

FISHER,
C.J.
&
STUART, J.
1922
February 14

[FISHER, C.J. AND STUART, J.]

VASSILI RICCA

v.

HAJI TOWLI HAJI VASSILI AND OTHERS.

WILLS AND SUCCESSION LAW, 1895, SEC. 22 (2)—MARK.

A will which bears the duly authenticated mark of the testator at the end is "signed" within the meaning of Sub-section (2) of Sec. 22 of the Wills and Succession Law, 1895.

This was an appeal from a judgment of the District Court of Larnaca. The Plaintiff claimed probate as executor of the will of one Haji Theklou Haji Vassili and the Defendants, the heirs, objected that the alleged will, bearing the mark only of the deceased, was not duly executed. The Court gave judgment granting probate and the Defendants appealed.

Nicolaides for the Appellants.

D. Themistocles for the Respondent.

Judgment: The only point for decision in this case is whether the will of the deceased Haji Theklou Haji Vassili can be admitted to probate, and the only objection raised to its being so admitted is that it was not "signed" by the testatrix within the meaning of Sub-sec. (2) of Sec. 22 of the Wills and Succession Law, 1895.

It was in fact marked by her and her mark was duly attested. We have therefore to construe the word "sign." The same word is used in Sec. 9 of the Wills Act, 1838, and it has been held that the affixing of a mark is signing within the meaning of that Section. See *e.g.*, *In the goods of Bryce*, 2 Curteis, 325, cited in the Laws of England, Vol. 28, p. 548.

It is also to be noted that a distinction is made both in the English Act and the Cyprus Law as regards the witnesses to a will. The former requires them to "subscribe" the will, and the latter provides that they shall "subscribe their names." Sec. 22 (4), and Sec. 23 require that the witnesses shall be "able to sign their names."

Under these circumstances we are of opinion that the word "sign" in the Sub-section under consideration includes something other than writing and that a duly authenticated mark is a compliance with the requirements of the Sub-section as regards signature.

Appeal dismissed. Costs of all parties to be paid out of the estate.