

In re RICE, A PERSON OF UNSOUND MIND.

C. A.

1886

March 1.

Practice—Proof of Deed—Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 26 [Revised Ed. Statutes, vol. xii., p. 415].

An appointment of new trustees, not required to be by deed or to be attested, was made by deed, executed abroad by the donee of the power, who was resident abroad, and his execution of it was attested by a witness, also resident abroad. A vesting order was then applied for, one of the old trustees being of unsound mind, and was supported by proof of the handwriting of the signature of the appointor to the deed :—

Held, that the petitioners must prove the handwriting of the attesting witness, or, failing that, must shew that they had endeavoured to find a witness in *England* who could speak to his handwriting, and failed in doing so, in which case the order might be drawn up on proof of the handwriting of the appointor.

UNDER a settlement the tenant for life had a power of appointing by any writing under his hand a new trustee or trustees in the room of a trustee or trustees dying or becoming incapable to act.

One of the three trustees having died, and another, *M. W. Rice*, being of unsound mind, the donee of the power in November, 1885, appointed new trustees in their room. The donee was resident in *Portugal*, and made the appointment there by deed executed in the presence of and attested by a witness also resident there. The beneficiaries, the continuing trustee, and the new trustees, then presented a petition for a vesting order, and the order was pronounced by the Court of Appeal on the 8th of February. The deed of appointment was verified by proof of the handwriting of the appointor, but the Registrar declined to draw up the order on this evidence without the direction of the Court.

Ingle Joyce now applied for such direction. The case is within the *Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 26*, attestation not being requisite to the validity of the instrument, and it not being even necessary that it should be a deed. *In re Reay's Estate* (1) is against me; but *Re Mair's Estate* (2), which is a later case, is precisely in point, and is in my favour.

(1) 1 Jur. (N.S.) 222; 3 W. R. 312.

(2) 21 W. R. 749.

C. A. COTTON, L.J. :—

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It is not desirable to depart unnecessarily from an established practice. In petitions in Lunacy and in Chancery it has been usual since the Act to require proof by the attesting witness. If he is abroad it will be enough to prove his handwriting, and if you shew by affidavit that you have endeavoured to obtain a witness in *England* who can speak to his handwriting, and have failed, the order may be drawn up on your present evidence.

FRY, L.J., concurred.

Solicitors: *Wing & Ducane.*

H. C. J.

C. A.

In re ALLINGHAM.

1886

[1886 A. 47.]

Feb. 24;
March 10, 24.

Solicitor—Taxation of Bill—Bankruptcy—6 & 7 Vict. c. 73, ss. 37, 38, 39
[*Revised Ed. Statutes, vol. ix., pp. 128–131.*]

The trustee in bankruptcy of a mortgagor held entitled to an order to tax, under 6 & 7 Vict. c. 73, the bill of costs of the solicitor of the mortgagee incurred in selling the property under a power of sale.

In re Marsh (1) distinguished.

ON the 5th of June, 1885, Mr. *Buckley*, who held a mortgage for £500 on property of Mrs. *Smith*, put up the property for sale by auction, and it was sold for £650. Mr. *Allingham* acted as solicitor for *Buckley* in the transaction, and received the purchase-money.

On the 23rd of August, 1885, Mrs. *Smith* was adjudicated bankrupt, and on the 3rd of September, *Collins* was appointed trustee. After his appointment he applied to *Allingham* for an account of the way in which the £650 had been disposed of, and an account was rendered, shewing that *Allingham* had retained out of it a bill of costs amounting to £43 18s. 6d., in respect of the sale. It appeared that there was a second mortgagee who would be entitled to the surplus proceeds of sale. *Collins*, in

(1) 15 Q. B. D. 340.