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from the rest and than inferring that, because this power is not expressly taken away, it is granted. The argument infringes the rule of construction above referred to. In my opinion, therefore, this appeal must fail and be dismissed with costs.

COUTTS, J.—I Agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, JJ.

SARADA IRASAD DEJ

v.

TRIGUNA CHARAN RAY.*

Succession Act, 1865 (Act X of 1865), section 50—Will—at testation—Will signed by testatrix by the pen of a scribe—execution witnessed by one witness—endorsement of Will by Sub-Registrar stating that execution admitted by testatrix.

Where a Will purported to have been signed by the testatrix who made her mark "by the pen of the scribe Ram Narayan Ray" and it was proved that one of two alleged attesting witnesses had been present when the mark of the testatrix had been affixed in her presence by the scribe, and the Will bore an endorsement of the Sub-Registrar that the testatrix had admitted execution of the Will to him, the endorsement also being signed by the testatrix who again made her mark "by the pen of Ramnarayan Roy" held, that the Will had been properly attested.

Roymoney Dasse, In the goods of (1), Hurro Sundari Deba v. Chunder Kant Bhattacharjee (2), Nitya Gopal Sircar v. Nayendra Nath Mitter Mazumdar (3), Tofaludda Peada v. Mahar Ali Shaha (4) and Amarendra Nath Chatterjee v. Kushi Nath Chatterjee (5), referred to.

* Circuit Court, Cuttack, Appeal from Original Decree No. 5 of 1921 from a decision of D. H. Kingsford, Esq., District Judge of Cuttack, dated the 24th January, 1921.

(1) (1876) I. L. R. 1 Cal. 150.

(3) (1885) I. L. R. 11 Cal. 428.

(2) (1881) I. L. R. 6 Cal. 17.

(4) (1898) I. L. R. 25 Cal. 78.

(5) (1910) I. L. R. 27 Cal. 169.

Appeal by the applicants.

The facts of the case material to this report are stated in the judgment of Adami, J.

Durga Prassana Das Gupta, for the appellants.

Biswanath Sinha, *Sarat Chandra Mukherjee*, *Subodh Chandra Chatterjee*, *M. Suba Rao* and *Gopal Chandra Roy*, for the respondents.

ADAMI, J.—This is an appeal against the order of the District Judge, Cuttack, dismissing an application for grant of letters of administration with copy of the Will annexed.

Rhubunmani Dasi died in 1910. She is alleged to have executed a Will in 1901 whereby she bequeathed a moiety of her four-annas share in a *zamindari* to her daughter, Annapurna, the mother of the appellants, and the other moiety to her adopted son, Triguna.

In 1912, after Annapurna's death, an application for letters of administration made by her husband on behalf of her sons resulted in a compromise according to which the District Judge allowed him to take out letters of administration in respect of a quarter of the four-annas share in the *zamindari*.

This court, however, set aside the order and revoked the grant on the ground that letters of administration could not be granted with respect to a portion only of the estate. The appellants then applied for letters of administration in respect of the whole estate. A certified copy of the Will was attached to the application, it being alleged that Triguna, the caveator, refused to give the original Will to the petitioners, appellants.

The alleged Will is dated the 8th February, 1911, and is signed by the testatrix who made her mark, by the pen of the scribe Ramnarayan Roy. It bears the signatures of Rakhai Prasad Roy and Girdhari Prasad Roy as attesting witnesses, and has a registration endorsement to the following effect:—

“Having visited the residence of the above Bhubonmoni Dasi at Sahebzada Barar, I have this day examined the said Bhubonmoni Dasi who has been identified to my satisfaction by Ram Narayan

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Roy, son of Lakshi Narayan Roy of the same bazar, caste and profession, and the said Bhubonmoni Dasi admitted the execution of the document.

Bhubonmoni Dasi
 (by mark) by the pen of
 Ramnarayan Roy." M. A. Samad,
 S. S. Registrar, Cuttack.
 9-2-01".

The only witness examined by the petitioners, appellants, for the purpose of proving the Will was Girdhari Prasad Roy, the attesting witness, who proved the execution of the Will by Bhubonmoni. He stated that the Will was read over by him to Bhubonmoni and that she approved of it and in his presence affixed her mark by the hand of the scribe, Ramnarayan Roy, who also signed the Will. He asserted emphatically that no other attesting witness except Ramnarayan was present when he signed. It is quite clear on the face of the document that Ramnarayan signed as scribe and not as an attesting witness. He is dead.

The petitioners also called Rakhai Prasad Roy to prove attestation, but though he was present in court, refused to examine him on the ground that he was hostile.

The learned District Judge found that from Girdhari's evidence it was clear that Rakhai Prasad was not a due attesting witness because he was not present when Bhubonmoni signed the Will or when Girdhari signed, and, as there was no suggestion that Rakhai Prasad became an attesting witness in any other of the methods prescribed by section 50 of the Succession Act, therefore it must be held that there was only one attesting witness and the Will was not duly executed. He dismissed the application on this ground.

The point taken by the appellants in this court does not seem to have been raised in the Lower Court; it is this, that the Special Sub-Registrar's signed endorsement showing that Bhubonmoni admitted execution of the Will before him next day is an attestation which sufficiently complies with the requirements of section 50 of the Succession Act, so that it should be held that both Girdhari and the Sub-Registrar attested the Will.

In the case, *In the goods of Romoney Dassee* (1), the Will bore the following signature and attestation—

“Sree Roymonee Dassee by the pen of Sree Jadub Chunder Sen”

“Presented for registration between the hours of 6 and 7 a. m. on 3rd October, 1874, at her residence 18 Durponarain Thakoors Street, by Roymoney Dassee by whom execution was also admitted.”

Sree Roymoney Dassee.

By the pen of Sree Jadub Chunder Sen.

“Identified by her nephew, Jogendronath Sen, clerk to Messrs. Gray and Sen, Solicitors.

Jogendronath Sen.

Seal of

C. M. Chattarjee,

Registrar.

Registrar”

It will be noted that no one signed expressly as an attesting witness, but it was held that, in the circumstances of the case, it would be sufficient if the Registrar had signed in the presence of the testator, and that, even if he did not sign in her presence, the signatures of the two persons, one of whom wrote the testatrix's name at her direction and, when she had affixed her marks, wrote “by the pen of Jadub Chunder Sen” and the other of whom saw the testatrix put her mark and identified her, writing his name as having done so, would be a sufficient attestation by two witnesses to satisfy the Act.

The present case differs from the above only in this that there was an attesting witness, Girdhari Prasad Roy who has given evidence of the attestation and that Ramnarain Roy who identified Bhubonmoni Dasi before the Registrar signs merely as being the person by whose pen the name of Bhubonmoni Dasi was written under the endorsement admitting execution, and not as identifying the lady.

In *Hurro Sundari Deba vs. Chunder Kant Bhattacharjee* (1), it was held that, if a testatrix admits a signature on a Will to be hers before a Registrar of

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(1) (1876) 1. L. R. 1 Cal. 159.

(2) (1981) 1. L. R. 6 C. L. 17.

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Assurances and is identified before him by one of the witnesses to the signature, and both the Registrar and the identifier sign their names as witnesses to the admission made, such attestation would be sufficient to satisfy section 59 of Act X of 1865. Again the question rises whether the signature of Ramnarayan Roy under the Registrar's endorsement can be taken to be an attestation of Bhubomoui's admission of execution.

The above case was followed in *Nitya Gopal Sircar vs. Nagendra Nath Mitter Mazumdar* (1) and there too the requirement was that the identifier and Registrar should sign as witnesses to the admission of the testator. In the last case the Registrar was called as a witness and gave evidence that the testatrix signed the admission in his presence.

In *Tofaludda Peada vs. Mahar Ali Shaha* (2) Banarjee, J., remarked, "It is quite true that the signature of the Registrar at the foot of the registration endorsement embodying the admission of the executant has been held to be sufficient attestation within the meaning of section 59 of the Indian Succession Act.....the Registrar's signature would come under the last description of attestation referred to in the third clause of section 50 of the Indian Succession Act."

In the case of *Amarendra Nath Chatterjee vs. Kashi Nath Chatterjee* (3) the decisions above cited were again followed, and there again the admission of execution was attested not only by the signature of the Registrar but also of another witness.

In the present case, though the admission before the Sub-Registrar is attested by the Sub Registrar alone, and not by a second witness as in the cases mentioned above, we have the evidence of Girdhari Prasad Roy who saw the testatrix make her mark when she executed the Will and himself signed as an

(1) (185) I. L. R. 11 Cal. 429.

(2) (1898) I. L. R. 25 Cal. 78.

(3) (1960) I. L. R. 27 Cal. 169.

attesting witness. Therefore, taking the signature of the Sub-Registrar as an attestation, together with the attestation of Girdhari Prasad Roy, the requirements of section 50 have been fulfilled.

It has not been argued before us that the Will was a forgery and in fact the respondent's case is not that the Will was not executed but that some years after execution the original Will was torn up by the executrix. The respondent did not produce any evidence to prove this

In my opinion the Will has been attested according to the requirements of law, and therefore, the appeal must be allowed. The decree of the Lower Court will be set aside and letters of administration with a copy of the Will annexed will be granted to the petitioners, appellants, in respect of the entire estate of the testatrix.

DAS, J.—I agree.

Appeal allowed.

PRIVY COUNCIL.

SHIB NARAYAN CHOWDHURY.*

v.

SHIB NARAYAN CHOWDHURY.*

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Hindu Law—Will, construction of—malik, meaning of—Practice—official translation, procedure for correction of, when challenged.

The term *malik*, when used, in a Will or other document, as descriptive of the position which a devisee or donee is

* PRESENT.—Lord Buckmaster, Lord Carson, Sir John Edge and Sir Lawrence Jenkins.