

(1880) 05 CAL CK 0021

Calcutta High Court

Case No: None

Hurro Sundari Dabia

APPELLANT

Vs

Chunder Kant
Bhattacharjee

RESPONDENT

Date of Decision: May 14, 1880

Acts Referred:

- Succession Act, 1865 - Section 50

Citation: (1881) ILR (Cal) 17

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Garth, C.J.

We think that, in this case, the Judge was quite right in holding that the attestation at the foot of the will was insufficient, because it is proved that both the witnesses signed their names before the will was signed by the testatrix. We agree with the learned Judges who decided the case of Bissonath Dinda v. Doyaram Jana I. L. R. Cal 738, and also with the Bombay case of Fernandez v. Alves I. L. R. 3 Bom. 382, which was cited to show that Section 50, Act X of 1865, clearly intends that the two witnesses shall sign their names after the testator or testatrix shall have signed his or hers.

2. But then there is the further point, which has been argued here, and to which the attention of the Judge does not appear to have been directed,--namely, that when the testatrix admitted before the Registrar her execution of the will, she was identified on that occasion by one of the same persons who profess to have witnessed her signature to the will. Upon her admitting before the Registrar that the signature to the will was hers, the Registrar signed his name as attesting her admission, and apparently the other witness did the same. Now, if these persons signed their names in the presence of the testatrix as attesting her own admission that she had signed the will, we think that would be sufficient, as an attestation, to

satisfy the requirements of the 50th section.

3. We have decided, therefore, to remand the case in order that the Judge, by recalling the witness who has already been examined, Chunder Kishore, and also any other witness who were present, may satisfy himself upon this point, and determine the case accordingly.

4. We find that the view we now take was adopted by Mr. Justice Phear in *In the goods of Roymoney Dossee* I. L. R. Cal. 150.

5. As the appellant did not raise this contention in the Court below, and as upon the materials now before us she would not be entitled to succeed, we think that the objector should have his costs in this Court.

6. Both parties will be at liberty to adduce fresh evidence bearing upon the question which we direct to be tried.