

(1912) 05 CAL CK 0058
In the Calcutta High Court
In Re: William Rennie

Date of Decision : 27-05-1912

Acts Referred:

Citation : (1913) ILR (Cal) 74

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—This is an application for a grant of Letters of Administration with will annexed to the estate of one William Rennie who was apparently a Marine Engineer employed in the B. I. S. Navigation Co. Ltd. The testator was a Scotchman, domiciled in Scotland at the time of his death. The Trust, Disposition and Settlement has been proved in the Court of the Sheriff of Dumbarton, and apparently confirmation of the Inventory has been granted by the Probate Division in England. The present application is for a grant of Letters of Administration with copy of the will annexed to the estate and effects of the deceased in British India. Now, in British India the practice differs from that of other parts of the British Empire. In other parts of the British Empire the Colonial Probates Act applies, and the practice is not to make a grant of Letters of Administration with copy of the will annexed but to send an exemplification of the Probate granted in any part of the United Kingdom, and this exemplification is re-sealed by the Court to which it is sent. The matter is of great convenience. It saves all the trouble of getting administration with will annexed and of obtaining sureties in the different colonies and dependencies of the Crown. That practice and Act have not been extended to British India, and the practice here is to require administration with will annexed to the estate of a deceased British subject who left property here. The question in this case is, are the words "in the Power-of-Attorney sufficient to authorise a grant" of Letters of Administration with the will annexed. When the matter was placed before me in chambers, I thought they were not, and, after having heard counsel on the matter, I am not yet convinced they are. The draftsman obviously drew the Power-of-Attorney on the footing that the practice obtaining in other parts of the British Empire obtained in British India, because the donor of the Power-of-Attorney authorises

the person appointed" to be my lawful, attorney for me and on my behalf to produce to the Supreme Court in-India in the Probate Jurisdiction at Calcutta or elsewhere in India the said confirmation under the seal of the said office and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the law thereof." That obviously does not authorise the Court to, make a grant of Letters of Administration to the persons who are authorised to produce to the Court the confirmation of the Trust, Disposition and Settlement for the purpose of having it re-sealed at Calcutta. Then it is said, the next words in the power are sufficient to authorise a Court to make a grant of Letters of Administration to the will annexed. The words are as follows "I do hereby authorise and empower my said attorney upon his having obtained such confirmation or other necessary instrument (Or instruments for me and in my name and on my behalf to ask, demand, recover, collect, gather in and receive all sums of money, stock, shares or property and all goods, chattels, estate and effects which may in any manner be outstanding, due. owing, belonging or appertaining, to the estate of the said deceased William Kennie in India." It seems to me quite obvious these words do not authorise a grant of Letters of Administration with will annexed. What the clause authorises is to give receipts in the name of and on behalf of the person giving the power. If the document authorised the attorney to become the lawfully constituted legal personal representative of the deceased in British India, he would not give receipts and discharges in the name of or on behalf of the donor of the power. He would give receipts as the constituted legal personal representative in British India. It seems to me that the words in this power are not sufficient to make a grant of Letters of Administration, and I must therefore refuse the application.