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Wills-Signature in Superscription-Intention to Adopt Name as Signature

WILLS—SIGNATURE IN SUPERSCRIPTION—INTENTION TO ADOPT NAME AS SIGNATURE—Six weeks before her death Mrs. Belle Stockman, in her own handwriting, prepared a paper which purported to be her last will. On the day of her death she requested a nurse to bring the paper to her, saying that it was her will, and desiring the nurse and another person present to sign it as witnesses, which they did. Mrs. Stockman did not subscribe her name, and it appeared only in the superscription, thus: "The will of Belle Stockman." Appellees contest the probate of the will on the ground that it was not signed as required by statute. HELD: a judgment for appellees, refusing probate, is reversed. *Thrift Trust Co. v. White et al,* Appellate Court of Indiana, June 25, 1929, 167 N. E. 141. (Petition for rehearing denied Oct. 22, 1929.)

The statute provides that: "No will.....shall affect an estate unless it be in writing, signed by the testator, or someone in his presence with his consent, and attested and subscribed in his presence by two or more competent witnesses." 2 Rev. St. 1852, p. 308; section 3452, Burns' 1926. The question as to whether the testator's name in his own handwriting, appearing at the beginning of the will, is a sufficient signing under the statute, is one of first impression in this state, although it long has been decided in many jurisdictions.

After the statute of frauds, the signature of the testator became necessary; its position on the instrument, however, was immaterial. *Lemayne v. Stanley* (1681) 83 Eng. Reprint 545. In this case, the testator wrote his own will: "In the name of God, amen, I, John Stanley, make this my last will and testament." The name did not appear elsewhere on the will, but the court held it to be a sufficient signing. The Indiana statute, like the English statute of frauds, does not specify where the testator's signature should appear on the will. Other states with statutes similar to the one in force in this state generally have followed the Lemayne Case. The Supreme Court of Michigan decided the question in 1922, *In re Norris Estate* (*Stone v. Holden*), 191 N. W. 238. On a blank form the testator had filled in his name at the beginning and in the attestation clause and published it as his will without actually signing it on the line provided for that purpose. This will was held to be duly executed since there was an intention on the part of the testator to adopt his name as written by him in the beginning of the will or in the attestation clause as his signature. More recently this decision was reaffirmed in Michigan, when the Supreme Court held that the superscription, "The will of Augusta M. Thomas" in testator's own writing was a sufficient signing, no other signature appearing at the end of the will. *In re Thomas Estate,* 220 N. W. 764.

In the case of *Armstrong v. Armstrong,* 29 Ala. 538, in which the will was written by another at the direction of the testator, but was not signed

at the close, although the execution was attested by witnesses, the court held the signing sufficient, and indicated a desire to follow the English decision under the statute of frauds. A corresponding viewpoint is that of the Maryland Court which referred to the similarity of the fifth section of the original statute of frauds with the section of the statute governing the execution of wills. Some other states in accord are: Illinois, *Kalowski v. Fausz* (1902) 103 Ill. App. 528; Mississippi, *Armstrong v. Walton* (1913) 62 So. 173; Texas, *Lawson v. Dawson* (1899) 53 S. W. 64; and Vermont, *Adams v. Field* (1849) 21 Vt. 256. The law on this point is well stated in 40 Cyc. 1104. "Where the statute relating to signing requires no more than the statute of frauds,—merely that the will shall be in writing, and be signed,—it is immaterial where the testator's signature was placed, if it was placed there with the intention of authenticating the instrument."

Evidence showing the intention of the testator to adopt as his signature the name he wrote at the beginning of the will is necessary. The intention of Mrs. Stockman to adopt the name written in the superscripture as her signature is indicated by the fact that she thought the will was complete and published it as such by requesting the two witnesses to sign it. The court concludes that, "If the initial words, 'The will of Belle Stockman,' had, instead, been written at the close, who would say that it should not be treated as her signature?"

Undoubtedly the case is in accord with the great weight of authority.

J. W. S.