

(1889) 07 CAL CK 0006
In the Calcutta High Court
In Re: A.J. Primrose

Date of Decision : 13-07-1889

Acts Referred:

Evidence Act, 1872 — Section 85

Citation : (1889) ILR (Cal) 777

Hon'ble Judges : Norris, J

Bench : Single Bench

Judgement

Norris, J.—On Thursday, an application was made to me in Chambers by Mr. Cowie for letters of administration to this estate to be granted to the Hon'ble Bouverie Francis Primrose under these circumstances:

2. It appears that Mr. Arthur John Primrose, who was a member of the Bengal Civil Service, was drowned in crossing from Ostend to Dover, and on application to the Sheriff of the Lothians and Peebles, his father, Bouverie Francis Primrose, was appointed, what is called in Scotch law, Executor Dative qua Father, and executed a power of attorney in Scotland in favour of the applicant here, authorizing him to take out letters of administration. The power of attorney was executed in the presence of Mr. Rutherford, a writer to the Signet, and J. McGillawie, a law clerk. Mr. Rutherford makes a declaration before the Lord Provost of Edinburgh, in which he declares that the power of attorney is signed by Mr. B. F. Primrose, and that the signatures of the witnesses are of their own proper hand-writing. The Lord Provost certifies, under the seal of the Corporation of the City of Edinburgh that Mr. Rutherford had made the declaration before him. Upon this, I have been asked to grant letters of administration. Trevelyan, J., granted an application for letters of administration in the goods of Emma Louisa Algeo, when one of the witnesses to the power of attorney made a declaration before the Lord Mayor of London. He has informed me that he was told it had been the practice to accept such declaration, and he did not feel at liberty to depart from the practice. Section 85 of the Evidence Act provides that the Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or any Court, or Judge, Magistrate, British Consul or Vice-Consul, or

Representative of Her Majesty or of the Government of India, was so executed and authenticated. This power of attorney is not executed before or authenticated by any of the persons mentioned in the section, and in order to comply with the provisions of the section, the power of attorney must be executed before or be authenticated by one of those persons. Therefore, I am reluctantly obliged to refuse this application. I have considered it necessary to say these few words in order that the profession might know what the practice is in future to be. The two cases, namely. Anonymous case (Fulton, 72) and In the goods of Macgowna (Morton, 370) confirm the view I have taken.