I have a distinct recollection of having more than once refused administration on that ground. This practice too is in accordance with the law as laid down by the text books cited. The caveat must be allowed with costs.

Caveat allowed.

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[28] IN THE GOODS OF MACGOWAN (1841).

MS. Notes. Feb. 8th, 1841.

In applying for administration under power of attorney from next of kin out of the jurisdiction, strictly legal proof of execution of power not essential, if Court satisfied of its genuineness.

MORTON applied for administration on behalf of Mr. Gifford, in whose favour a power of attorney to take out administration was executed by the next of kin in England. The only question was whether sufficient proof of the execution of the power was made out. The subscribing witnesses were in England, but there was an affidavit verifying the signature of the party executing. This would certainly not be received as proof, according to the strict rules of legal evidence;—the statute, however, (55 Geo. III. c. 84. 8. 2) did not restrict the Court to the reception of any particular proof in such cases. The only question was whether the Court itself was satisfied or otherwise of the genuineness of the document.

The Court directed an inquiry as to what had been done in former cases; and it appeared that in two or three instances they had received such evidence of the power having been executed, and committed administration accordingly.

Ryan, C. J. this morning said, that the question in each case was whether the Court were satisfied in their own minds of the document being genuine. In the present case they saw no reason to doubt it; but this case would not furnish a precedent for receiving such proof as a matter of course, because each would depend on its own circumstances.

Granted.

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[29] NOTES.

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IN THE RECORDER'S COURT AT PENANG.

IN THE GOODS OF ABDULLAH DECEASED (1835).

MS. Notes. March 31st, 1835.

Will of Mahommedan alienating more than a third of his property, is good pro tanto. Accordingly, general administration granted to the widow revoked, and an application directed on the footing of the will.

SIR B. H. MALKIN.—This was an application to set aside the administration granted to the widow of the deceased, a Mahommedan, and to admit an alleged will to probate. There was no dispute as to the execution of the paper treated as a will; but it was urged on the part of the widow that the will was inoperative, as not being conformable to the rules of the Mahommedan law. The fact that it was not so conformable is admitted: and the only question is whether for that reason the will ought not to be admitted to probate.