

succession to such movables.¹ It follows, therefore, that the representative under an English grant of a deceased person who has died domiciled in England ought, in the opinion of English judges, to be placed by the Courts of any foreign country, where the deceased has left movable property, in a position there to represent the deceased. The claim, however, of the English administrator of a person who has died domiciled in England, to be made representative of the deceased in a foreign country, is by no means an absolute one. "The grant of probate," it has been laid down, "does not, of its own force, carry the power of dealing with goods beyond the jurisdiction of the Court which grants it, though that may be the Court of the testator's domicile. At most it gives to the executor a generally recognised claim to be appointed by the foreign country or jurisdiction. Even that privilege is not necessarily extended to all legal personal representatives, as, for instance, when a creditor gets letters of administration in the Court of the domicile."²

RULE 75.³—The following property⁴ of a deceased person passes⁵ to the administrator under an English grant:—

- (1) Any property of the deceased which at the time of his death⁶ is locally situate⁷ in England.⁸

¹ See chap. xvi., Rule 90, *post*; *Enohin v. Wylie* (1862), 10 H. L. C. 1; *Ewing v. Orr-Ewing* (1883), 9 App. Cas. 34; (1885) 10 App. Cas. 453.

² *Blackwood v. The Queen* (1882), 8 App. Cas. 82, 92, 93, judgment of Privy Council. See *In re Kloebe* (1884), 28 Ch. D. 175, 179, judgment of Pearson, J.

At the present day, at any rate, our Courts would not expect that any foreign, *e.g.*, a colonial, Court should grant administration to the English administrator of a deceased person who did not die domiciled in England. See *Burn v. Cole* (1762), Ambl. 415, 416, language of Lord Mansfield, C. J.

³ See 1 Williams, *Executors* (10th ed.), pp. 272—274; *Idid.*, 1283—1289; Westlake (4th ed.), pp. 118—124; Foote (3rd ed.), pp. 285—291, 294; Nelson, pp. 202—217.

⁴ For definition of "property," see Rule 62, p. 303, *ante*.

⁵ Since the word "administrator" as here used includes an executor (see Rule 62, p. 303, *ante*), the term "passes" is not strictly correct; for the property of the deceased does not pass to the executor under the grant, but rather vests in him on the death of the testator (see p. 305, *ante*). Still, the language employed in the Rule is convenient and usual (compare Westlake, p. 118), and expresses what is meant, *viz.*, that certain property belongs to, and must be accounted for by, the administrator or executor who has obtained a grant.

⁶ See Walker & Elgood, pp. 149, 156 and 140 (2).

⁷ As to local situation of property, see pp. 309—314, *ante*.

⁸ See *Attorney-General v. Dimond* (1831), 1 Cr. & J. 356, 370, judgment of Lyndhurst, C. B.

- (2) Any movables of the deceased, or the proceeds of any property of the deceased, which, though not situate in England at the time of the death of the deceased, are received, recovered, or otherwise reduced into possession by the English administrator as such administrator.¹
- (3) Any movables of the deceased which after his death are brought into England before any person has, in a foreign country where they are situate, obtained a good title thereto under the law of such foreign country (*lex situs*) and reduced them into possession.²

Comment

All the property of the deceased, whether it consist of immovables³ or of movables (*i.e.*, of land, goods, or choses in action), which at the time of his death⁴ is locally situate⁵ in England, passes to the English administrator, and this even though the property is not reduced into possession.⁶ Foreign lands or immovables, on the other hand, do not pass under the English grant.

¹ See *Dowdale's Case* (1605), 6 Rep. 46 b, *nom. Richardson v. Dowdale*, Cro. Jac. 55; Westlake, p. 123; Foote, p. 293. See as to right of English administrator to receive or recover debts or other movables, Rule 73, p. 343, *ante*.

² See chap. xxiv., Rule 143. *post.* and cases there cited, especially *Castriquo v. Imrie* (1870), L. R. 4 H. L. 414, 429; *In re Queensland, &c. Co.*, [1891] 1 Ch. 536, 545, judgment of North, J. Contrast, however, Westlake, p. 119; Story, s. 516; and *Whyte v. Rose* (1842), 3 Q. B. 493, 506, *dicta* of Rolfe, B., and Parke, B.

For rights further of an English administrator, as against personal property in England in the hands of a foreign personal representative, see chap. xviii., Rule 121, and comment, *post*; and as to the title of a foreign personal representative to movables of the deceased, *Ibid.*, Rule 120, p. 447, *post*.

³ See for a very limited and unimportant exception as to land which comes within the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (4).

⁴ See Rule 63, p. 307, *ante*.

⁵ As to the local situation of property for the purpose of administration, see pp. 309—312, *ante*.

⁶ This seems to follow from the Land Transfer Act, 1897, s. 1, taken together with the rules as to the incidence of probate duty, and the rules as to the jurisdiction of the Ecclesiastical Courts, on which the incidence to probate duty originally depended. (See pp. 312—314, *ante*.) See *Attorney-General v. Dimond* (1831), 1 Cr. & J. 356, 370, judgment of Lyndhurst, C. B.