

1876  
 IN THE GOODS  
 OF WILLSON.

reference by the Registrar as to whether the issue of the grant of letters of administration should be delayed until fourteen days had expired or should be granted at once, s. 258 of the Succession Act was referred to, and the following order was made by

PHEAR, J.—I have read this section (258) as if there were a comma after the words “fourteen clear days,” and the word “respectively” after “death:” and I understand “letters of administration” not to include the case of letters of administration with the will annexed. The distinction intended by the Legislature appears to me to be this: where a will is proved, the grant may be made on the lapse of seven clear days, but where there is no will, not until after the expiration of fourteen clear days. The application may be granted.

*Application granted.*

Attorneys for the Administrator General: Messrs. *Chauntrell, Knowles, and Roberts.*

*Before Mr. Justice Phear.*

IN THE GOODS OF ROYMONEY DOSSEE.

1875  
 Dec. 20 & 22.

*Will, Attestation of—Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s. 2.*

By the Succession Act, s. 50, no particular form of attestation is necessary: therefore, where to a document purporting to be her last will and testament the name of a testatrix was written by A, and the testatrix then, in his presence, affixed her mark, and A in her presence wrote beneath it, “by the pen of A;” and the testatrix was then identified to the Registrar, who was present, by B, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her, *Held* a sufficient attestation, and probate was granted (1).

APPLICATION for probate of the will of S. M. Roymoney Dossee, a Hindu inhabitant of Calcutta, dated 31st October

(1) When a person signed a will competent as an attesting witness—  
 for the testator, the testator merely *Avabai v. Pestonji Nanabhai*, 11 Bom.  
 holding the pen and making no mark, H. C. R., 87.  
*it was held that such person was not*

1874. The will was in the Bengali character, and bore the following signature and attestation when translated "Sree Roymonee Dossee + By the pen of Sree Jadubchunder Sen.

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"Presented for registration between the hours of 6 and 7 A.M., on 31st October 1874, at her residence, 18 Durponarain Thakoor's Street, by Roymoney Dossee, by whom execution was also admitted.

Sree Roymoney Dossee +  
By the pen of Sree Jadubchunder Sen.

"Identified by her nephew, Jogendronath Sen, clerk to Messrs. Gray & Sen, Solicitors.

Jogendronath Sen.



C. M. Chatterjee,  
*Registrar.*"

In support of the application, an affidavit of Ashootosh Mullick, Denobundhoo Sen, Jogendronath Sen, Obhoycoomar Sen, and Jadubchunder Sen, was put in, which alleged that at about 7 A.M., on 31st October 1874, the deponents, together with the Registrar of Assurances, Baboo C. M. Chatterjee, were all present at the house of the testatrix, and then and there saw her affix her mark to a Bengali document, purporting to be her last will and testament in execution of such document, and on or immediately after such execution, presented the said document to the Registrar for registration as her last will and testament, and it was then and there admitted for registration by the Registrar on the deceased, the party executing, being identified to him by Jogendronath Sen. The signature of the Registrar appeared on the document, but it did not appear that he affixed his signature in the presence of the testatrix. Jogendronath Sen deposed that the deceased affixed her mark to the document in the presence of himself and the other deponents and of the Registrar, and that, after such execution, he duly identified the deceased to the Registrar, who thereupon

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registered the will, and that thereupon he put his signature thereto as the party identifying the deceased. He also deposed that the signature "C. M. Chatterjee" was that of the Registrar.

Jadubchunder Sen deposed that he added the last paragraph to the will by the direction of the testatrix, and that he then, by the direction of the testatrix, wrote her name at the foot or end of the will, and handed the will to her to affix her mark thereto after her name, which she thereupon did, and he then and there, in the presence of the testatrix and of the other deponents, and the Registrar, wrote under the deceased's name and mark the words বঃ জীয়াদবচন্দ্র সেন, which, when translated into English, are "by the pen of Sree Jadubchunder Sen," in attestation of the fact that he had written the name of the deceased at the end of the will by her direction, and had seen her affix her mark opposite to her name in execution of the said document for her last will and testament.

Mr. *Woodroffe*, in support of the application, submitted that as the Indian Succession Act, s. 50, which is made applicable to the wills of Hindus by Act XXI of 1870, made no particular form of attestation necessary; the attestation was sufficient, and probate might be granted. [PHEAR, J.—It would be sufficient if the Registrar signed in the presence of the testatrix.] It does not appear that he did so; but even without his signature, it is submitted the attestation is sufficient. The signatures of the two persons, one of whom wrote the testatrix's name at her direction, and when she had affixed her mark, wrote "by the pen of Jadubchunder 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.

PHEAR, J.—Ordered probate to be granted.

*Application granted.*

Attorneys the for Petitioner: *Gray, Sen and Farr.*