved by a judgment.

Then the learned Judge said :—

> I am still not satisfied with the action taken by the applicant. The only ruling which bears on the question now to be solved is that of *Sushilabala Dassi* v. *Anukul Chandra Choudhury* (1) to which a reference is made in Mr. Ghose's annotated edition of the Indian Succession Act.

That decision, as the learned Judge himself points out, was concerned with an altogether different class of French wills, *viz.*, a will which Art. 969 of the Code Napoleon describes as a will in the mystic form. A will of that kind is provided for in Art. 976 of the Code of Napoleon which says that :—

> When the testator shall be desirous of making a mystic or secret will, he shall be bound to sign his dispositions, whether he has written them himself, or whether he has caused them to be written by another. The paper

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which shall contain his dispositions, or the paper which shall serve as envelope, if there be one shall be closed and sealed. The testator shall represent it thus closed and sealed to the notary and to fix witnesses at the least, or he shall cause it to be closed and sealed in their presence; and he shall declare that the contents of such paper are his will, written and signed by himself, or written by another and signed by him: the notary shall thereon draw up the act of superscription, which shall be written on the paper or on the sheet which shall serve for envelope; this act shall be signed as well by the testator as by the notary, together with the witnesses.

Then follow certain other provisions. A will of that description has to be brought before the Court and the Court has to be satisfied as to its authenticity. We are not concerned with a "will in the mystic "form", but with a will made by public act and, therefore, the authority which the learned Judge cites is immaterial for our present purposes. What really troubled the learned Judge was the precise language of s. 228 of the Indian Succession Act, which appears to be the only provision in law under which the learned Judge could adjudicate upon the matter brought before him by the petition of May 19, 1936. The sentence provides as follows:—

> When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the province, whether within or beyond the limits of His Majesty's dominions, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

That section lays down a procedure which is in accordance with the law in England, according to which probate granted by a foreign Court is not recognised as establishing the title of any person to the estate of the deceased lying within the jurisdiction of the English Courts. The English practice, however, is that where probate has been granted of a will in a foreign Court, which was the Court of the testator's domicile the English Courts will follow the grant not merely with regard to the document admitted to probate but also with regard to the person to whom the probate is granted. In such cases, if any part of the property is situate in England, the Court will grant the probate on any duly authenticated copy of the will in respect of which such grant was made by the foreign Court

without any further proof. The position is summarised in Halsbury's laws of England, Vol. 14, p. 202, para. 331, in these words—

Where a person dies domiciled abroad, and it becomes necessary to prove his will in England, probate is granted of his will upon proof that the testator was domiciled in the country, in question, and that either the foreign Court has adopted his will as a valid testament or that his will is valid by the law of that country.

It is perfectly plain and beyond all question that if the law in India were precisely the same as in England as set forth in that paragraph, the present case would fall within the terms of that paragraph. Probate is granted of a will, which is valid by the law of the country in which the testator is domiciled. There are a large number of authorities for that proposition and I need not refer to more than two of these cases. They were both heard by Sir J. P. Wilde, one being the case of *In the Goods of Therese Henriette Aimeé Deshais* (deceased) and the other being the case of *In the Goods of the Countess De Vigny* (deceased) (1). We find in the judgment of the first of these matters these observations:—

To grant probate in common form of a foreign will, this Court will be satisfied with *prima facie* proof that some foreign Court has adopted the document as a valid testament, and this without any regard to the form in which such adoption is signified; it does not require that the form of approval should be the same as its own grant of probate.

In the second case we find these judicial observations:—

If you can shew me any document that purports on the face of it to be equivalent to probate, any act of the foreign Court the language of which carries to my mind in any shape or form that the foreign Court has adopted the document as a will, that will be sufficient for me. A notarial certificate is really nothing, because a notary has to take a note of anything that any one chooses to bring him. But you are labouring unnecessarily, because you have an affidavit that the will is good according to the French law. You also require, however, an affidavit that the deceased was domiciled in France.

In his judgment, Sir J. P. Wilde says:—

I am clear that the Court has no power to grant probate of any foreign will unless it is *prima facie* satisfied by some document or another that such will has been recognised by the foreign Court, or unless it is proved to be a valid will according to the law of the place where testator was domiciled.

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Now, in the present instance, the will of Uma Shashi had been proved before the learned District Judge to be a valid will according to the law of the place where the testatrix was domiciled. The notary, Sadhu Charan Mukherji, in the course of giving his evidence on August 6, 1936 stated :—

I am the *notaire* of Chandernagore, I remember to have made a will of Uma Shashi Debi. A certified copy of the same will was granted under my seal and signature.

This is the certified copy Ex. 1. It bears my signature which has been attested by the Judge whose signature in its line has been attested by the Administrator of Chandernagore.

The original is in my office. Under the law it cannot be parted with. Under French law it must remain in my office.

He continued :—

A will under French law is valid if it is not signed by the testator, if it does not bear his mark or if it does not bear his thumb impression, if there is a statement that the testator is too ill to sign or make his mark.

The will was written at the residence of the testatrix. I saw the lady ; she had to express her wishes before me.

The identity of the testatrix was established before me by two of the witnesses Chura Mani De and Krishna Chandra De. The will contains their signatures at the foot.

Lastly the notary said :—

The proving of a will is unknown in Chandernagore. If she had left any immoveable property in Chandernagore the will would have to be registered merely.

The proving of a will is unknown in French territory.

The *notaire* was, of course, only concerned with a particular will—the will of Uma Shashi and, therefore, it is quite clear that what he meant was that that will was a valid will according to the French law and it was not necessary to prove it before the Court. The fact that, by the direction of the Judge, the notary gave evidence and that evidence was to the effect I have mentioned may well bring the matter within the purview of the case *Bháuráo* v. *Lakshmibái* (1) in which it was stated by the Chief Justice that—

If a foreign will has already been proved and deposited in a competent Court abroad, s. 5 of the Act, following the English law, enables a Court

(1) (1895) I. L. R. 20 Bom. 607, 610.

in British India to grant letters of administration to the applicant with a properly authenticated copy of such will annexed, and thus to dispense with the necessity of proof of the original will: but where a foreign will has not been so proved, the Judge will have himself to take evidence as to the due execution of the will, according to the law of the country in which the testator was domiciled, in cases where the property in respect of which probate is sought is moveable or personal property, and must, if necessary, satisfy himself by evidence as to the law relating to the execution of wills in force in such country.

In the present instance, the evidence given by the notary as to the manner in which the will came into existence and evidence as to its validity which was given by him in a sense in the capacity as an expert in the law applicable to such matters in French territory to the effect that the manner of the making of the will was sufficient to give rise to a valid testament according to the law of France. In view of that aspect of the matter the case might well be said to come within the provisions of s. 239 of the Indian Succession Act, 1925, which provides that—

When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an unauthenticated copy of it is produced.

In that connection, I would refer to two English cases, the first of which is *In the Goods of Lemme* (1) which was a case of a will of a British subject domiciled abroad at the time of his death, which had been proved in the French Courts and deposited with a notary, who by the law of France was forbidden to allow it to be removed from his custody. It was held that probate might be granted of a copy of the original will properly proved, limited to such time as might elapse before the original itself should be brought in. It may be observed that although in form the duration of the authority conferred by the grant was limited, in actual fact, having regard to the relevant provisions of the law in France, the original would never be produced and, therefore in a sense the

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authority so conferred would be unlimited in duration. Sir Francis Jeune P. in giving judgment said:—

> The proper way to get over the difficulty created by the impossibility of obtaining the original will is to grant probate, not of the document recognised in France, as that would be a translation, but of a copy of the will properly proved to be such. Probate will be granted of such copy until such time as the original will is brought in.

One is almost tempted to say that the time when it would be brought in was already as remote as the traditional Greek Kalends.

The other case to which I would refer is the case of *In the Goods of Von Linden* (1). In that case, the will of Baron Hugo Von Linden, who was a German subject domiciled in the kingdom of Gurtemburg and who died at Stuttgart in that kingdom on October 8, 1895, had been proved in accordance with the requirements of local law and it had been deposited with a notary who, by the law of the country, was forbidden to allow it to leave his custody. The will contained a direction that, during the lifetime of the widow, she should have an unrestricted right of administration and the usufruct of the testator's estate without giving security, which, according to the local law, was equivalent to appointing her executrix and so entitled her to collect the personal estate as though she were the owner thereof. Part of the personal estate was in England and it was held by the English Court that probate might be granted to the widow of a copy of the original will properly proved, limited to such time as might elapse before the original will itself should be brought in. Sir Francis Jeune P. said:—

> This will may be read as though it in terms called the applicant an executrix, and that probate may be granted to her as executrix according to the tenor. As to the form of the grant, I follow the decision in *In the Goods of Lemme* (*ubi supra*) and there will be a grant of probate of a copy of the original will properly proved, limited to such time as may elapse before the original will is brought in.

We do not propose, however, to dispose of this matter upon the basis of the provisions of s. 239 of

(1) [1896] P. 148.

the Indian Succession Act, 1925, because, in our opinion, the conditions required by s. 228 of the Act have in effect been substantially complied with. In our opinion, in order that justice may be done in cases, such as the present one, it is necessary and desirable that a reasonable interpretation should be given to the expression "proved and deposited" so as to bring the practice in this country as far as possible into line with the practice obtaining in England. To do otherwise would be to create endless difficulties in cases where a foreign testator chose or was obliged for any reason such for example his or her physical condition to make his will by "public act" or in the form of an "*olographe*" will. I think we must hold that the word "proved" as used in s. 228 was not necessarily intended to be the equivalent of "admitted to probate" or—to use a hideous but convenient term which is current in this country—"probated", but to mean authoritatively established as being valid according to the law of the place where it was made. In the present instance, as I have already pointed out, the matter was brought before a Judge in Chandernagore, it was brought before a Court in Chandernagore and the Court, upon a consideration of the petition by which the matter was brought before the Court, decided that there was no necessity for a formal declaration which would correspond to a large degree to admitting the will to probate because the will was otherwise valid and operative and a document upon which the person designated to carry out the terms of the will would be entitled to act. There is a passage in the notes appended to s. 228 in Dr. Sen Gupta's annotated edition of the Indian Succession Act at p. 671, wherein under the heading "Proof and deposit" there is this expression of opinion:—

> In the case of a will proved in British India this implies that either probate or letters of administration must have been granted. But where the law of the foreign country, where the will was proved, provides for any other procedure for proof of the will, that would be regarded as a sufficient compliance with this section, provided that the will has been proved and it has been deposited. It is not necessary that the will should continue to be deposited in the foreign Court. It is enough that the will has once been

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deposited and then removed from the Court, where such removal is authorised by the law of the foreign country.

Then there is a reference to the case of *Sushilabala Dassi* v. *Anukul Chandra Choudhury* (*supra*) which was quoted by the learned District Judge. In my opinion, there was a sufficient compliance with the conditions laid down in s. 228 when the matter was brought before the President du Tribunal de la Justice de Paix a Competence Entendue de Chandernagore whose title has been inaccurately rendered in the official translation as "The President Judge of the "Court of Justice of Peace in Chandernagore" whose jurisdiction is extended. That Judge must have looked at the document and he must have been satisfied that it was valid according to the French law and that no further action was necessary in the matter. There is to be found some support for the view we take of the matter in the judgment in an unreported case of Wilson J. decided by him as long ago as the August 5, 1879. The case is *In the Goods of Louis Joakim*, deceased. The matter came before the Court on a petition, which stated that Louis Joakim, late of the Rue due Tosse in Chandernagore, deceased, who was in his lifetime a French subject, died at Chandernagore on or about February 6, 1879, having duly made and executed a will in the presence of a notary of Chandernagore in accordance with French law and thereof appointed an executor as appears from the said will and a translation in English thereof annexed and marked respectively with letters A and B. Then the petition set up that there were assets belonging to the estate of the deceased within the jurisdiction of this Court, *i.e.*, the High Court of Judicature at Fort William in Bengal to be administered, consisting so far as could be then ascertained, of securities of the Government of India for Rs. 17,200 at par value but whereof the present market value at 94 per cent. is Rs. 16,168.

There was annexed to the petition an affidavit of an advocate named Louis Edward Sawbolle residing and practising at Chandernagore in the French Settlements in India in which he said that he was conversant with the laws and constitution of the Republic of France in so far as they obtain at Chandernagore.

Then he said:—

I have referred to the last will and testament of Louis Joakim, deceased, dated February 4, 1879, whereof an exemplification under the hand and official seal of Robert Eaton, notary, is herewith annexed and marked with the letter "A" and I say that the said original will is made in conformity with and is valid by the laws and constitutions obtaining at Chandernagore aforesaid.

He continued:—

I know and I am well acquainted with Louis Joakim, deceased, who died on the 6th February last at Chandernagore and I say that at the time of his death the said deceased was domiciled in Chandernagore.

In addition, there was a statement by a functionary, described as the Judge President at Chandernagore, in these words—

I certify that the French laws, Art. 1026 and the following of the French Civil (Code) an executor of a will is not bound to have his authority sanctioned by the Judge nor to obatin probate of the will by the Court in order to take possession of the effects of the estate. He can fulfil his functions of his own right, that is to say, receive the income and the monies due, pay the debts without judicial authority interfering with his action unless the heirs or legatees dispute it.

I certify and attest furthermore that Mr. Louis Joakim by his will of February 4, 1879, appointed Mr. Louis Edward Sawbolle as the executor thereof, who can receive the interest on the promissory notes. Mr. Louis Joakim is French, domiciled by his living at Chandernagore, where all his property is situated and that he died in the said Town on the 6th February 1879.

Made in my office at Chandernagore, July 31, 1879.

The original of this last sentence is in these words:—

Fait en notre cabinet a Chandernagore le 31 Juillet 1879 Le Juge President.

It may be taken, therefore, that the certification I have set forth was in effect an order in Chambers. In my opinion, the order made by the '*Juge*' at Chandernagore in the present case precisely corresponds to the order made in the case which came before Wilson J. It follows, therefore, that, in our opinion, the learned District Judge took a wrong view of this matter and this appeal must be allowed. We direct that letters of administration with a copy of the copy

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of the will of Uma Shashi annexed do issue to the applicant Sukumar Banerji. In view of the fact that he was nominated by the testatrix to administer her estate in accordance with the directions contained in the will, we do not think it necessary to make any order for security.

Let this order be sent down as soon as possible.

BISWAS J. I agree.

Appeal allowed.

A. C. S.