The question seems to me to be whether assuming both witnesses to have been present at the time, what took place amounted to a due acknowledgment of his signature by the testator. Nothing was said by the testator to the witnesses, before they were asked by him to make their marks; they were not told by him that the paper was his will, nor was anything said as to its contents; neither is there any proof that the testator's name was on the paper, when the witnesses added their marks. The witnesses are illiterate people, unable to read or write, and therefore they cannot swear as to whether the testator had or had not signed before they attested. The Court took time to consider the question which was raised upon these facts, on account of a case cited in argument by Dr. Tristram, namely, that of *In the Goods of Thompson* (4 Notes of Cases, 643) There are some remarkable expressions in the judgment in that case, which seemed to render it advisable that I should review the decisions on this point.

The authority which has guided the court in questions of this kind, is *Gwillim* v. *Gwillim*, 3 Sw. & Tr. 200. Sir Cresswell Cresswell decided in that case, that, where at the time of the execution, the witnesses had been told that the paper they were attesting was the testator's will, and where, from the surrounding circumstances of the case, the court can arrive at an affirmative conclusion, that the testator's signature had been affixed before the attestation, there is then a sufficient acknowledgment by the testator. Such, I think, is in substance the decision in *Gwillim* v. *Gwillim;* and that decision has been followed by the court, in the subsequent cases of *In the Goods of Huckvale*, L. R. 1 P. & M. 375, and *Beckett* v. *Howe*, L. R 2 P. & M. 1, 18 W. R. 75. In the former of these cases the court said—"The result is, that where there is no direct evidence one way or the other, but a paper is produced to the witnesses, and they are asked to witness it as a will, the court may, independently of any positive evidence, investigate the circumstances of the case, and may form its own opinion from these circumstances, and from the appearance of the document itself, as to whether the name of the testator was or was not upon it at the time of the attestation; and if it arrives at the conclusion that it was there at the time, the case falls within the principles of the decisions to which I have referred, and the execution is good. * * * I may add that there is a class of cases, the circumstances of which are such as to exceed the limits of the rule laid down in *Gwillim* v. *Gwillim*. One of those cases is *In the Goods of Hammond*, 11 W. R. 639, 3 Sw. & Tr. 94, in which Sir Cresswell Cresswell decided that where there was no evidence at all on the question, whether anything had been written before the signature of the testator, the court could make no presumption. To the same effect is *In the Goods of Pearsons*, 33 L. J. P. M. & A. 177. In both these cases the witnesses saw nothing but a blank piece of paper, and did not know anything about the nature of the instrument they were asked to attest. The circumstances of these cases seem beyond the limit to which the doctrine laid down in *Gwillim* v. *Gwillim*, ought to be carried." In the other case—*Beckett* v. *Howe*—the court said—"The sum and substance is, that the witnesses did not see the testator's signature, nor did the testator say it was there, but he did tell one witness that he was going to execute a will, and indirectly to both he expressed that intention, for he told them that some alteration was necessary in his affairs, by reason of his wife's death. The doctrine in *Gwillim* v *Gwillim* is this, that if the testator produces a paper, and gives the witnesses to understand it is his will, and gets them to sign their names, that amounts to an acknowledgment of his signature, if the court is satisfied that the signature of the testator was on the will at the time Whether that decision was right or wrong I have not to determine. It was founded on other cases. Provided the testator acknowledges the paper to be his will, and his signature is there at the time, it is sufficient." That is the manner in which the court has hitherto dealt with questions of this kind, but in the case of *In the Goods of Thompson*, I find the following expressions in the judgment of Sir Herbert Jenner Fust:—"It is clear that the codicil was not signed by the testator in the presence of both the witnesses whose names are subscribed to it, and there was no express acknowledgment of his signature by him in their presence; the question is, whether, according to the construction of the statute, there was a sufficient acknowledgment in the presence of the two attesting witnesses. Now the court has been obliged in many cases to put a construction upon the clause of the statute respecting the execution of wills, and it has held that an express acknowledgment is not necessary; that when a paper is produced by a testator to witnesses with his name signed thereto, and they have an opportunity of seeing his name, and they attest the same by subscribing the paper, they being present at the same time, this is a sufficient acknowledgment of his signature by the testator, though the signature was not actually made in their presence or expressly acknowledged." Now if that doctrine be correct, and its terms should be adhered to, it undoubtedly goes beyond the other cases to which I have referred, because it only requires for a sufficient acknowledgment, that the name of the testator should be upon the paper at the time of the attestation, and that the witnesses should merely be asked to sign their names without any statement by the testator that the paper was his will, or of what nature it might be. It was that case which induced me to review the decisions on the point; in so doing one of the decisions I came upon was that in *Ilott* v. *Genge*, 3 Curt. 160, which was delivered by Sir Herbert Jenner Fust in the Prerogative Court of Canterbury. The learned judge said: "Under the present statute, the testator must acknowledge his signature, not his will merely, and there is no proof in this case to satisfy my mind that the will was signed before it was produced to the witnesses. It is not sufficient, in my opinion, merely to produce the paper to the witnesses, when it does not appear that the signature of the testator was affixed to it at the time, and this it is which distinguishes this case from those under the Statute of Frauds, as in all those cases, with the exception, perhaps, of *Peate* v. *Ongley*, Com. 196, the will was proved to have been signed