DICEY AND MORRIS

ON

THE CONFLICT OF LAWS

TENTH EDITION

UNDER THE GENERAL EDITORSHIP OF

J. H. C. MORRIS,

D.C.L., LL.D., F.B.A.

WITH

SPECIALIST EDITORS

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J. H. C. MORRIS, D.C.L.(Oxon), LL.D.(Cantab), F.B.A.

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CONTENTS

VOLUME 1

VOLUME 2

Part Four

LAW OF PROPERTY

CHAPTER 18 deals with the nature of property (*i.e.* whether it is movable or immovable) and with the situs of property (especially that of ships, aircraft and choses in action).

Chapter 19 deals with the jurisdiction of the court in respect of foreign land and with the law governing particular transfers of immovables, *e.g.* by way of sale, lease or mortgage.

Chapter 20 deals with the law governing particular transfers and assignments of movables, both tangible and intangible, *e.g.* by way of sale, pledge or gift.

Chapter 21 deals with the recognition in England of foreign governmental acts affecting property.

Chapter 22 deals with the jurisdiction of English courts to make grants of administration in respect of the estate of deceased persons; with the resealing in England of grants of administration made in the Commonwealth overseas; with the effect of an English grant on property of the deceased situate abroad; with the choice of law applicable by English courts when administering the estate of a deceased person; and with the powers and duties of English and foreign personal representatives.

Chapter 23 deals with the jurisdiction of English and foreign courts to determine the succession to the movables and immovables of a deceased person, and with the choice of law applicable by English courts to questions of intestate and testate succession to movables and immovables (including the exercise by will of powers of appointment).

Chapter 24 deals with the effect of marriage on the movable and immovable property of the spouses, when there is and also when there is not a marriage settlement or contract.

Chapter 25 deals with the validity, the administration and the variation of trusts of movables and immovables, both testamentary and *inter vivos*.

CHAPTER 18

NATURE AND SITUS OF PROPERTY

Rule 75.[1]—The law of a country where a thing is situate (*lex situs*) determines whether

(1) the thing itself is to be considered an immovable or a movable; or

(2) any right, obligation, or document connected with the thing is to be considered an interest in an immovable or in a movable.

COMMENT

Introductory. Whether a given thing is in its nature a movable or an immovable, *i.e.* whether it can in fact be moved or not, is manifestly a matter quite independent of any legal rule. A law, however, may determine that a thing in its nature movable shall, for some or for all legal purposes, be subject to the rules generally applicable to immovables, or that a thing in its nature immovable shall, for some or all legal purposes, be subject to the rules applicable to movables. In this sense, and in this sense alone, law can determine whether a given thing shall be treated as a movable or as an immovable. Thus, the law of England can determine, as in fact it does, that title deeds shall be considered as part of the real estate, or, in other words, that title deeds shall in some respects be considered as immovables. The only law which can effectively determine whether things shall be treated as movables or immovables is the law of the country which has control of the thing, that is, if the thing is tangible, the law of the country where it is situated.

Similarly, English courts admit the right of other countries to determine whether things within their limits come within the class of movables or immovables. When slavery existed in Jamaica, the slaves on the estate were reckoned appurtenant to the land by Jamaican law, and have been held by our courts to pass under a devise of realty in Jamaica.[2] Heritable bonds,[3] again, in so far as they were treated

[1] Cheshire and North, Chap. 15; Wolff, ss. 482–486; Anton, Chap. 16; Nygh, pp. 399–404; Falconbridge, Chap. 21; Cook, Chap. 12; Robertson, pp. 190–212; Restatement, s. 225; Leflar, s. 167; Clarence Smith (1963) 26 M.L.R. 16; *Chatfield* v. *Berchtoldt* (1872) L.R. 7 Ch.App. 192; *Freke* v. *Carbery* (1873) L.R. 16 Eq. 461; *Ex p. Rucker* (1834) 3 Dea. & Ch. 704; *De Fogassieras* v. *Duport* (1881) 11 L.R.Ir. 123; *Duncan* v. *Lawson* (1889) 41 Ch.D. 394; *Re Hoyles* [1911] 1 Ch. 179 (C.A.); *Re Berchtold* [1923] 1 Ch. 192; *Re Anziani* [1930] 1 Ch. 407; *Macdonald* v. *Macdonald*, 1932 S.C.(H.L.) 79; *Re Cutcliffe* [1940] Ch. 565.

[2] *Ex p. Rucker* (1834) 3 Dea. & Ch. 704.

[3] " A ' heritable bond ' is a bond for a sum of money, to which is joined, for the creditor's further security, a conveyance of land or of heritage, to be held by the

by the law of Scotland as interests in immovables, were recognised as interests in immovables by English courts.[4] The last example is specially noticeable in relation to our Rule; it shows that it is the *lex situs* which determines not only the nature of a thing, but also of rights, obligations, or documents connected with a thing. A heritable bond may itself be deposited in a bank in England, but it is Scots law—the *lex situs* of the land on which the bond imposes a charge—that determines the character of the bond. A more sophisticated mode of stating this result is to say that though the bond is physically movable, it is so closely connected with the land that it ought to be governed by the law governing interests in the land and not by the law governing movables.

Distinction between movables and immovables. In English domestic law the leading distinction between proprietary interests in things is the historical and technical distinction between realty and personalty. In the English conflict of laws, however, the leading distinction between things is the more universal and natural distinction between movables and immovables.[5] This distinction is capable of application to the different systems of law between which a choice must be made, which the distinction between realty and personalty is not. "In order to arrive at a common basis on which to determine questions between the inhabitants of two countries living under different systems of jurisprudence, our courts recognise and act on a division otherwise unknown to our law into movable and immovable."[6]

The importance of the distinction between movables and immovables is most apparent in the field of succession, because succession to movables is (in general) governed by the *lex domicilii* of the deceased, whereas succession to immovables is (in general) governed by the *lex situs*.[7] But the distinction may also be important in transactions *inter vivos*, because such transactions are (in general) governed by the *lex situs* so far as immovables are concerned,[8] whereas they are not necessarily governed by the *lex situs* so far as movables are concerned.[9]

The distinction between movables and immovables is not co-extensive with the distinction between realty and personalty. In the first place, as will appear below,[10] personalty includes some important

creditor in security of the debt." See "Heritable Bond," Bell's *Dictionary of the Law of Scotland*, ed. of 1882. See, however, the Titles to Land Consolidation (Scotland) Act 1868, s. 117, as amended by the Succession (Scotland) Act 1964, s. 34 (2) and Sched. 3, whereby heritable bonds are now made part of the creditor's movable estate for purposes of succession.

[4] *Re Fitzgerald* [1904] 1 Ch. 573 (C.A.); *Johnstone* v. *Baker* (1817) 4 Madd. 474, n.; *Jerningham* v. *Herbert* (1829) 4 Russ. 388, 395; *Allen* v. *Anderson* (1846) 5 Hare 163. If, on the other hand, a separate personal bond was taken beside the heritable bond, it could be disposed of by a will of movables: *Buccleuch* v. *Hoare* (1819) 4 Madd. 467; *Cust* v. *Goring* (1854) 18 Beav. 383.

[5] *Re Hoyles* [1911] 1 Ch. 179 (C.A.); *Re Berchtold* [1923] 1 Ch. 192; *Macdonald* v. *Macdonald*, 1932 S.C.(H.L.) 79.

[6] *Re Hoyles* [1911] 1 Ch. 179, 185.

[7] Chap. 23, *post*.

[8] Chap. 19, *post*.

[9] Chap. 20, *post*.

[10] See pp. 525–526, *post*.

interests in immovables; and, in the second place, the distinction between movables and immovables would appear to be a distinction between different kinds of things, whereas the distinction between realty and personalty would appear to be a distinction between different kinds of interests in things. The two distinctions are therefore "distinctions in different planes." [11]

In the English conflict of laws, the selection of the proper law is thus based on the distinction between movables and immovables and not on the distinction between realty and personalty. But once the proper law has been so selected, then if its domestic rules are based on the distinction between realty and personalty that distinction will be applied.[12] This is because the case has now reached a stage when it has passed out of the domain of the conflict of laws into the domestic domain.

In *Re Hoyles* [13] Farwell L.J. suggested that our courts only adopt the distinction between movables and immovables when the conflict is between English law and the law of some country (*e.g.* France or Scotland) which does not recognise the distinction between realty and personalty, and not when the conflict is between English law and the law of some country (*e.g.* Ontario or New York) which does recognise that distinction. The suggestion looks plausible, but is (it is submitted) unsound. "Is England to have one system of conflict of laws for the rest of the world, and a different system for the common law countries of the Empire and the United States? It is believed undesirable that this should be the case." [14] In *Re Hoyles* the conflict was between English law and the law of Ontario, a common law province. In the subsequent case of *Re Cutcliffe* [15] the conflict was again between English law and the law of Ontario, and Morton J. (correctly, it is submitted) applied the distinction between movables and immovables without reference to Farwell L.J.'s suggestion, which is, moreover, inconsistent with the decision of the House of Lords in *Macdonald* v. *Macdonald*.[16]

If there is a conflict between the *lex situs* and the *lex fori* as to whether a particular thing is movable or immovable, it is well settled that the *lex situs* at the decisive moment must control.[17] The reason for this rule no doubt is the paramount importance of reaching a decision consistent with what the *lex situs* has decided or would decide,

[11] Falconbridge, p. 507; Cook, Chap. 10, called by Falconbridge (p. 509, n. (*k*)) "a valuable contribution in aid of the adoption of accurate terminology in the conflict of laws."

[12] *Re Berchtold* [1923] 1 Ch. 192.

[13] [1911] 1 Ch. 179, 185; *cf. Re Hole* [1948] 4 D.L.R. 419, criticised in (1949) 27 Can. Bar Rev. 225, and by Falconbridge, pp. 540–541; see also *Haque* v. *Haque* (*No.* 2) (1965) 114 C.L.R. 98, 109–110.

[14] Robertson, p. 201.

[15] [1940] Ch. 565.

[16] 1932 S.C.(H.L.) 79. See especially at p. 84.

[17] *Re Hoyles* [1911] 1 Ch. 179 (C.A.); *Re Berchtold* [1923] 1 Ch. 192, 199; *Macdonald* v. *Macdonald*, 1932 S.C.(H.L.) 79, 84; *Re Cutcliffe* [1940] Ch. 565, 571.

since in the last resort only the *lex situs* has effective control over the thing.[18] The qualification indicated by the words " at the decisive moment " is relevant only in the case of things which are in fact movable but which are treated as though they were immovable for some purposes by some systems of law—for example, the keys of a house or live farming stock. What is meant by " the decisive moment " will perhaps become clear from an example.[19] Suppose that T, domiciled in England, owns a farm in country X, and that by the law of X (but not by English law) livestock are regarded as immovables for the purposes of succession. T dies intestate leaving A as his next-of-kin according to English domestic law and B as his next-of-kin according to the law of X. It would seem that as between A and B, B is entitled to the stock, because by the *lex situs* they are regarded as immovable; and that it should make no difference if A chanced to remove the stock to England without B's consent after the death of T. But if T had removed the stock to England before his death, then A would be entitled to them; in other words, in a case of succession the decisive moment is the death of the testator or intestate.

The distinction between movables and immovables must not be confused with the distinction between tangible and intangible things. Tangible things are either movable (*e.g.* a horse) or immovable (*e.g.* land). Things may be the subject of legal interests. For example, A may own a horse, B may have an estate in fee simple in land, C may have a leasehold interest in or a right of way over the same land. It is unnecessary to assign a legal *situs* to a legal interest in a tangible thing as distinguished from the actual physical *situs* of the thing itself, since it is sufficient to regard a person's legal interest in a horse or a piece of land as situated where the horse or the land is situated. But complications arise if the thing which is the subject of the interest is itself intangible, *e.g.* debts, stocks and shares, patents, trade marks, copyright and goodwill. In reality, the distinction between movables and immovables is not appropriate to these intangible things, since a thing which cannot be touched obviously cannot be moved. Logically, therefore, things should be classified as being (1) tangible things, which may be either (a) movable or (b) immovable, and (2) intangible things. However, it is common practice to classify all things as being movable or immovable for the purposes of the conflict of laws, and to include intangible things in movables, and even to ascribe an artificial *situs* to intangible things in order to bring them within the scope of rules of law expressed in terms of *situs*.[20]

Examples of classification. The following examples show how English courts have classified proprietary interests in things situated

[18] Robertson, p. 191.
[19] Cook, p. 309.
[20] See Rule 76. This paragraph is based substantially on the valuable discussion in Falconbridge, pp. 506–508; *cf.* Cook, Chap. 11; Cheshire and North, pp. 487–488.

in England as interests in movables or immovables for the purposes of the conflict of laws.

Leaseholds. Leasehold interests in land in England are interests in immovables,[21] and it is quite immaterial that English domestic law regards them as personal estate.

Rentcharges. A rentcharge on land in England is an interest in an immovable,[22] though for some domestic purposes it is regarded as personal estate.

Mortgages. The mortgagee's interest in land in England, including his right to payment of the debt, is for the purposes of the conflict of laws an interest in an immovable,[23] though it is regarded by English domestic law as personalty.

Land contracted to be sold. There are conflicting decisions on the nature of the interest of an unpaid vendor of land, including his right to payment of the purchase price.[24] It is submitted that it should be regarded as an interest in an immovable.

Partnership land. There is no clear English authority on whether a partner's interest in partnership land is an interest in a movable or in an immovable.[25]

Land held on trust for sale. Interests in land in England held on trust for sale but not yet sold are interests in an immovable,[26] though under the equitable doctrine of conversion they are treated as personal estate by English domestic law.

In *Re Berchtold*,[27] a domiciled Hungarian died intestate having

[21] *Freke* v. *Carbery* (1873) L.R. 16 Eq. 461; *Duncan* v. *Lawson* (1889) 41 Ch.D. 394; *Pepin* v. *Bruyere* [1900] 2 Ch. 504; *In bonis Gentili* (1875) I.R. 9 Eq. 541; *De Fogassieras* v. *Duport* (1881) 11 L.R.Ir. 123.

[22] *Chatfield* v. *Berchtoldt* (1872) L.R. 7 Ch.App. 192.

[23] *Re Hoyles* [1911] 1 Ch. 179 (C.A.), followed in *Re Donelly* (1927) 28 S.R.N.S.W. 34; *Hogg* v. *Provincial Tax Commissioner* [1941] 4 D.L.R. 501; *Re Ritchie* [1942] 3 D.L.R. 330; and *Re Landry and Steinhoff* [1941] 1 D.L.R. 699; but not followed or disapproved in *Re O'Neill* [1922] N.Z.L.R. 468; *McClelland* v. *Trustees Executors and Agency Ltd.* (1936) 55 C.L.R. 483, 493; *Re Young* [1942] V.L.R. 4; *Re Williams* [1945] V.L.R. 213; *Livingston* v. *Commissioner of Stamps* (1960) 107 C.L.R. 411, 421; *Haque* v. *Haque* (*No.* 2) [1964] W.A.R. 172, 177; (1965) 114 C.L.R. 98, 133, 146; *cf. Re Ralston* [1906] V.L.R. 689. The New Zealand and Australian cases where *Re Hoyles* was not followed purport to follow *Harding* v. *Commissioners of Stamps* [1898] A.C. 769 (P.C.), but that was a taxation case and of no value as an authority in the conflict of laws: see Falconbridge, Chaps. 24 and 26. The matter would appear to be finally settled so far as England and Canada are concerned.

[24] See *Re Burke* [1928] 1 D.L.R. 318 (immovable); contrast *Re Hole* [1948] 4 D.L.R. 419, as to which see *ante*, p. 523, n. 13; *Haque* v. *Haque* (*No.* 2) (1965) 114 C.L.R. 98, where the majority of the court based themselves largely on the Australian decisions on mortgages, as to which, see *supra*, n. 23.

[25] See *Haque* v. *Haque* (*No.* 2) (1965) 114 C.L.R. 98 (movable). *Cf.* the tax cases, *Forbes* v. *Steven* (1870) L.R. 10 Eq. 178; *Re Stokes* (1890) 63 L.T. 176; and see comment thereon in *Re Berchtold* [1923] 1 Ch. 192, 206–207, and *Philipson-Stow* v. *I. R. C.* [1961] A.C. 727, 755–756. *Re Ritchie* [1942] 3 D.L.R. 330 turned on a local statute.

[26] *Murray* v. *Champernowne* [1901] 2 I.R. 232; *Re Berchtold* [1923] 1 Ch. 192; *Australian Mutual Provident Society* v. *Gregory* (1908) 5 C.L.R. 615.

[27] [1923] 1 Ch. 192. Contrast *Re Piercy* [1895] 1 Ch. 83.

been entitled to an interest in English freehold land subject to a trust for sale but not yet sold. It was argued that his next-of-kin by Hungarian law were entitled to his interest on the ground that it was, under the doctrine of conversion, regarded as personalty. But it was decided that his interest was an interest in an immovable, that domestic English law applied (including its doctrine of conversion), and that therefore his next-of-kin by English law were entitled. Russell J. said: " But this equitable doctrine only arises and comes into play where the question for consideration arises as between real estate and personal estate. It has no relation to the question whether property is movable or immovable. The doctrine of conversion is that real estate is treated as personal estate, or personal estate is treated as real estate; not that immovables are turned into movables, or movables into immovables." [28]

Capital moneys arising under the Settled Land Act. Section 75 (5) of the English Settled Land Act 1925, re-enacting section 22 (5) of the Settled Land Act 1882, provides that capital money arising under the Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall for all purposes of disposition, transmission and devolution be treated as land. This section has had to be considered in a number of cases where the situation was to some extent the converse of that in *Re Berchtold.*

In *Re Cutcliffe,*[29] C died intestate in 1897 domiciled in Ontario. At the time of his death he was entitled to a reversionary interest in certain stock which represented the reinvestment of the proceeds of sale of settled freehold land situated in England. As the stock was that of a British company and held by the English trustees of an English settlement, it was common ground that it must be regarded as situated in England. The question was whether C's interest in the stock passed to his next-of-kin under the law of Ontario (*lex domicilii*), or whether it passed to his heir at law under the law of England (*lex situs*). It was held that as the English statute provided that the stock must be treated as land for all purposes of devolution, C's interest in the stock was an interest in an immovable, and therefore its devolution was governed by English domestic law. The decision has not escaped criticism, but would appear to be perfectly correct. The gist of the criticism is that " the doctrine of conversion is a characteristic doctrine of domestic English law arising from the distinction between realty and personalty, and whether it is a judge-made rule, as in the *Berchtold* case, or has been expressed in statutory form, as in the *Cutcliffe* case, in either event the doctrine can have no application to a particular situation unless it has first been decided in accordance with the conflict rules of the forum that the proper law

[28] [1923] 1 Ch. at p. 206.

[29] [1940] Ch. 565.

is domestic English law or some other law that distinguishes between realty and personalty and includes the doctrine of conversion." [30] The answer would appear to be that in the *Berchtold* case the doctrine of conversion said that realty was to be treated as personalty, while in the *Cutcliffe* case the statute said that capital money was to be treated as land. In other words, in the *Berchtold* case the doctrine of conversion that had to be considered was formulated in terms appropriate only to domestic English law, while in the *Cutcliffe* case the statute that had to be considered was expressed in terms appropriate also to the conflict of laws. The stock was in England; English law (*lex situs*) therefore had to decide whether it was movable or immovable; and English law said it was immovable. " How could the decision have been otherwise? " [31]

The correctness of the decision becomes even more apparent if we consider a case in which the *lex fori* and the *lex situs* are different. This was the situation in *Re Crook*.[32] C died intestate domiciled in New South Wales. At the time of his death he was entitled to investments in England representing the proceeds of sale of English settled land. The New South Wales court held that these investments must, by English law, be treated as immovables and so passed to his English next-of-kin in accordance with English law (*lex situs*), and not to his New South Wales next-of-kin in accordance with New South Wales law (*lex domicilii*).

In *Re Midleton's Settlement* [33] the proceeds of sale of Irish settled land were re-invested in English securities. Notwithstanding the Settled Land Act 1882, s. 22 (5), which was still in force in Ireland and so was treated as an Irish statute, it was held that for purposes of taxation the securities were situated in England. It seems to follow from this decision that, had it been necessary to determine for the purposes of the conflict of laws whether the securities were movable or immovable, they would have been held to be movable. Such a conclusion would appear to be entirely correct. Apart from statute, stocks and shares are treated as movables; the English Settled Land Act 1925 could not apply as the capital moneys did not arise " under *this* Act "; nor could the Irish Settled Land Act apply, because English law (*lex situs*) determined the character of the securities.

ILLUSTRATIONS [34]

1. D, domiciled in Ireland, dies intestate leaving leaseholds in England. The leaseholds will devolve in accordance with English domestic law.[35]

[30] Falconbridge, Chap. 28, p. 589. [31] Cheshire and North, pp. 486–487.
[32] (1936) 36 S.R.N.S.W. 186.
[33] [1947] Ch. 583 (C.A.), not following *Re Stoughton* [1941] I.R. 166; affirmed *sub nomine Midleton* v. *Cottesloe* [1949] A.C. 418.
[34] In all these Illustrations, it should be remembered that intestate succession to immovables is governed by the *lex situs* and to movables by the *lex domicilii*: *post*, Rules 97, 98.
[35] *Freke* v. *Carbery* (1873) L.R. 16 Eq. 461; *cf. Duncan* v. *Lawson* (1889) 41 Ch.D. 394.

2. D, domiciled in England, dies intestate leaving leaseholds in Ontario. By the law of Ontario, leasehold interests in land are interests in immovables, although they are personal estate. The leaseholds will devolve in accordance with the law of Ontario.[36]

3. D, domiciled in Ontario, dies intestate. He was entitled to a mortgage on land in England. D's interest devolves in accordance with English domestic law.[37]

4. D, domiciled in England, dies intestate. He was entitled to a mortgage on land in Ontario. By the law of Ontario a mortgage on land is an interest in an immovable. D's interest devolves in accordance with the law of Ontario.[38]

5. D, domiciled in England, dies intestate. He was entitled to a mortgage on land in New Zealand. By New Zealand law a mortgage on land is an interest in a movable.[39] D's interest devolves in accordance with English domestic law.

6. D, domiciled in Hungary, dies intestate. He was entitled to an interest in land in England subject to a trust for sale but not yet sold. D's interest devolves in accordance with English domestic law.[40]

7. D, domiciled in Ontario, dies intestate. He was entitled to an interest in English stock representing capital moneys arising from the sale of English settled land. By the English Settled Land Act 1925 such capital moneys shall for all purposes of disposition, transmission and devolution be treated as land. D's interest in the stock devolves in accordance with English domestic law.[41]

8. D, domiciled in England, dies intestate. He was entitled to an interest in Irish stock representing capital moneys arising from the sale of Irish settled land. By the (Irish) Settled Land Act 1882 such capital moneys shall for all purposes of disposition, transmission and devolution be treated as land. D's interest in the stock devolves in accordance with Irish law.[42]

9. The circumstances are the same as in Illustration 8, except that the capital moneys arising from the sale of the Irish settled land are re-invested in English stock before D's death. D's interest in the stock will (*semble*) devolve in accordance with English domestic law. The Irish Act cannot prevail against the physical location of the stock in England.[43]

Rule 76.[44]—The *situs* of things is determined as follows:

(1) Choses in action generally are situate in the country where they are properly recoverable or can be enforced.[45]

(2) Land is situate in the country where it lies.

[36] *Cf. Macdonald* v. *Macdonald*, 1932 S.C.(H.L.) 79.

[37] *Re Hoyles* [1911] 1 Ch. 179 (C.A.); *Re Ritchie* [1942] 3 D.L.R. 330; *Re Lqndry & Steinhoff* [1941] 1 D.L.R. 699.

[38] *Re Hoyles* [1911] 1 Ch. 179 (C.A.); *Re Dalrymple Estate* [1941] 3 W.W.R. 605; *Hogg* v. *Provincial Tax Commissioner* [1941] 4 D.L.R. 501. *Re Hoyles* is the leading authority both for the proposition that the *lex situs* determines whether a thing is movable or immovable, and for the proposition that a mortgage on land in England is an interest in an immovable.

[39] *Re O'Neill* [1922] N.Z.L.R. 468.

[40] *Re Berchtold* [1923] 1 Ch. 192.

[41] *Re Cutcliffe* [1940] Ch. 565.

[42] Inference from *Re Crook* (1936) 36 S.R.N.S.W. 186.

[43] Inference from *Re Midleton's Settlement* [1947] Ch. 583 (C.A.); affd. *sub nom. Midleton* v. *Cottesloe* [1949] A.C. 418.

[44] See generally Falconbridge, Chap. 20; Dymond, *Death Duties*, 15th ed., pp. 1256–1286; Green, *Death Duties*, 7th ed., pp. 659–678; Nygh, pp. 404–411.

[45] *New York Life Insurance Co.* v. *Public Trustee* [1924] 2 Ch. 101, 109 (C.A.)

(3) Subject to the Exceptions hereinafter mentioned, a chattel is situate in the country where it is at any given time.

COMMENT

General. In common with other Rules in this book which refer to the *lex situs*, Rule 75 assumes the ascription of a situation to things. A similar assumption is made in other branches of the law. Many probate and administration cases [46] and much revenue legislation [47] rest upon the ascription of a local situation to things. In the conflict of laws the *situs* of a thing is ascertained by reference to the rules of the *lex fori* because all concepts signifying connecting factors must be interpreted by reference to that system.[48] However, foreign law is not always irrelevant since the rules of the *lex fori* may require a reference to it. For example, the English rule is that shares in a company are situate where they can be effectively dealt with as between the owner and the company[49]; and in the case of a foreign company the place of effective transfer can be determined only in accordance with the law of the company's country of incorporation.

Choses in action.[50] It was formerly said that a chose in action had no location.[51] This is no longer true, and the courts have evolved rules under which a *situs* can be ascribed to each type of chose in action. In so far as these rules have a common characteristic it is that debts and other choses in action "are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced."[52] However, no comprehensive formulation is possible, and each type of chose in action must be dealt with separately. Most of the cases dealing with the situation of choses in action are not concerned with the conflict of laws, and it does not follow that if a particular type of chose is regarded for one purpose as situate in a particular

[46] Since jurisdiction to make a grant no longer (see *post*, pp. 589–590) depends on there being property situate in England, these cases are obsolete, but see, *e.g. In the Goods of Tucker* (1864) 3 Sw. & Tr. 585.

[47] See generally *English, Scottish and Australian Bank Ltd.* v. *I. R. C.* [1932] A.C. 238. An interesting catalogue of situations for the purpose of capital gains tax is contained in Capital Gains Tax Act 1979, s. 18 (4).

[48] See *Rossano* v. *Manufacturer's Life Insurance Co.* [1963] 2 Q.B. 352, 379–380.

[49] *Post*, pp. 532–533.

[50] See Cheshire and North, pp. 537–538, 555, 591; Falconbridge, Chap. 20; Anton, p. 409.

[51] *e.g. Lee* v. *Abdy* (1886) 17 Q.B.D. 309, 312; *Smelting Co. of Australia* v. *I. R. C.* [1897] 1 Q.B. 175 (C.A.); *Danubian Sugar Factories* v. *I. R. C.* [1901] 1. Q.B. 245 (C.A.); *Velasquez Ltd.* v. *I. R. C.* [1914] 3 K.B. 458 (C.A.). The last three cases were overruled by *English, Scottish and Australian Bank* v. *I. R. C.* [1932] A.C. 238. The ecclesiastical courts had always ascribed a local situation to choses in action, see *Att.-Gen.* v. *Bouwens* (1838) 4 M & W. 171.

[52] *New York Life Insurance Co.* v. *Public Trustee* [1924] 2 Ch. 101, 109 (C.A.).