Counsel were not instructed.

REFERENCE UNDER STAMP ACT, s. 50.

JUDGMENT.—Following the decision in *Reference under Stamp Act*, s. 46(1), we hold that in calculating the stamp due on the document, which is a release, the one-anna adhesive stamp ought not to have been taken into account.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Handley.

AMMAYEE (DEFENDANT), APPELLANT,

v.

YALUMALAI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1891. December 1. 1892. January 4. February 23.

Succession Act—Act X of 1865, s. 50, cl. 3—Attestation—Initials of witness.

Semble:—If the attesting witnesses affix their initials at the time of witnessing the execution of a will, it is a sufficient compliance with the terms of s. 50 of the Indian Succession Act.

APPEAL against the judgment of WILKINSON, J., sitting on the Original Side of the High Court in testamentary suit No. 2 of 1890.

In this case two persons, as executors appointed by the will of Cunneappa Chetty deceased, propounded and sought probate of a testamentary instrument signed by the deceased and attested by three witnesses, of whom only one signed his name in full and the others only wrote the initial letters of their names.

The question was raised whether the instrument propounded was duly attested with reference to the provisions of Indian Succession Act, s. 50, cl. 3, and, upon this question, the judgment was as follows:—

WILKINSON, J.—The preliminary question for determination in this case is whether the attesting witnesses signed the will. There were three attesting witnesses to the will, only one of whom has signed his name in full, the other two witnesses having merely affixed the initials of their names. The question is whether they have complied with the requirements of clause 3, section 50 of the

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(1) I.L.R., 8 Mad., 87.

* Appeal No. 17 of 1890.

AMMAYEE v. YALUMALAI.

Indian Succession Act, which lays down that each of the witnesses must sign the will.

There can be no doubt that the legislature intended to draw a marked distinction between the action required of the testator and that required of the witness as regards the mode of their signature. The testator, the Act says, shall sign or shall affix his mark to the will, whereas each of the witnesses must sign the will. If the legislature had intended that witnesses should be permitted to affix their mark in place of their signature, there was no reason why the words "or affix their mark" should have been omitted in clause 3. I am of opinion that the cases *Fernandez* v. *Alves*(1) and *Nitye Gopal Sircar* v. *Nagendra Nath Mitter Mozumdar*(2) were rightly decided, and that it is necessary for the validity of a will that the signature of at least two witnesses should appear on the will.

But that does not dispose of this case unless it be held that initials are not a signature, but are merely equivalent to a mark, and I am not prepared to go so far. In a case reported as *In the goods of Christian*(3), Sir H. Jenner Fust is reported to have said "The attesting witnesses to the codicil have affixed their initials only. I am not aware that the witnesses can be required to sign their names. I am of opinion that there is a sufficient subscription on their parts." In that case the same witnesses, who initialled the codicil, had signed the will, but that does not alter the case, as the codicil required subscription as much as the will itself. There is, therefore, distinct authority for holding that it is sufficient for an attesting witness to a will to affix his initials in place of his full signature, and I see no reason why I should not follow it. There is, it seems to me, considerable difference between a mark and the initials of the witness' name, and I am not prepared to assent to the argument of the learned Advocate-General that initials of a witness' name must be regarded in the same light as a mark. I concede that, in all probability, the reason why the legislature required that the witnesses should sign their names was to require strict proof of execution, but initials are quite capable of identification, and it would, I apprehend, amount to forgery if feigned initials were inserted. The law does not require witnesses to sign their names in full, and I am, therefore,

(1) I.L.R., 3 Bom., 382. (2) I.L.R., 11 Cal., 429. (3) 2, Robertson, p. 110.

disposed to hold that, so far as the witnesses' signatures are concerned, the will before me is a valid will."

The rest of the judgment is not material for the purposes of this report.

This appeal came on for disposal before COLLINS, C.J., and HANDLEY, J., and the above question was again raised.

The *Acting Advocate-General* (Hon. Mr. *Wedderburn*), and Mr. *R. F. Grant* for appellant.

Mr. *W. Grant* for respondents.

JUDGMENT.—We have no doubt that the learned Judge in the Court below was right in holding that the will was rightly attested.

It is admitted by the learned Acting Advocate-General for appellant that, according to English Law, it is sufficient if the attesting witnesses affix either their marks or their initials. In the recent case of *Margary* v. *Robinson*(1) the testator, two days before his death, being paralysed and partly speechless, expressed his wishes by signs which were interpreted to a medical man who wrote them down on a card. The testator made a cross with a pencil in the middle of the writing on the card and the same medical man and another placed their initials on the back of the card. The will was held to be duly executed and attested. But it is contended that the Indian Succession Act, s. 50, which is made applicable to wills of Hindus by the Hindu Wills Act, by providing that the testator "shall sign or shall affix his mark to the will" and that the attesting witnesses "must sign the will," makes a distinction between the testator and attesting witnesses and precludes the latter from merely putting marks or initials in attesting the will. In support of this contention, *Fernandez* v. *Alves*(2) and *Nitye Gopal Sircar* v. *Nagendra Nath Mitter Mozumdar*(3) are quoted. In these cases it was held that it was not sufficient for the attesting witnesses to put their marks to the will. We wish not to be understood as agreeing with these decisions. It seems to us open to argument that the principle of the English decisions as to what is a sufficient "subscribing" within the meaning of the English Act applies equally as to what is a sufficient "signing" by an attesting witness within the meaning of the Indian Act. But it is not necessary to decide that

(1) L.R., 12 P.D., 8. (2) I.L.R., 3 Bom., 382. (3) I.L.R., 11 Cal., 429.

AMMAYEE v. YALUMALAI.

question in this case, for we agree with Mr. Justice Wilkinson that the Bombay and Calcutta decisions referred to do not apply to initials of an attesting witness, which stand on an entirely different footing from marks. The Act does not provide that the attesting witnesses should sign in full and we know of no authority for the proposition that initials are not a signature. On the contrary it has been held that they are equivalent to a signature to an acknowledgment under the Limitation Act. In our opinion, if the attesting witnesses affix their initials at the time of witnessing the execution of the will, it is a sufficient compliance with the terms of section 50 of the Indian Succession Act.

[After a consideration of the evidence, their Lordships recorded their finding as follows:—

Upon the whole we must hold that it is not proved that the deceased M. Chinna Cunneappa Chetty signed the will in question being fully aware of its contents and of the nature of what he was doing.]

Narasimhachari, attorney for appellant.

Branson & Branson, attorneys for respondents.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Handley.

1892. January 11.

MADHAVI (PLAINTIFF), APPELLANT,

v.

KELU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, s. 13—"Res judicata" *between defendants.*

The plaintiff, a junior member of a Malabar tarwad, alleged that the karnavan had assigned to her his kuikanom right over certain land, and that she had obtained a fresh demise from the jenmi and placed a tenant in possession. The tenant was dispossessed by the present karnavan, and in 1886 sued him and the plaintiff to recover possession of part of the land. That suit was dismissed on the ground that the above allegations of the plaintiff were unfounded. She now sued the present karnavan for possession of the entire land:

Held, that the claim of the plaintiff was *res judicata* as far as it related to the land in question in the former suit, but not as to the rest.

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* Second Appeal No. 812 of 1890.