plaintiff was entitled to the

Rule absolute.

Godwin v Robarts L.R. 10. Ex. 81, V. 337.
Athy Kent v Pratt L.R. 9. Ex. 142.
Gooch v Credit F of England L.R. 2 Q.B. 382.
Vanquelin v Bouard 35 L.J.C.P. 83.

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Probate duty is payable in respect of bonds of foreign governments, of which a testator, dying in this country, was the holder at the time of his death, and which have come to the hands of his executor in this country; such bonds being marketable securities within this kingdom, saleable and transferable by delivery only, and it not being necessary to do any act out of this kingdom in order to render the transfer of them valid.

THIS was an information against the defendants for non-payment of probate duties, tried before Lord *Abinger*,

M. W.

C. B., at the Sittings after last Hilary Term, when a special verdict was taken by consent, which stated in substance as follows:—

Mary Pelham, in the information mentioned, on the 26th day of March, 1836, made her last will and testament in writing, and duly executed, and thereby devised and bequeathed all her estate and effects, goods and chattels, and all her property of every nature and kind whatsoever, to certain persons in the said will mentioned: and also thereby nominated and appointed the defendants executors and executrix thereof. The said Mary Pelham died on the 30th day of March, 1837, without revoking or altering her said will, and the defendants, on the 27th of April, 1837, proved the will in the Prerogative Court of Canterbury, and took upon themselves the burden of the execution thereof.

The said Mary Pelham was at the time of her death, and for three years next preceding, resident in Connaught Place, in the parish of Paddington, in the county of Middlesex, and within the jurisdiction of the said Prerogative Court, and at the time of her death was possessed of personal estate and effects to the amount of 38,509*l.* 3*s.* 1*d.* A large part of the said personal estate, amounting to the sum of 7,877*l.* 13*s.* 7*d.*, was as follows: that is to say, 880*l.* 2*s.* 9*d.*, parcel of that sum, consisted of six written instruments called Russian Bonds, and of other written instruments thereto attached, and called dividend warrants, whereof at the time of her death she was the holder. The following is a copy of one of the said Russian Bonds:—

"Five per Cent. Annuity.

"No. 70,818. Anno 1822. No. 16,616.

"Certificate of a perpetual annuity in the Great Book of the Public Debt of the Imperial Commission of the Sinking Fund, representing a capital of 6,720 silver roubles, equal to pounds sterling 1,036.

"Entered the 1st March, 1822."

"Book 1. Folio 276, 2d Series. Letter C.

"The bearer of this certificate is entitled to an annuity of 336 silver roubles, payable half-yearly, at his option, in St. Petersburg or London, namely, 168 silver roubles on the 1st day of March, and 168 silver roubles on the 1st day of September; if in St. Petersburg, in silver roubles of the weight and standard now current; if in London, at the rate of 3*s.* 1*d.* sterling per silver rouble, in both instances on presentation of the dividend warrant then due. The bearer of this certificate, on application to the Commissioners of the Sinking Fund, may cause it to be converted into an inscription in the Great Book in his own name, or that of any other person or persons whom he shall designate; in which case the dividends will be payable in St. Petersburg only, at the periods above mentioned; and the transfer or cession of such inscription must be made according to the existing regulations. Twenty-four dividend warrants are hereunto attached: if, when the last becomes payable, the capital has not been redeemed, or inscribed in the Great Book, twenty-four similar warrants will be issued, and so forwards, and in such manner as to secure to the holder of this certificate the due payment of the annuity in St. Petersburg or London.

"N. B.—A special fund of one per cent. on the amount of this loan is appropriated for its redemption."

"Extract from the Regulations of the Commission, Chap. 2.

"Sec. 22.—The payment of the perpetual annuity, as well as the payment of the outstanding debts, will be effected in time of peace as well as in time of war, without distinction, whether the creditor belongs to a friendly or a hostile nation.

"Sec. 23.—If a foreigner, proprietor of the inscription, dies intestate, the inscription shall pass to his heirs, in

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the order of the succession established by the laws of t... country of which he was a subject.

" Sec. 24.—The capital placed in the perpetual de... being considered as an inviolable property, shall be exem... from sequestration, both for claims of the Crown and tho... of individuals, unless these capitals in whole or in p... have been given in security for contracts of provisions, ... by any other articles of agreement, whether with t... Crown or with private individuals, or for the purpose ... bailing any claim, in which case they are subject to t... general laws concerning mortgages and bails. The... capitals are likewise exempted in all cases from eve... tax.

" Sec. 25.—No person can be restrained to take back th... whole or part of the capital placed in the perpetual deb... But to facilitate to the proprietors of inscriptions th... means of converting them, when they desire it, into real... money, the Commission will employ annually, for the pu... pose of repurchasing them at the current price, a capi... of the Sinking Fund, which shall be assigned beyond th... fund necessary for the payment of the perpetual interest.

£947 17*s.* 6*d.*, other parcel of the said sum ... 7,377*l.* 13*s.* 7*d.*, consisted of thirteen bonds or writing... obligatory, called Danish Bonds, respectively signed with... the sign manual of the King of Denmark, and sealed with... the great seal of the kingdom of Denmark, whereof the... said Mary Pelham was holder at the time of her death... and one of which is as follows:—

" We, Frederick the Sixth, by the Grace of God, King... of Denmark, &c. &c.

" We do declare and make known by this our general... bond, for us and our heirs and successors to the Crown, to... all whom it may concern, that having resolved, in order to... enable our treasury to pay off more ancient loans at a... higher rate of interest, to raise a loan bearing interest at...

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3 per cent. per annum, and such loan having been accordingly contracted for in our name and for our account with the bankers, Thomas Wilson & Co., of London, through our Privy Counsellor of Legation, Frederick Adeler Ployen, Knight of the Danebrog, which has been sanctioned by us, and the said bankers having now placed at the disposal of our treasury the amount to be paid by them according to the 3rd and 4th articles of the contracts entered into; we now give the present general bond for us, and our heirs and successors, and we do hereby authorize and direct our directors of these public debts and sinking fund to grant for the amount of this general bond the following special bonds payable to bearers, which bonds are to be countersigned by Messrs. Thomas Wilson & Co., viz.:—

A. No. 1. to 25,000	25,000	Bonds of	£100 each	£2,500,000
B. .. 1. .. 2,000	2,000	..	250 ..	500,000
C. .. 1. .. 1,000	1,000	..	500 ..	500,000
D. .. 1. .. 2,000	2,000	..	1,000 ..	2,000,000
				£5,500,000

And the said special bonds are to be provided with sixty half-yearly dividend warrants, and at the expiration of thirty years with sixty more, so as to secure the dividends for sixty years from the 31st day of March last on each special bond respectively. Although this our general bond is made for 5,500,000*l.* sterling, and the securities we have pledged for the redemption of the capital and payment of the interest are more than adequate for that purpose, we hereby declare that the purchase of only a sum of 3,500,000*l.* has been contracted for with the bankers, Thomas Wilson & Co., the remaining 2,000,000*l.* being held by us to be sold whenever we, our heirs and successors, may deem expedient.

" And we engage for ourselves, and for our heirs and successors, that the interest on the said special bonds shall be paid in London by our agents, Thomas Wilson & Co.,

at the rate of three per cent, per annum, from the 31s
of March of the present year, in half-yearly payme
commence on the 30th of September of the presen
and to continue every 31st of March and 30th of Sep
ber of each succeeding year, on presentation of the
dend warrants when due, and free from all expense
holders of the same. The amount of the dividend
rants, which may remain unclaimed beyond the ter
six months from the dates at which they shall res
tively have become due, shall after that period be le
the hands of the banking-house to whom such paym
shall have been committed for the account and risk of
bond-holders, without further liability on our part.

"We further engage for ourselves, and our heirs
successors, that the said special bonds shall be repaid
extinguished by purchases, within the period of sixty ye
from the 31st of March last. For this purpose, we eng
that a sinking fund shall be created, of at least
half per cent. on the amount of the whole of the said sp
cial bonds, the which, with the accumulating interest
the bonds redeemed, shall be annually applied, as here
fore provided, to the redemption of the loan, to beg
from and after the 31st of March last.

"We reserve to ourselves, and to our heirs and succe
sors, the right of purchasing special bonds to any greate
extent than above mentioned, and also to pay off the whole
or any part of the loan at 100*l.* per cent., on giving s
months' notice thereof in the London Gazette.

"And, inasmuch as the under-mentioned securities were
pledged by general bond, of the 10th day of November,
1821, for the redemption of a five per cent. loan, contracted
with the bankers, A. F. Haldimand and Sons, for three
million pounds sterling, of which loan there remain in cir
culation bonds for 1,330,000*l.*, the which we have directed
to be paid off out of the proceeds of the present three
per cent. loan, (public notice to that effect having been

by our envoy extraordinary in London), by which
ment these securities will be released, and entirely at
disposal. Now we hereby declare, that such part of
said securities as are already released, and the whole,
so released by the payment above mentioned, are and
all be pledged as a security for the redemption of the
special bonds, and payment of the interest that may
due thereon, to the creditors at large, in our name, and
our heirs and successors to the Crown, specifically
exclusively, viz:—

1. The whole of the revenues arising from our tolls of
e Sound or Sound dues, and all other profits and emolu-
ents, arising from that source of revenue.

2. The mortgages and other securities on the West
dia plantations, for money advanced by us to the planters
d proprietors of estates.

3. The net revenue of our West India Islands of St.
homas, St. Croix, and St. Johns: the produce of which
hree heads of revenue has for six years, upon an average,
exceeded the sum of 250,000*l.* sterling, annually. The
pecification of these revenues is to be annexed to the
contract ratified by us, and we have ordered to be deli-
vered over as a security or mortgage, documents duly exe-
cuted of the revenues above mentioned, which are to be
deposited for safe custody in the Bank of England, toge-
ther with this our general bond, under the seals of our
envoy extraordinary and minister plenipotentiary for
the time being, of the bankers, Thomas Wilson & Co., and
of a notary public: and we further pledge by these pre-
sents, all other revenues of our states, save those already
specifically assigned for other purposes.

"In the redemption of the loan, the following plan is to
be adopted:—The special bonds to be purchased in Lon-
don, are, on each 31st of March and 30th of September,
or as near thereto as practicable, to be marked as belonging
to the sinking fund, and to be deposited in the Bank of

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England, in the presence of our ambassador or envo for the time being in London, of our agents, Thoma Wilson & Co., and a notary public, until the whole loa is repaid: on the expiration of each period of re-purchase the numbers and amounts of the special bonds so deposited are to be published in the London Gazette.

"We reserve to ourselves, and to our heirs and succes sors, the right, when part of the special bonds are paid off to reclaim a proportionate part of the securities for the same; the revenue arising from our West India Islands to be first restored, and then the mortgages on the Wes India estates.

"We hereby declare ourselves, and our heirs and suc cessors, debtors to all those who shall be holders of the said special bonds respectively, for the amount expressed in each special bond. And we acknowledge ourselves, and our heirs and successors, bound to every person who shall, for the time being, be a holder of one or more of those special bonds, for the punctual payment of the principal and interest of each, according to the tenor thereof.

"We further hereby bind ourselves, and our heirs and successors, to the performance of all the foregoing engage ments in the most solemn manner, and do declare that no judicial plea whatever, privilege in suits, or any pretence, shall avail us, or our heirs and successors, in pleading and counterpleading, all which we formally and deliberately renounce, as well as any plea, by whatever title it may be called, and which is contrary to the tenor of this our general bond.

"In faith of which we have signed the present general bond with our sign manual, and have caused our great seal to be fixed to the same.

"And it is further to be countersigned by our Direc tors of the Public Debts and the Sinking Fund.

"Done in the capital of Copenhagen this eighth day of June, one thousand eight hundred and twenty-five.

"WILBRECHT."

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"This is to certify that the bearer hereof is entitled to one hundred pounds sterling, part of the loan secured by the above general bond of His Majesty the King of Denmark, and the interest thereon, value having been duly paid to the Denmark Government for the same.

"His Royal Majesty's undersigned Directors of the Public Debts and the Sinking Fund, declare this to be a special bond, granted in conformity to the engagements of His Majesty contained in His Majesty's general bond, of which the above is a copy.

"Copenhagen, in the direction of the Public Debts and the Sinking Fund, the 8th of June, 1825."

And 5556*l.* 13*s.* 4*d*, residue of the said sum of 7377*l.* 13*s.* 7*d.*, consisted of 14 written instruments, called Dutch Bonds, and of certain other written instruments accompanying the same, called coupons, whereof the said Mary Pelham was the holder at the time of her death. The said Dutch Bonds are in the Dutch language, and the following is a literal translation of one of them:—

"Debt yielding Interest.

"Certificate.

"No. 22,194.

"The holder of this is entitled to a capital of thousand guilders, yielding an interest of $2\frac{1}{2}$ per cent. in the year, to commence from this day, and for which, as appears by the subjoined registration, a like sum has been entered in the ledger of the national debt, yielding interest, in the name of the office of Administration, under the direction of

"BRONDGEEST and SON,

"CHRISTAAN BRUNTING,

"JACOBUS CHEMET, and

"A. & C. VORTMAN,

established at Amsterdam and at Utrecht; which capital may at all times be disposed of according to section E.,

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art. 15, of the common notice, dated the 22nd of Augu
1814, on returning this certificate with the coupons wh
have not yet become due.

"Amsterdam and Utrecht, the
"1st of January, 1815.

(Signed), "BRONDGEEST and SON,
"Capital, £1000. "CHEMET, WEETJEN, a
"Fol. 61. "A. & C. VORTMAN.

"Shewn and registered by the direction of the Ledge
of the National Debt, Amsterdam, the 30th of January
1834.

"Coupons delivered up to January, 1833, with vouchers for further delivery." (Signed), "V. D. WAL, Verifier."

The said Russian, Danish, and Dutch bonds respec
tively were and are, and always have been, marketable
securities within this kingdom, and always have been sold
and transferred within this kingdom by delivery only, and
the bearers thereof have always been deemed and reputed
to be, and have always been dealt with as being, legally
entitled to the principal monies secured by the said bonds
respectively, and to the interest or dividends from time to
time arising or accruing in respect of the same. It never
has been nor is necessary to do or perform any act what-
soever out of the kingdom of England, in order to render
a transfer of any of said bonds valid; and the bearers of
the said bonds respectively have always been treated and
dealt with by the agents of the empire of Russia, and of
the kingdoms of Holland and Denmark, as the persons
duly entitled to the principal monies secured by the said
bonds respectively, and the interest or dividends thereof;
and such agents have always paid all monies due and
payable for and in respect of the said bonds respectively,

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according to the tenor and effect thereof, to the bearers of the same.

In regard to the Danish and Russian bonds, there has always been, in the kingdom of England, a lawfully authorized agent of the empire of Russia and of the kingdom of Denmark respectively, for the purpose of paying the interest or dividends from time to time arising or accruing in respect of the same bonds respectively to the bearers thereof; but as to the Dutch bonds, there is not, nor ever has been in this kingdom, a lawfully authorized agent of the kingdom of Holland, for the purpose of paying the dividends or interest accruing in respect of the same, but such dividends or interest are payable solely at Amsterdam.

No part of the principal money secured by the said bonds has yet been paid upon any of them to the holders or holder thereof; but all the dividends or interest have been, and still continue to be, regularly paid to the holders or holder thereof in due manner.

The said Mary Pelham, at the time of her death, being so possessed of the said Russian, Danish, and Dutch bonds as aforesaid, the said bonds, and each and every of them, at the time of her death, were at her said residence and within the jurisdiction aforesaid, and immediately after her death came into the custody and possession of the defendants as part of her personal estate and effects; and the defendants, as such executors and executrix as aforesaid, afterwards, and without doing or causing to be done any act out of the kingdom of England, or out of the jurisdiction of the said Prerogative Court, sold and delivered the said bonds, and each and every of them, to certain persons to the jurors unknown, and received as the price of and for the said bonds the sum of 7,737*l.* 13*s.* 7*d.*

[The special verdict then proceeded to state that the estate of the testatrix, in respect of which probate was to

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be granted, was sworn by the defendants to be ... 35,000*l.*, and that they paid the probate duty in re... of that sum; but that the said sum of 7,737*l.* 13*s.* 7... vested in the said bonds, was not included in the sai... of 35,000*l.*, and that the probate duty thereon amo... to 75*l.*, which had been demanded from the defen... but remained unpaid.]

The points marked for argument were as follows:

On the part of the Attorney-General:

The Attorney-General claims the payment of ... under the 55 Geo. 3, c. 184, sched. part 3, title "Prob... and intends to argue that the facts disclosed in the sp... verdict shew, that the said Russian, Danish, and D... bonds therein mentioned were respectively liable to ... bate duty in the hands of the defendants, the exec... and executrix of Mary Pelham, because at the time of ... decease they formed part of her personal estate wi... the jurisdiction of the Prerogative Court of Canter... by which court probate of the will of the said Mary ... ham was granted.

On the part of the defendants:

The defendants will contend that probate duty d... payable in respect of any of the securities mentione... the special verdict.

That such securities, being evidence only of debt... to the testator's estate from debtors out of the jurisdic... of the spiritual court, are not any estate or effects wi... the meaning of the statute 55 Geo. 3, c. 184, or any o... act or provisions relating to the payment of probate d...

That such securities must, in reference to such duty ... taken as and deemed to be property in a foreign coun... and only legally available there.

The case was argued early in this term, by

The *Solicitor-General*, for the Crown.—The only ... question in this case is, whether it falls within the au...

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...f the cases of *Attorney-General* v. *Dimond* (*a*) and *...orney-General* v. *Hope* (*b*), the latter of which was ...ermined in the House of Lords, and must, of course, be ...med a binding authority. In the *Attorney-General* v. *...mond*, it was held that probate duty was not payable ...espect of French rentes, belonging to a testator dying ...his country, although the property was brought into ...d administered in this country by the executor. In the *...torney-General* v. *Hope*, the same was held with re...ect to monies standing in the testator's name in the ...blic funds or stock of the United States of America. ...th respect to the latter case it may be observed, that ...was decided in some degree with reference to certain ...formation communicated to the Lord Chancellor, as to ...e existing practice of the Ecclesiastical Courts in re...pect to the grant of probate, which information appears ...om the case of *Spratt* v. *Harris* (*c*), subsequently re...orted, to have been erroneous. It must now, however, ...e admitted, that no probate duty would be payable un...er the circumstances stated in the *Attorney-General* v. *Dimond*, and the *Attorney-General* v. *Hope*. But the ...resent case is clearly distinguishable from those. Here ...t appears on the face of the special verdict, that all these ...onds are marketable securities within this kingdom, and ...saleable and transferable by delivery only, and that it is ...ot necessary for the holder to do any act out of the king...dom, in order to render the transfer valid; that the prin...cipal and interest are payable by the respective foreign ...governments by which they were granted, to the bearers; ...and further, that the defendants have actually sold them ...in the market. The grounds of decision in the former ...cases were, that the duty was payable in respect of the ...property in respect of which probate was granted, and

(*a*) 1 C. & J. 356. (*b*) 1 C. M. & R. 530; 8 Bligh, 44.
(*c*) 4 Hagg. 405.

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that the probate could only be granted in respect to property which was within the jurisdiction of the Court of probate; and therefore the French rentes, which were receivable and transferable only in France, and the United States' Stock, which was receivable and tranferable only in America, were not property in respect of which the probate was granted. But these bonds *were* property in respect of which the probate was granted. Suppose an action had been brought against the executors, to which they had pleaded plene administraverunt, and had given proof of administration of all the assets except these bonds, and it were proved that they had sold them after the testatrix's death, and possessed themselves of the money obtained for them—could it be said that they had proved their plea? [Lord *Abinger*, C. B.—Would not that equally apply to the French rentes?] After the sale of them by the executors, probably it would, since the proceeds would be property of which they had possessed themselves as executors, although not by virtue of the probate. But here they never could plead plene administraverunt so long as they had in their possession the bonds themselves, being valuable property, saleable within the jurisdiction of the court of probate. Suppose they had been in the hands of a banker at the time of the testatrix's death, and the executors had demanded them, but the banker had refused to deliver them up; the executors clearly could have maintained trover to recover them; but they could not do that without payment of the probate duty in respect of them, since otherwise they would be recovering as executors, under a probate on which, in respect of the property sought to be recovered, no duty had been paid. *Hunt* v. *Stevens* (*a*) is a clear authority to shew, that if it appears that an executor or administrator is suing for a greater value than is conveyed by the probate or administration stamp, he shews

(*a*) 3 Taunt. 113.

his probate or administration to be void, and cannot recover. The ground of decision in the *Attorney-General* v. *Dimond*, and *Attorney-General* v. *Hope*, viz., that in order to realise the property, acts must be done out of the jurisdiction of the court of probate, wholly fails in the present case. In order to obtain the proceeds of the French rentes, the party would be obliged to go to Paris, where duty might be payable upon the transfer of them to the French government, and so the party might be subjected to the injustice of paying double duty, if it were held that they were also subject to probate duties here. But how does the case of these bonds, which are found to be saleable and transferable merely by delivery here, differ from that of any other valuable chattel? They are in fact chattels for which the testatrix might obtain their value in money immediately, and for which, without reference to any sale or conversion into money, she might have sued in trover. In *Gorgier* v. *Mieville* (*a*), it was held that the property in Prussian bonds (which were of a similar nature and form to these) passed by delivery, like the property in bank notes or exchequer bills, and consequently, that an agent, in whose hands they were placed for a special purpose, might confer a good title by pledging them to a party who did not know that he was not the real owner. It may be admitted that these are securities not capable of being enforced in the municipal courts of this country against the parties bound by them: but the nature of the security or obligation is immaterial to the case, it being found that these were instruments tranferable and convertible into money by sale in the market, in this country. The Russian certificate, however, itself sets forth, that the party is entitled to be paid either *in London* or at St. Petersburg: and they are all in the form of a *bond*. But it is sufficient, if they are mere pieces of paper, available in this country

(*a*) 3 B. & Cr. 45; 4 D. & R. 641.

for the amount of the sums mentioned in them, and capa
of being dealt with as property here. [*Parke*, B.—
would say the same if the party died possessed of for
bills of exchange receivable abroad—it is enough
they can be turned into money here.] Undoubtedly
they were transferable by delivery. The case must of
have arisen with respect to Irish bank notes circulating
England, and vice versâ. Suppose a party died posses
of goods in a bonded warehouse, which could not lawfu
come into consumption in this country, and could not
made available as assets without sending them abroad
can it be said that the executor ought not to include
value of them in his probate?

On these grounds it is submitted that the case is d
tinguishable from the former decisions, and that the jud
ment ought to be for the Crown.

Sir *C. Wetherell*, for the defendants.—The decisions
the *Attorney-General* v. *Dimond*, and the *Attorney-Gen
ral* v. *Hope*, are conclusive of the present case. Th
principle laid down in those cases completely governs an
covers the present. In the *Attorney-General* v. *Dimon*
Lord *Lyndhurst*, C. B., lays it down distinctly, that "th
probate is granted in respect of the effects which ar
within the jurisdiction of the spiritual judge at the death
of the testator: the jurisdiction is exercised in respect o
those effects only." And again: "It (the probate) could
not be granted for or in respect of this property, because
the property was, at the death of the testator, in a foreign
country, and consequently out of the jurisdiction of the
spiritual judge." The judgment in that case was fully
and elaborately reviewed in the *Attorney-General* v. *Hope*.
What real distinction can there be, either in point of in
ternational law or on any application of the jus civile,
between the case of the stocks now in question, and that of
the French rentes and the American stock? The holder

lands in the same situation as to them all, as a creditor of
the particular government. The property of the testator,
coming in from whatever part of the world, is assets which
the executor is bound to administer: but the application
of the *probate duty* depends on the physical question of
locality; and that principle is adhered to in all the cases.
A judgment entered up in the superior courts is bonum
notabile in the province of Canterbury. So, a bond is
bonum notabile within the jurisdiction in which it was
at the time of the testator's death. But it has been invari-
ably held, that simple contract debts are not bona notabilia
where the creditor lived, but that they follow the person
of the debtor (*a*). The two former species of property
have a locality within the province; the latter has not.
Now, these certificates are neither debts of record nor by
specialty, according to the law of England; they have,
therefore, no locality here. They are like bills of ex-
change which the financial officers of the foreign govern-
ments might have accepted for payment of these loans,
and of the dividends upon them. A bill of exchange has
no locality where the holder is, because it is of the nature
of a simple contract debt, and he is not suable there spe-
cially: *Yeomans* v. *Bradshaw* (*b*); yet it is transferable
merely by delivery. The case, also, of an award, where
it is required to be in writing, is referred to by Lord *Holt*
in that case; he says: "That doth not alter the nature of
the action of debt upon the award, nor draw the admini-
stration to the place where the award is." The class of
instruments to which these certificates may most nearly be
referred, is that of bills of exchange: it is clear they
have no analogy to bonds, in the sense to which the term is
known to the law of England. A bond in England may
be sued upon as a specialty, and attaches on the real

(*a*) 11 Vin. Abr. Executors, p. 79; Com. Dig. Administrator, (A), (B).

(*b*) Holt, 42; S. C. Carth. 373; Comb. 392; 12 Mod. 107.

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property of the debtor: but in what mode could the instruments be sued on here? If this property be held liable to probate, the effect will be to localise in the province of Canterbury debts owing abroad, while that character of locality is denied to debts owing here. Where a simple contract debt is owing by a debtor out of the province of Canterbury, but a judgment is recovered upon it, and entered up in one of the superior courts, the judgment localises the debt, and probate must then be granted by the Prerogative Court: *Byron* v. *Byron* (a). The principle of all the cases therefore is, that in order to entitle the Prerogative Court to the grant of probate the debt must have acquired a locality within its jurisdiction; whereas here the instruments are not suable on at all in this country, and the debtors reside not only out within the province of Canterbury, but beyond the four seas. The engagement to pay in London does not vary the nature of the instrument or the species of the debt. *Gorgier* v. *Mieville* only decides that there may be a property in the papers themselves. *Hunt* v. *Stevens* has even less application to the present case; there the goods were locally situate within the province; here the whole argument of the defendants is, that the property never was locally within the jurisdiction. The probate duty is altogether commensurate with, since it arises out of, the local jurisdiction. The title under the probate and under the will are wholly different; the former depends on the principle of locality—the latter is universal. The case of exchequer bills is different; they depend for their validity and their saleable character on an act of Parliament and import a debt receivable from the proper officer of the government in this country, of even a higher nature than a bond. Neither is the case of Irish bank notes payable in England, or the contrary, parallel to the pre-

(a) Cro. Eliz. 472.

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sent; because here the question is how a local situs is to be given to a debt which is owed out of the united kingdom. That question is in effect determined by the cases of the *Attorney-General* v. *Dimond,* and the *Attorney-General* v. *Hope.*

The Solicitor-General, in reply.—The argumenton the other side has been addressed to the single point of the supposed analogy from the cases relating to the question of bona notabilia. But suppose A. died in the diocese of Winchester, having property there, and these bonds were deposited with his banker at Gloucester, would they not be bona notabilia within the diocese of Gloucester, and if his executor sued for them under a Winchester probate, would lie not be nonsuited? [*Parke,* B.—Sir *Charles Wetherell's* argument must go to the extent that they are bona notabilia nowhere.] With regard to the case of bills of exchange, relied upon by the other side, in *Yeomans* v. *Bradshaw* the action was against the drawer, who lived out of the province; the plaintiff, therefore, had no locus standi by virtue of his Durham probate: but if the action had been against a party to the bill who was resident within the jurisdiction by which the probate was granted, it is clear that that would have given the executor a sufficient title to sue. But this is in truth no question of bona notabilia at all: that doctrine has no application as between goods in one province or diocese, and out of the kingdom. The defendants must establish that these instruments have no value in the kingdom, before he can apply the analogy. The duty is not claimed as upon the *debts* due from the foreign powers, but upon the *available value in this country.* The property depends, not on there being a debt, or quasi debt, but on the certificates being in the possession of the testatrix at her death, and being valuable chattels, transferable by delivery.

Cur. adv. vult.

On a subsequent day, the judgment of the Court was delivered by

Lord ABINGER, C. B.—The question in this case arises upon a special verdict, on an information against the executors of Mr. Pelham: the point to be decided is, whether probate duty is, by law, payable upon the value of certain written instruments, called Russian, Danish, and Dutch bonds, which were the property of the testatrix, and were, at the time of her death, in the province of Canterbury. The special verdict gives a description of these instruments, which are called, though incorrectly, bonds, and finds that all these were marketable securities within this kingdom, transferred by delivery only, and that it never has been necessary to do any act whatsoever out of the kingdom of England, in order to make the transfer of any of the said bonds valid: that there has always been an agent in England of the Russian and Danish governments, to pay the dividends due on these bonds respectively; but the dividends on the Dutch bonds are payable solely at Amsterdam. All these instruments have been clearly framed with a view to their becoming subjects of sale, and easily transmissible from hand to hand. The special verdict also finds, that all the bonds came to the possession of the executors, as part of the testatrix's personal estate, and were sold and delivered by them, without doing any act out of the jurisdiction of the Prerogative Court, for 7,000*l.* and upwards, which they had received.

By the 55 Geo. 3, c. 184, a certain duty is granted on probates, "in proportion to the value of the estate and effects for and in respect of which such probate shall be granted;" and the law has been settled by the two cases of *The Attorney-General* v. *Dimond* (*a*), and *The Attorney-General* v. *Hope* (*b*), that the duty is to be regulated, not

(*a*) 1 C. & J. 356. (*b*) 1 C. M. & R. 530; 8 Bligh, 44.

by the value of all the assets which an executor or administrator may ultimately administer by virtue of the will or letters of administration, but by the value of such part as are at the death of the deceased within the jurisdiction of the spiritual judge by whom the probate or letters of administration are granted. The question is, therefore, whether these securities are to be considered as assets locally situate within the province of Canterbury at the time of the testatrix's death.

The two cases above cited, decided that the French rentes and American stock, which are part of the national debt of France and America respectively, and are transferable there only, and debts due from persons in America, were not assets locally situated here. But it is contended, and we think rightly, that the property which is the subject of this inquiry is distinguishable, and had a locality in England.

Whatever may have been the origin of the jurisdiction of the ordinary to grant probate, it is clear that it is a limited jurisdiction, and can be exercised in respect of those effects only, which he would have had himself to administer in case of intestacy, and which must therefore have been so situated as that he could have disposed of them in pios usus. As to the locality of many descriptions of effects, household and moveable goods, for instance, there never could be any dispute; but to prevent conflicting jurisdictions between different ordinaries, with respect to choses in action and titles to property, it was established as law, that judgment debts were assets, for the purposes of jurisdiction, where the judgment is recorded; leases, where the land lies; specialty debts, where the instrument happens to be; and simple contract debts, where the debtor resides at the time of the testator's death: and it was also decided, that as bills of exchange and promissory notes do not alter the nature of the simple contract debts, but are merely evidences of title, the debts due on

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these instruments were assets where the debtor lived, not where the instrument was found. In truth, with respect to simple contract debts, the only act of administration that could be performed by the ordinary would be to recover or to receive payment of the debt, and that would be done by him within whose jurisdiction the debtor happened to be.

These distinctions being well established, it seems to follow that no ordinary in England could perform any act of administration within his diocese, with respect to debts due from persons resident abroad, or with respect to shares or interests in foreign funds payable abroad, and incapable of being transferred here; and therefore no duty would be payable on the probate or letters of administration in respect of such effects. But, on the other hand, it is clear that the ordinary could administer as to chattels within his jurisdiction; and if an instrument be created of a chattel nature, capable of being transferred by acts done here, and sold for money here, there is no reason why the ordinary or his appointee should not administer that species of property. Such an instrument is in effect a saleable chattel, and follows the nature of other chattels as to the jurisdiction to grant probate.

In this case, assuming that the foreign governments are not liable to be sued by the legal holder, there is no conflict of authorities, for their governments are not locally within the jurisdiction, nor can be sued here; and no act of administration can be performed in this country, except in the diocese where the instruments are, which may be dealt with and the money received by their sale in this country. Let us suppose the case of a person dying abroad, all whose property in England consists of foreign bills of exchange, payable to order, which bills of exchange are well known to be the subject of commerce, and to be usually sold on the Royal Exchange. The only act

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administration which his administrator could perform would be to sell the bills and apply the money to the ment of his debts. In order to make titles to the bills the vendee, he must have letters of administration; in to sue in trover for them, if they are improperly held from him, he must have letters of administration (for even if there were a foreign administration, it is established rule that an administration is necessary in country where the suit is instituted) (*a*): and that letters of administration must be stamped with a according to the saleable value of the bills, the of *Hunt* v. *Stevens* (*b*) is an express authority.

If this be the law in the supposed case, it is impossible distinguish it from that under consideration. Here are duable instruments in England, the subjects of ordinary the debtors by virtue of such instruments, if there any, resident abroad, out of the jurisdiction of any dinary, and consequently, there being no fear of conflicting rights between the jurisdictions who are to grant probate. If these were the *only* effects in England of the deceased, (a supposition which would simplify the case), there would be no question as to the necessity of probate, not only to make title to them by sale to any one who knew that they were the property of the deceased, or chose to inquire into the title, but, certainly, in order to sue for them against a wrong doer; against a banker, for instance, who had received them from the deceased and refused to deliver them to the executor or administrator; and the probate must surely be stamped according to the value of the only effects which could be sold, disposed of, or recovered under it. And if this be true, if they were the only effects, it must be true that the duty must be paid on their value if they form part of the effects of the deceased.

(*a*) Story on the Conflict of Laws, 421. (*b*) 3 Taunt. 113.

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We think, therefore, that in this case these instruments are of the nature of valuable chattels, saleable here and which can be administered here, and therefore their amount should be included in the value of the testator's effects.

The Crown therefore is entitled to judgment.

Judgment for the Crown.