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Vishnu Ghanasham relied upon the authorities already cited.

Pándurang Balibhadra, for the respondent, relied upon the two cases *Krishnarav* v. *Vasudev* (1) and *Motichand* v. *Dadabhai.*(2) He also contended that the market value of the house must be taken to be the price paid by the defendant, Rs. 175.

WESTROPP, C.J. :—This Court, on the authority of the Calcutta cases *Nanhoon Singh* v. *Tofanee Singh*(3) and *Jeebraj Singh* v. *Inderjeet Mahtoon,* (4) and of *Bái Máhkor* v. *Bulakhi Chaku,* (5) reverses the order of the District Judge and restores that of the Subordinate Judge with costs ; but, in accordance with the course followed in the last-mentioned case, directs that the plaint be returned to the plaintiff in order that he may, if so advised, present the same in the proper Court.

[TESTAMENTARY AND INTESTATE JURISDICTION.]

March 5.

MANICKBAI, APPLICANT; HORMASJI BOMANJI, CAVEATOR.*

Will—Acknowledgment of signature by testator—Indian Succession Act (X. of 1865), Section 50, Clause 3—Wills Act (1 Vic. Cap. 26), Section 9.

It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the will when the witnesses attested it.

THE applicant, as widow and executrix of Bomanji Burjorji Shroff, propounded as his last will a document bearing his signature and those of two attesting witnesses, who identified the document as one which they, at the request of the testator, had attested in the office of Messrs. Ralli Brothers, where they and the testator were all employed. They both said that, before they attested it, the testator told them that it was his will, but that he did not sign it in their presence or read it to them. One said he could not remember whether he saw the testator's signature, or any

* In the matter of the last will and testament of Bomanji Burjorji Shroff.

(1) 11 Bom. H. C. Rep. 15. (2) 11 Bom. H. C. Rep. 186.

(3) 12 Beng. L. R. 113. (4) 12 Beng. L. R. 115. (5) *Supra* p. 538.

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writing, on the paper when he attested it, but if he did, he did not particularly notice it. The other said he was quite sure he did not see the testator's signature, as the paper was folded in such a way that he could see no writing whatever on it. The evidence of the testator's widow went to show that, before starting for the office of Messrs. Ralli Brothers on the morning of the day on which the other two witnesses attested the will, the testator wrote and signed his will at home, and then took it with him when he left the house to go to the office.

The caveator opposed the grant of probate to the applicant mainly on the ground of undue execution. He also alleged that the testator had executed another subsequent will, but of this there was no evidence.

On these facts *Marriott*, Advocate General (Acting), and *Inverarity*, for the applicant, contended that there had been by the testator an acknowledgment of his signature sufficient to satisfy the requirements of Act X. of 1865. The testator said: "This is my will;" that is equivalent to saying "the signature on this paper is mine," for without his signature the paper could not be his will. The evidence shows that at least it is more probable that the signature of the testator was on the paper when the witnesses attested it than that it was not. If so, an acknowledgment by the testator that the paper is his will is a sufficient acknowledgment of his signature, though the witnesses do not see him sign it or notice his signature on the paper when they attest it: *Cooper* v. *Bockett*,(1) *Gwillim* v. *Gwillim*,(2) *Smith* v. *Smith*,(3) *Beckett* v. *Howe*.(4)

Latham and *Farran* for the caveator:—Act X. of 1865, Section 50, requires the *personal* acknowledgment of the testator, whereas the English statute (1 Vic. Cap. 26) requires merely the acknowledgment. The introduction of the word "personal" into the Indian Act shows an intention to particularize more strictly than the English Act what has to be done by the testator, and, therefore, the cases on the English Act cannot be admitted as authorities in the construction of the Indian Act. The cases cited by the other side only go to show that where there is a conflict between the

(1) 4 Moore P. C. 419. (2) 3 Sw. and Tr. 200.

(3) L. R. 1 P. and D. 143. (4) L. R. 2 P. and D. 1.

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evidence of the witnesses and the facts and circumstances of the case, the Court may attach greater weight to the presumption to be drawn from the facts and circumstances than to the evidence of the witnesses: *Ilott* v. *Genge*(1), *Fischer* v. *Popham*,(2) *Croft* v. *Croft*.(3)

Inverarity in reply :—*Ilott* v. *Genge*(4) and *Fischer* v. *Popham*(5) do not apply, because in neither of those cases did the testator inform the witnesses that the paper which they were attesting was his will. In *Croft* v. *Croft* (6) the evidence clearly established the undue execution of the will. The introduction of the word "personal" into the Indian Act makes no difference, unless, perhaps, in such a case as *Inglesant* v. *Inglesant*.(7)

GREEN, J.:—The question for decision is whether, under the 3rd clause of Section 50 of the Indian Succession Act X. of 1865, the two attesting witnesses received from the deceased a personal acknowledgment of his signature to the paper here propounded as the last will of Bomanji Burjorji Shroff. The two attesting witnesses state that, in the office of Messrs. Ralli Brothers, Bomanji produced a paper, saying it was his will, and asked them to attest it, which they did, and that this was the same paper which is now propounded as his will. Both say, one more positively than the other, that they then saw no writing on the paper which they attested. If Manickbai's evidence is to be relied on, this paper was written and signed by Bomanji at his own house before he took it to the office of Messrs. Ralli Brothers and there got the witnesses to attest it. The circumstance which, to some extent at least, threw doubt, in my mind, as to that evidence, was this: that an affidavit was proposed to be made by the two attesting witnesses (which, however, they refused to make) that the will had been signed in their presence by Bomanji at the office of Messrs. Ralli Brothers. It did not, however, appear clearly that instructions for this statement had been given by Manickbai. The provisions of the English Wills Act (1 Vic., Cap. 26, Section 9), with regard to the acknowledgment by the testator of his sig-

(1) 4 Moore P. C. 265. (2) L. R. 3 P. and D. 246.
(3) 34 L. J. P. M. and A. 44. (4) 4 Moore P. C. 265.
(5) L. R. 3 P. and D. 246. (6) 34 L. J. P. M. and A. 44.
(7) L. R. 3 P. and D. 172.

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nature to his will, are substantially the same as those of the Indian Succession Act X. of 1865, Section 50, for I think the introduction of the word "personal" into the last-mentioned Act is not material in such a case as the present. The question: what is a sufficient acknowledgment by a testator of his signature to his will? was considered in the cases of *Cooper* v. *Bockett*,[1] *Gwillim* v. *Gwillim*,[2] *Smith* v. *Smith*,[3] and *Beckett* v. *Howe*.[4] The rule to be gathered from those cases is that, if the testator produces a paper and makes the witnesses understand that it is his will, that is an acknowledgment of his signature, if the Court is satisfied that his signature was on the will when the witnesses attested it. The circumstances of the present case, coupled with the evidence of Manickbai, have led me to the conclusion that when the testator produced this paper in the office of Messrs. Ralli Brothers, and informed the attesting witnesses that it was his will, and got them to attest it, his signature was already on it. That being so, I must hold that he sufficiently acknowledged his signature to these witnesses. Probate must, therefore, issue to Manickbai. The costs of both parties must come out of the estate, except so far as occasioned by the contention of the caveator that probate ought not to issue on the ground that Bomanji Burjorji had executed another will subsequent to the one propounded. These last-mentioned costs must be paid by the caveator Hormasji Bomanji.

[ORIGINAL CIVIL JURISDICTION.]

March 5.

BHIKAJI SABAJI AND OTHERS (PLAINTIFFS) *v.* BAPU SAJU AND OTHERS (DEFENDANTS).*

Indian Companies Act X. of 1866, *Section* 4—*Partnership*—*Association*—*Acquisition of gain*—*Illegal agreement.*

An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain, and if consisting of more than twenty persons must be registered.

Where more than twenty artizans signed an agreement whereby they constituted themselves an association for the above purpose, but which association was not registered as a company under Act. X. of 1866,

(1) 4 Moore P. C. 419.

(2) 3 Sw. and Tr. 200.

(3) L. R. 1 P. and D. 143.

(4) L. R. 2 P. and D. 1.

* Suit No. 239 of 1877.