

ORIGINAL CIVIL.

Before Mr. Justice Sale.

IN THE GOODS OF HENDERSON, DECEASED.

1895
March 22.*Practice—Application for letters of administration by constituted attorney—
Power of attorney executed in Glasgow—Verification—Declaration.*

The Chief Magistrate of the City of Glasgow being a person lawfully authorized to administer oaths, a declaration as to the execution of a power of attorney taken before him and authenticated by his certificate and the common seal of the City of Glasgow and by a Notarial certificate is sufficient proof of the execution of the power.

THIS was an application for letters of administration under a power of attorney executed in Scotland in the presence of two witnesses, one of whom, a solicitor, made a declaration as to the execution of the power, under "The Statutory Declarations Act, 1835," before the Chief Magistrate of Glasgow. The declaration was authenticated by a certificate of the Chief Magistrate under the common seal of the City of Glasgow, and the certificate of the Chief Magistrate was authenticated by a certificate of a Notary Public under his hand and seal. The question was whether the declaration taken before the Chief Magistrate of Glasgow could be accepted as proof of the execution of the power.

The following note furnished by the Registrar fully states the question as it arose for decision :—

"This is an application for letters of administration under a power of attorney executed in Scotland in the presence of two witnesses, one of whom, described as 'Solicitor, Glasgow,' made a declaration before the Chief Magistrate of the City of Glasgow, who made a declaration before a Notary Public. The declaration before the Chief Magistrate is authenticated by his signature and the common seal of the City of Glasgow. The other declaration before the Notary Public is authenticated by his signature and official seal. Both declarations purport to have been made under section 16 of 'The Statutory Declarations Act, 1835' [5 and 6 W. I. IV., c. 62]. That section enacts, 'that it shall and may be lawful to and for any attesting witness to the execution of any will, codicil, deed, or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication, or

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delivery of any such will, codicil, deed, or instrument in writing by such declaration in writing made as aforesaid, and every such Justice, Notary, or other officer (that is, as stated in the previous section, other officer now by law authorized to administer an oath) shall be and he is hereby authorized and empowered to administer or receive such declaration.'

"The Act, section 15, also enacts, 'that a declaration taken under it shall have the same force and effect as if the person or persons making the same had appeared and sworn or affirmed the matters contained in such declaration *visâ voce* in open court or upon a commission issued for the examination of witnesses.'

"The Statutory Declarations Act, 1835,' extends to the United Kingdom and Ireland, and is referred to in section 120 (2) of 52 and 53 Vict., c. 50, as an Act under which a declaration may be taken in Scotland.

"A subsequent Act, 'The Probate and Letters of Administration Amendment Act, 1858' (21 and 22 Vict., c. 95), contains an important provision, the effect of which is to extend to all places within Her Majesty's dominions the enabling provisions of 'The Statutory Declarations Act, 1835.' Section 32 enacts 'that affidavits, declarations, and affirmations to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any Colony, Island, Plantation, or place out of England under the dominion of Her Majesty, before any Court, Judge, Notary Public, or person lawfully authorized to administer oaths in such Country, Colony, Island, Plantation, or place respectively, &c., &c., and all Registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Notary Public, or person which shall be attached, suspended, or subscribed to any such affidavit, declaration, or affirmation, or to any other document.'

"It thus appears that a declaration as to the execution of a power taken under 'The Statutory Declarations Act, 1835,' or 'The Probate and Letters of Administration Amendment Act, 1858,' at any place to which such Act extends, before a person 'lawfully authorized to administer oaths,' would be admissible in

England or Ireland as evidence of the execution of the power. It should for that purpose, if both conditions be fulfilled, be also admissible in this country as provided in section 82 of the Indian Evidence Act, under which a document 'admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed . . . shall be admissible for the same purpose for which it would be admissible in England or Ireland.'

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"In the present case the declaration was taken in Scotland, a place to which the Act extends, and it was taken before the Chief Magistrate of the City of Glasgow. The question then is whether the Chief Magistrate is a person 'lawfully authorized to administer oaths.'

"It is a matter of common knowledge that Glasgow is one of the Royal Burghs incorporated by Royal Charter. Its privileges are preserved under the Act of Union, 5 & 6 Anne, c. 8, Article XXI. The Act 6 Anne, c. 6, section 2 provides for 'the appointment of Justices of the Peace in Scotland,' but (section 3) so as not 'to alter or infringe any rights, liberties, or privilege heretofore granted to the City of Edinburgh or to any other Royal Borough of being Justices of the Peace within their respective bounds.'

"As a Royal Burgh, Glasgow is governed by a Town Council, which has the right to elect from its own members a Lord Provost or Chief Magistrate, who has jurisdiction to hold Courts: 3 and 4 Will. IV., c. 46, s. 136; 3 and 4 Will. IV., c. 77, as explained by 4 and 5 Will. IV., c. 87. In his judicial character as a Judge of any Court of record, he would be a Justice of the Peace: 2 Hawk. P. C., 38, c. 8. s. 3; 2 Step. Com. (3rd ed.), 622; (8th ed.), 644.

"By 33 and 34 Vict., c 37, authority is given to the Senior Police Magistrate of every populous place in Scotland to act *ex officio* as a Justice of the Peace, so that he may be in the same position as the Provost of Royal or Parliamentary Burghs.

"There can, therefore, be no doubt that the Lord Provost of the City of Glasgow as Chief Magistrate and as Justice of the Peace has authority to administer oaths.

"The common seal of the City of Glasgow is not one of the

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seals of which English Courts take judicial notice. But would not the English Courts be bound to take judicial notice of it when used by the Chief Magistrate for the special purpose mentioned in section 32 of 'The Probate and Letters of Administration Amendment Act, 1858?' Indeed, under that section, would not the Chief Magistrate's signature alone be sufficient? It may be a question whether the provisions of that section would be applicable to a case where the declaration was taken under 'The Statutory Declarations Act, 1835.' In the present case, however, it is not necessary that these questions should be considered, inasmuch as the certificate of the Chief Magistrate is authenticated, not only by the common seal of the City of Glasgow, but also by a certificate of a Notary Public, whose official seal attached to his certificate is required to be judicially noticed by section 57 of the Indian Evidence Act."

The following order was made by

SALE, J.—In this case an application was made for letters of administration under a power of attorney as to the execution of which a declaration was made before the Chief Magistrate of Glasgow. On the question whether that declaration is sufficient evidence of the execution of the power, I have been furnished with a very full note by the Registrar, Mr. Belchambers, I entirely approve of that note, and for the reasons therein stated, I think the declaration is sufficient proof of the execution of the power.

Attorneys for the applicants: Messrs. *Dignam, Robinson & Sparkes.*

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Rampini.

1895.
 March 5.

SASI BIUSIUN RAHA (DEFENDANT) v. TARA LAL SINGH DEO
 BAHADUR (PLAINTIFF).^a

*Transfer of Property Act (Act IV of 1882), section 103, sub-section (j)—
 Liability of a lessee after transfer—Leases of non-agricultural character.*

To suits brought by a landlord against his lessee for rent based upon *kabuliyats*, the leases being of non-agricultural character, an assignee of

^a Appeal from Appellate Decree No. 232 of 1894, against the decree of Babu Debendra Lal Shome, Subordinate Judge of Manbhurn, dated the 29th of November 1893, reversing the decree of Babu Taraprosanna Ghose, Munsif of Raghunathpur, dated the 10th of May 1893.