

(A) ADMINISTRATION.

RULE 63.¹—The Court has jurisdiction to make a grant² in respect of the property³ of a deceased person, either

- (1) where such property is locally⁴ situate in England at the time of his death, or
- (2) where such property has, or the proceeds thereof have, become locally situate in England at any time since his death,

and not otherwise.⁵

¹ Tristram & Coote, Prob. Prac. (11th ed.), pp. 355—357; *Preston v. Melville* (1840), 8 Cl. & F. 1; *Enokhin v. Wylie* (1862), 10 H. L. C. 1; *Attorney-General v. Bouvens* (1838), 4 M. & W. 171; *In Goods of Tucker* (1864), 3 Sw. & Tr. 585; 34 L. J. P. & M. 29; *In Goods of Coode* (1867), L. R. 1 P. & D. 449; *Attorney-General v. Hope* (1834), 1 C. M. & R. 530; 2 Cl. & F. 84. Compare *In Goods of Fittock* (1863), 32 L. J. P. & M. 157; *In Goods of Lord Howden* (1874), 43 L. J. P. & M. 26; *In Goods of De la Saussaye* (1873), L. R. 3 P. & D. 42; *In Goods of Harris* (1870), L. R. 2 P. & D. 83.

See the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, and Walker & Elgood (4th ed.), p. 35. The Land Transfer Act, while not affecting the ultimate beneficial succession to real property, vests such property, with certain exceptions mentioned in sect. 1, sub-sect. (4), on the death of the deceased owner in his personal representative, as if it were a chattel real vesting in him, and gives to the personal representative (executor or administrator) the administration of such real estate. The Land Transfer Act, 1897, does not apply to Ireland or Scotland, nor, indeed, to any land outside England.

² The grants made by the Court, whether grants of letters of administration or grants of probate, are of different kinds. Thus the Court may make a general grant of administration where the deceased dies without having made any will at all, or a grant of administration *cum testamento annexo*, as where a person dies having made a will and has not appointed an executor who can and will act. So, again, the Court may admit the whole of a will to probate, or may admit part only of a testamentary document to probate and refuse it as to the rest, or may grant limited probate where the testator has limited the executor. Walker & Elgood, chaps. v. to xi. These and other distinctions should be borne in mind. They do not, however, unless specially referred to, concern the Rules in this Digest. When a grant is mentioned therein, what is meant is, unless the contrary be stated, a general grant applying, as far as the English Courts can make it apply, to all the property of the deceased. As to the property which passes under an English grant, see chap. xi., Rule 75, p. 346, *post*.

³ As to meaning of "property," see Rule 62, p. 303, *ante*.

⁴ As contrasted with its being "constructively" or "fictitiously" situate in the country where the deceased dies domiciled, in accordance with the principle, *mobilia sequuntur personam*.

⁵ But where a person who leaves no estate in England dies intestate residing and domiciled in a British colony, e.g., Victoria, the Court may, for the convenience of the deceased's personal representatives who have obtained a colonial grant of administration, allow the grant to be resealed. *In Goods of Sanders*, [1900] P. 292.