

Is governed by two rules namely “Onus probandi lies in every case upon the party propounding a Will, and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of free and capable testator.” (Chapter-XIX in Article 366 of Hindu Law by Sir Dinshaw Fardunji Mulla, 23rd Edition by Lexis Nexis) – Second Rule is that “if a party writes or prepares a Will under which he takes a benefit, or if any other circumstances exist which excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the Will to remove such suspicion, and to prove affirmatively that the successor knew and approved the contents of the Will and it is only where this is done that onus is thrown on those who oppose the Will to prove fraud or undue influence, or whatever they rely on to displace the case for proving the Will.”

See **Barry v. Butlin , Fulton v. Andrew , Tyrrell v. Painton and Family v. Carrigan .**

With regard to the nature of the Evidence required in such cases to establish knowledge of, or assent to, the contents of a will, Parke, B., in the case first cited said:—

“In all cases the onus is imposed on the party propounding the will; it is in general discharge by proof of capacity, and the fact of execution, from which knowledge of, and assent to, the contents are assumed

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Nor can it be necessary that in all cases, even if the testator’s capacity is doubtful, the precise species of evidence of the deceased’s knowledge of the will is to be in the shape of instructions for reading over the instrument. They form no doubt the most satisfactory, though not the only satisfactory description of proof by which the cognizance of the contents of the will may be brought home to the deceased.” See also Mitchell v. Thomas (5). On the other hand, there is no rigid rule that if the Court is satisfied that a testator of a competent mind has read his will, or had it read to him, and has thereupon executed it, all further inquiry is shut out (see Fulton v. Andrew, per Lord Hatherley).

Lachho Bibi v. Gopi Narain, 1901 - Allahabad High Court