

**In Re: L.P.D. Broughton**

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**Court :** Kolkata

**Decided On :** Mar-06-1902

**Reported in :** (1902)ILR29Cal311

**Judge :** Ameer Ali, J.

**Appellant :** In Re: L.P.D. Broughton

**Judgement :**

**Ameer Ali, J.**

1. This is an application for probate of the will of Mr. L. P. D. Broughton, late Administrator-General of Bengal.

2. It appears that he had executed a will in the year 1894, and that some time in 1901 he made over to Mr. N. S. Watkins a copy of that will with various alterations in pencil, which are sworn to be in his handwriting; that copy remained in the custody of Mr. Watkins until it was produced on the 3rd of January 1902 shortly before Mr. Broughton died. Mr. Watkins has in his affidavit stated that the document which is now produced with the pencil alterations was in his custody all along in the condition in which it was delivered to him by the deceased. On the 3rd of January this year Mr. Broughton executed a document, which I may treat as a codicil, and which is, with the exception of a few words, in the handwriting of Dr. Arnold Caddy of this city, who was attending the testator medically about the time of his decease. The words not in Dr. Caddy's handwriting were written by Mr.

Watkins. By this codicil, which I hold upon the affidavits to have been duly executed by Mr. Broughton, he confirms the copy-will as altered by him in pencil.

3. These two documents, therefore, upon the affidavits of Miss Rawlings and Mr. Watkins, really represent the last wishes of the deceased. The alterations in pencil in the copy-will, I have no doubt, were made before the execution on the 3rd of January, 1902, of the document I have referred to, and therefore do not come under the provisions of section 58 of the Succession Act; and as they together represent his last wishes and testamentary dispositions, the applicants, who were appointed by the deceased as his executors, are entitled to probate thereof.

4. I have ascertained from the Registrar the practice of this Court regarding wills containing alterations made by the deceased, and I am informed that the practice has been to attach to the document of which probate is sought, a copy in writing with the alterations incorporated in the text, and I think I ought not to depart in this case from that practice; but having regard to the fact that the alterations here have been made in pencil by the testator himself and that the pencil writings are likely to fade in course of time, I direct, in the exercise of my discretion, that a photographic facsimile, taken in the presence of the Registrar and of the executors, be attached to the probate.

5. I may add that the case *In the goods of Hall* (1871) L. R. 2 P. & D. 256. does not apply to this case. In my opinion the alterations shown in the document of which probate is sought are not of a merely deliberative character, and that therefore the applicants are entitled to probate of the will with the alterations. The directions I have given are amply supported by the authorities to which I was referred by Mr. Woodroffe, viz. *Gann v. Gregory* (1854) 8 De G. M. & G. 777. and *Shea v. Boschetti* (1854) 18 Beav. 321. In the copy in writing, which I have directed to be attached, the pencil alterations and interlineations should be shown in red ink.

**Woodroffe, J.**

6. There may be some question as to what is legible or illegible, and the red ink portions may not contain all that may be said to be legible. This difficulty may be obviated by a photographic facsimile probate.

7. Under the ruling of Lord Penzance in *In re Hall* (1871) L. R. 2 P. & D. 256. I can only allow to be copied the portions that are legible, and regarding which I can say they represent the testator's disposing mind. Under that ruling portions rubbed out must be treated as revoked.

**Woodroffe, J.**

8. Will your Lordship decide what is legible

9. No. I will leave that to the Registrar. He can have a copy made and submitted to you, and, if any question arises, it can be referred to me.

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