

Comments: one of
the attesting
witnesses at



**ASSIGN
BUSTER**

Comments: Where no attesting witness found: According to Section 68 at least one attesting witness shall be called on to prove the execution of documents (a). If no attesting witness is available, or (b) if the document is executed in the United Kingdom, Section 69 contemplates that two things must be proved, viz.— (i) It must be proved by some witnesses that the signature of the person executing the document is in his handwriting, and (ii) That the attestation of one of the attesting witnesses at least is in the handwriting of the witness. This section speaks of signature and handwriting only. As per above two cases (a & b) a document required by law to be attested can be proved without calling an attesting witness. When attesting witness is available Section 69 is not applicable. But, when attesting witness cannot be found Section 68 is not attracted and the case is covered by Section 71.

Section 69 comes into play when no attesting witness can be found. This section is applicable only if the person says that the attesting witness cannot be found, so, he is unable to examine him. Where both the attesting witnesses have not been examined in terms of Section 69, it is incumbent upon the propounder of the will to prove that the allegation of at least one of attesting witness is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. Where the attesting witnesses to the will were neither found, and no evidence was adduced to prove the signature of any two witnesses and the requirement of Section 69 to prove the will by at least one witness was not fulfilled, the finding of that execution of will was not proved was held to be proper.

When all attesting witnesses are dead, the court may rely on the presumption under section 114 that they signed before the mortgagor and the finding that they are attesting witnesses practically involved the finding that they signed after the mortgagor.