

ORIGINAL CIVIL.

Before Mr. Justice Ameer Ali.

IN THE GOODS OF P. H. MOADAM, DECEASED.

*Power-of-Attorney—Stamp—Operation of power confined to British India—
Stamp Act (I of 1879), section 5.*

1895
Nov. 26.

It is not necessary for the Courts in India to consider whether a power-of-attorney issued in England, but which is intended to operate in British India, complies with the fiscal requirements of the Stamp laws in England. It is sufficient if such power-of-attorney is stamped according to the Stamp laws of British India. *Bristow v. Sequeville* (1) and *ames v. Catherwood* (2) followed. *Clegg v. Levy* (3) not followed.

Semble.—If such a power-of-attorney was intended to operate in England as well as in British India, it would not be invalid, so far as it was intended to operate in British India, because the requirements of the Stamp laws in England had not been fulfilled. It would be sufficient if it complied with the requirements of the Indian law.

THIS was an application before the Judge sitting in Chambers for the admission of a power-of-attorney, executed in England and forwarded to a firm of attorneys in Calcutta to be acted on by them, and intended for operation in British India only. The power-of-attorney was not apparently required for any purpose in England, where it had been originally executed. The document was tendered duly stamped with a stamp in accordance with Schedule I, Article 50 of the Indian Stamp Act (I of 1879), but it had never, either at the time of execution or at any later date, been stamped with the stamp required by the English Statutes. The question was raised whether under these circumstances the document could be admitted by the Courts of this country.

Mr. Foley (Messrs. Morgan & Co).—It is not the duty of this Court to enquire into the fiscal arrangements of any other country. The Court is only concerned with those of British India. The power-of-attorney is intended for use in this country only. It empowers a gentleman who resides in this country, and it relates to property which is situated in this country. It has been properly stamped in accordance with the Indian Stamp Act, and does not, I submit, require any further stamp. *Smith's Mercantile Law*, 10th edit., p. 232; *James v. Catherwood* (2), *Bristow v. Sequeville* (1); *Baldeo Persad's Indian Stamp Act*, 1st edit., p. 16.

(1) 5 Ex., 275.

(2) 3 D. & R., 190.

(3) 3 Camp., 166.

1895
 IN THE GOODS
 OF
 MCADAM.

It has frequently been the practice in these Courts to accept documents of this nature stamped in the way I have indicated according to the requirements of the Indian Stamp Act alone.

AMEER ALL, J.—This is an application for letters of administration by Mr. G. Ward, manager of the Calcutta Branch of the Delhi and London Bank. A question has arisen whether the power-of-attorney sent out from England in favor of Mr. Ward is sufficient, inasmuch as it does not bear the stamp necessary under the English law. The document complies with the Stamp law of this country, and so far as it is intended to have any operation, its operation is confined to British India. It seems to me, looking to the Stamp law of this country, that the power-of-attorney is valid and in form according to the requirements of the Indian Statute. It is not necessary for this Court to see whether a power-of-attorney, which has operation in this country, complies with the fiscal requirements of another country. No doubt there is an old case *Clegg v. Levy* (1) in which Lord Ellenborough seems to have expressed an opinion adverse to the opinion of this Court, but there are other cases of a more recent date—*Bristow v. Sequeville* (2), *James v. Catherwood* (3), *Megji Hansraj v. Ramji Joita* (4)—in which the opinion of Lord Ellenborough does not seem to have been followed. I may go further, although it is not necessary for the decision in the present matter, and say that, even if a power-of-attorney had been intended to operate partly in British India and partly in England, the fact of its not being stamped in accordance with the English law would not have rendered it invalid, in so far as it was intended to operate in British India, if the requirements of the Indian law had been complied with; but it is not necessary to decide this latter point. The point I decide is that the present power-of-attorney complies with the requirements of the Indian Stamp Act and is valid for the purposes it is intended to meet. Letters of administration will, therefore, be granted in this case and in the two other similar cases in which the same point has been raised.

Attorneys for the applicant: Messrs. *Morgan & Co.*

C. E. G.

(1) 3 Camp., 166.

(3) 3 D. & R., 190.

(2) 5 Ex., 275.

(4) 8 Bom. H. C., 169.