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the faith of representations made to him by Robert Bruce Johnston, and of the affidavit filed by Mr. Johnston to the effect that the deceased's effects did not exceed in value the sum of 20*l.* That, two or three months afterwards, he was asked to execute another bond for a much larger amount, which he refused to do. That, on that occasion, he was informed that the one he had executed was of no use, and had not been used. That, if in the first instance he had been asked to enter into a bond for a large amount, he would have refused to do so. That the only reason why he executed the one he did was the belief that, after Mr. Johnston had paid the expenses of obtaining letters of administration, and of passing the accounts, there would only have remained the sum of 10*l.*, or thereabouts, for the administration of which he could in any way be liable.

Dr. Spinks, Q.C., appeared for Mr. Ward, to shew cause against the order being made absolute. Mr. Ward, on the substitution of the second bond, presumed that his liability had ceased, and that he was no longer called upon to see to the due administration of the estate. As far as he is concerned, the estate has been duly administered, because the probate and testamentary expenses, which have been paid, cover his security. He referred to *In the Goods of Stark.* (1)

Searle, for the creditors. Mr. Ward will be responsible only to the amount of his bond, and his responsibility will not be increased by the estate turning out to be larger than was expected.

[LORD PENZANCE. The complaint of Mr. Ward is, that he became responsible to the amount of 20*l.*, and on that footing he entered into the bond. You are now asking that he may be made responsible for dealing with a very much larger sum.]

Mr. Ward will have an opportunity of setting up any answer he thinks proper in the action brought at common law.

LORD PENZANCE. Ought you not to proceed against the sureties to the second bond first? I think it will be more equitable and fair that that should be done. I shall, therefore, order the bond to be assigned against the other parties, but hold my hand as regards the first bond until I know the result of the suit.

Proctor: *E. W. Crosse.*

(1) Ante, p. 76.

IN THE GOODS OF THOMAS BRIGHTMAN SHARMAN.

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Will—Residue—Signature of Legatee written under Attestation Clause—Omission of Name in Probate—Practice.

The deceased made a will in favour of one person only, and after bequeathing to her certain specified articles of property, he added, "and all other chattels;" these last words were held to cover the general residue.

Where a will has been executed in the presence of two witnesses, and, in addition to their signatures, the signature of a third person, who is also residuary legatee, appears at the foot of the will, the Court will receive evidence to explain why such signature was written, and if it be satisfied that it was not written with the intention to attest the signature of the deceased, it will order it to be omitted in the probate.

THOMAS BRIGHTMAN SHARMAN, late of Leake, in the county of Lincoln, veterinary surgeon, who died on the 28th of September, 1868, executed a will a few hours before his death to the following effect: "I give and bequeath unto my sister, Adelaide Sharman, absolutely, all my house and land and book debts, household furniture, plate, linen, books, china, glass, books of art, drugs, hay, straw, potatoes, and everything on the said premises, horse, gigs, &c., and all other chattels.

"Thos. B. Sharman.

"Signed in the presence of us by the testator. "Henry Charrrington. "Mary A. Lancaster. "A. Sharman.

"Leake, Sept. 28th, 1868."

The affidavit of Henry Charrington contained the following account of the making and execution of this will: "On the 28th day of September, 1868, I being a neighbour and an intimate friend of the deceased, called upon him to see him, he being unwell. He informed me that he wished very much to make a will giving the whole of his property to his sister, Adelaide Sharman, who resided with him, absolutely. I, at the testator's request, consented to prepare such a will. I wrote the will out at my own house, and brought it to the deceased. I read the same carefully over to him. He expressed his satisfaction with the contents, and executed it in the presence of Mary Ann Lancaster and of myself, and we then signed as witnesses. The testator's sister was present when the will was executed, but she did not sign as a witness. After I and Mary Ann Lancaster had signed it, it struck

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me it would be desirable that the said Adelaide Sharman should sign her name on the paper on which the will was written, not as witness, but as the universal legatee named therein, and I intimated this to the deceased. He said he thought his sister ought not to sign, but I afterwards, being under the impression that it was the proper course to pursue, requested Miss Sharman to sign the will, and she did so."

The deceased left a father, Mr. George Sharman, who would be entitled to his property, in case he had died intestate. On the 20th of April, application on motion was made to the Court for administration, with the will annexed, to be granted to Adelaide Sharman as the universal legatee named in the will, but the Court refused to grant the motion, and ordered a notice to be served on the father of a renewed application. This notice was served upon him on the 23rd of April, but he did not appear to oppose it.

Inderwick renewed the application. The Court will not preclude the party interested from explaining with what object she put her signature on the paper: *Randfield* v. *Randfield.* (1) If she is not an attesting witness, her signature can form no part of the probate; for, being written under the signature of the testator, it is not a part of the will. On this point he referred to the following cases: *In the Goods of Mitchell* (2); *In the Goods of Forest* (3); *In the Goods of Smith* (4); *In the Goods of Raine.* (5)

As regards the interest of Adelaide Sharman under the will, it is evident that the only person the testator desired to benefit was his sister, and he makes her his residuary legatee; for the words *all other chattels* are sufficient to cover the residue of his property. As the will was drawn by the testator himself, the Court will not construe its wording too strictly: *Michell* v. *Michell* (6); *Campbell* v. *Prescott* (7); *Kendall* v. *Kendall* (8); *Arnold* v. *Arnold* (9); *Parker* v. *Marchant.* (10)

LORD PENZANCE. There are two questions in this case—first, whether a grant can go at all to the applicant; and, secondly,

(1) 30 L. J. (Ch.) 179, n. 1.
(2) 2 Curt. 916.
(3) 2 Sw. & Tr. 334; 31 L. J. (P. M. & A.) 200.
(4) 3 Sw. & Tr. 589; 34 L. J. (P. M. & A.) 19.
(5) 34 L. J. (P. M. & A.) 125.
(6) 5 Mad. 63.
(7) 15 Ves. 500.
(8) 4 Russ. 360.
(9) 2 My. & K. 365.
(10) 1 Y. & C. Ch. 290.

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whether the probate ought to issue with or without her name as witness. In a case decided by Sir C. Cresswell, he held that under ordinary circumstances it is not the duty of this Court to ascertain if there be two attesting witnesses, whether the name of a third person appearing on the face of the will was written as attesting the signature of the testator or not; but that such a question would be more properly raised in a Court of Construction. No doubt, however, there are some considerations on this matter which deserve to be carefully weighed; amongst others, that this Court is bound not to send up to the Court of Construction anything which does not form part of the will itself. Now, if the name is not the name of an attesting witness, it is not a part of the will, and ought not to appear in the probate. In the present case such a duty is forced upon the Court, because, not only the question what is the will, but also the question to whom the grant shall go, depends upon the previous question, whether Miss Sharman is interested under the will or not. If she attested the signature of the deceased, she forfeited all interest under the will; if she did not attest the signature, her name forms no part of the will. On the evidence before me, I can have no hesitation in saying that she did not attest the signature of the deceased. When a testator has signed his name in the presence of two witnesses, and at his request they attest his signature, the execution is complete; and if a third person afterwards adds his name, the Court will not come to the conclusion, without cogent evidence, that that third person signed as an attesting witness. The next question is, whether the grant can go to Miss Sharman as residuary legatee. I think she is residuary legatee. There is a great deal in the observation that she is the only person interested under the will. The will is extremely short. The testator gives to his sister absolutely all his house and land and book debts, household furniture, plate, linen, books, china, glass, books of art, drugs, hay, straw, potatoes, and everything on the premises, horse, gigs, &c., and all other chattels. The fair meaning is, that he gives everything to his sister, and therefore she is the residuary legatee. Administration with the will annexed will issue to her, but the grant will not include her name written at the foot of the will.

Attorneys: *W. & H. V. Sharp.*