HOUSE OF LORDS.

Tuesday, December 7, 1909.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Shaw.)

WINANS *v.* ATTORNEY-GENERAL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Estate Duty—Foreign Domicile of Deceased—Property Situated in Great Britain—Finance Act 1894 (57 *and* 58 *Vict. c.* 30), *secs.* 1 *and* 2.

Property physically situated in Great Britain, including bonds payable to bearer, is liable to assessment for estate duty under the Finance Act 1894, secs. 1 and 2, although the deceased owner was domiciled abroad.

The appellants, who were the executors of a United States citizen with a domicile there, had presented a petition of right. In this they sought for repayment of estate duty paid by them in respect of certain bonds payable to bearer, locally situated in Great Britain, the property of the deceased. The petition of right was dismissed by the judgment of BRAY, J., affirmed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and BUCKLEY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—The only question in this case is whether or not estate duty is payable on certain personal property locally situated within the United Kingdom which belonged at the time of his death to the late Mr Winans, who died in 1897 in London, being an American citizen domiciled in America. It is clear that the language of section 1 of the Finance Act 1894 is wide enough to cover the present case. It is also clear that the Act itself does not contain any exception which would withdraw the property in question from the incidence of estate duty, and the only suggestion which can be made in support of this appeal is that the wide language of the 1st section in the Act of 1894 must be cut down by a limitation similar to the limitation which was long ago applied to other and wholly different language used in the Acts imposing legacy and succession duties. It seems to me that there is not the smallest foundation for this view. Legacy and succession duties fall upon the benefits received by survivors on their accession upon the death of a deceased. Estate duty falls upon the property passing upon the death of the deceased, apart from its destination. The Act of 1894 is in that respect analogous, not to the Legacy and Succession Duty Acts, but to the old Probate Duty Acts, which it supersedes in so far as they cover common ground. No doubt the estate duty covers more than did the probate duty. Also it is possible, though no such instance has been established in regard to personal property, that the probate duty may in some point extend beyond the ambit of the estate duty. But in the main the class of property once liable to the one duty is now liable to the other, and both proceed, not upon any assessment of benefit arising upon the death to this or that particular person, but upon the value of the property which passed upon the death of the deceased. Accordingly the principle, broadly true, that domicile governs the liability to legacy and succession duties, has as to personality within the jurisdiction no concern with the estate duty, as it had no concern with the probate duties. It would indeed be strange if, as must be the case were the appellants' argument sound, the sum of £10,000 in consols had to pay the high estate duty when belonging to an Englishman domiciled in England, and only the lower probate duty when belonging to a foreigner domiciled abroad. In both cases the property received the full protection of British laws, which is a constant basis of taxation, and can only be transferred from the deceased to other persons by the authority of a British court. This appeal will have served a useful purpose, because the arguments in support of and in resistance to the proposition of law advanced by the appellants traversed a wide field, but the appeal itself is quite hopeless to my mind. It proposes to restrict the plain words of a Taxing Act by a limitation which has no ground either in authority or in reason. I have to move your Lordships that the appeal be dismissed with costs.

LORD ATKINSON—One William Louis Winans, an American gentleman, held to be domiciled in that country, died in England on the 22nd June 1897, leaving here at the time of his death certain bonds of the value of £1,573,962, 10s. 11d. or thereabouts. His executors paid estate duty on their value, and in this suit they claim a return of the duty paid on the ground that these assets of the deceased are not chargeable with estate duty. The sole question for decision is whether they are chargeable or not. It is not disputed that the bonds are payable to bearer, are marketable in England, are not registered in the name of the deceased, nor is his name mentioned in them, are transferable in England by delivery, and that no act other than delivery need be done in or out of England to complete the title of the transferee. Being physically situated in England at the time of their owner's death, they were subject to English law and the jurisdiction of English courts, and taxes might therefore *prima facie* be leviable upon them. The property in them undoubtedly passed out of the deceased at the moment of his death. To whom it passed, who is to succeed to it, or who is to enjoy it, are matters to which section 1 of the Finance Act 1894 is not directed. There does not appear *a priori* to be anything contrary to the principles of international law, or hurtful to the policy of nations, in a State taxing pro-

perty physically situated within its borders, wherever its owner may have been domiciled at the time of his death . That principle is not, however, acted upon in the case of legacy and succession duties, wide as is the language of the statutes imposing them. In these cases the principle *Mobilia sequuntur personam* is applied. In the case of *Attorney-General* v. *Campbell* (L. R., 5 H. L. 524) Lord Westbury expresses himself thus—"If a man dies domiciled abroad possessed of personal property, the question whether he died testate or intestate, and also all questions relating to the distribution and administration of his personal estate, belong to the judge of his domicile, and on the principle of *Mobilia sequuntur personam* his domicile sets up the power of administration." Accordingly legacy duty is not payable on a legacy of personal property situated within the realm left by the will of a testator domiciled abroad (*Thomson* v. *Advocate-General*, 12 Cl. & F. 1), while legacy duty is payable on a legacy of personal property situated abroad left by the will of a person domiciled in this country (*Re Ewin*, 1 C. & J. 151; *Attorney-General* v. *Napier*, 6 Ex. 217). It is the same in the case of succession duty (*Wallace* v. *Attorney-General*, L.R., 1 Ch. 1). In each case the same principle brings the property constructively within, or carries it without the reach of the taxing statutes of this realm, according as the domicile of its deceased owner is within or without the realm. A special reason, however, is assigned for this. Legacy and succession duty are taxes on the enjoyment of and succession to property. The Acts imposing them operate upon and have regard to the persons to whom on the death of the deceased owner the property belonging to him is carried, on whom it devolves, who are thenceforth entitled to enjoy it. The principle upon which and the persons on whom the property of a deceased person devolves according to the law of a foreign country may be altogether different from the principles of English law applicable to the same subjects, and to avoid the great difficulties which would result from any attempt on the part of the English courts to follow the devolution of property under a system of foreign law of which they are ignorant, and to exact duties from beneficiaries who might under the foreign law be altogether different persons from those who would be entitled under English law, the principle *Mobilia sequuntur personam* has been applied. In *Thomson* v. *Advocate-General* (*ubi sup.*) Lord Campbell is reported to have expressed himself thus—"The truth is that the doctrine of domicile has sprung up in this country very recently, and that neither the Legislature nor the judges until within a very few years ago thought much of it; but it is a very convenient doctrine, it is well understood, and I think that it solves the difficulty with which this case is surrounded." And again—"This seems to me the most reasonable construction to put upon the Act of Parliament; it is the most convenient; any other construction would lead to very great difficulties." Both the Lord Chancellor and Lord Campbell point out that this doctrine has no application to probate duties. In *Wallace* v. *Attorney-General* (*ubi sup.*) Lord Cranworth, L.C., in speaking of section 2 of the Succession Act, said — "The question therefore is, whether when a person domiciled abroad makes a will giving personal property in this country by way of legacy, the legatee is a person becoming entitled to that property within the true intent and meaning of section 2. I think not. I think that in order to be brought within that section he must be a person who becomes entitled by virtue of the laws of this country. Any wider construction would give rise to difficulties hardly to be surmounted. In collecting duties the officers of the revenue will, in general, find no difficulty, supposing the duties to be imposed only on persons within our own law. The officers know, or must be supposed to know, what that law is with regard to the persons liable by our law to the duties to be levied. But who the parties entitled under a foreign will are is a question which no knowledge of our law will enable them to solve. It can only be ascertained by evidence in every case showing what the foreign law is and who is entitled under it. In some cases this may be a matter of no doubt, but in others it may be a matter of great difficulty, and in no case can the officers act safely until the rights of the parties have been ascertained litigiously. But even when it is ascertained who the parties entitled are, it by no means follows that the amount of duty payable would be known." He then proceeds to give an example of this latter. It would therefore appear that the application of the principle *Mobilia sequuntur personam* in the case of legacy and succession duties is based upon convenience. It springs from the necessity of avoiding the difficulties, almost insurmountable, which would arise in exacting these duties on any other principle, but it is obvious that no such difficulties can arise in exacting the estate duty, no more than in exacting probate duty. Both duties are required to be paid by the executor before probate is granted to him, and in neither case are the officers of the revenue concerned with the ultimate devolution of the property, or with the fact that in the ultimate adjustment of the estate each beneficiary may have to pay some duty on the benefit which he receives. The Finance Act of 1894, like the Victorian statute considered in *Blackwood* v. *The Queen* (8 App. Ca. 88), imposes a "tax payable by an executor as a condition-precedent to the issue and efficacy of the probate necessary to legalise his action, out of the estate while it is in bulk, and before distribution or administration has commenced." The argument from convenience has therefore no application to duties of this kind, exacted at such a time and under such conditions, and it would certainly appear to me that if the last three lines of section 1 of the Act of 1894

were omitted, and the remainder of the section considered alone, its general words should be held to apply to all property within the realm whatever might be the domicile of the person on whose death the property passed. The fact that the special provisions of sec. 2, sub-sec. 2, of the Act were needed to bring under charge to these duties property situate outside the realm, which under the previous law would have been liable to legacy and succession duty, is, I think, almost conclusive to show that the principle *Mobilia sequuntur personam* does not apply to estate duty. If it did the special provisions of sec. 2, sub-sec. 2, would have been entirely unnecessary. The principle would have affected all that the express provisions of the sub-section effect, and it is scarcely conceivable that when the Legislature expressly applied that principle in order to bring constructively within this realm the personal property situate abroad of a person domiciled here, and so within the reach of the Statute of 1894, it would not also have expressly applied the same principle to remove constructively the property situate here to the foreign domicile of its owner so as to escape estate duty if it was intended that the property should escape that duty. *Prima facie*, therefore, estate duty would be payable in respect of assets upon which probate duty would have been payable formerly, and under the special provisions of sec. 2, sub-sec. 2, estate duty would also be payable upon the assets mentioned therein upon which legacy and succession duty would have been payable formerly. Domicile has nothing to do with probate duties (*New York Breweries Company* v. *Attorney-General* [1899], A. C. 62), and unless in the case of property situate within this realm brought within some of the exceptions provided for in the Act of 1894, it has nothing to do with estate duties. It may well be that by special legislation the *situs* of certain kinds of property is, for the purpose of its probate duty, deemed to be where it was not theretofore considered to be, or where in fact it is not. Your Lordships were referred to two statutes of that character, 25 and 26 Vict. c. 22, and 27 and 28 Vict. c. 56. By section 39 of the first specialty debts are placed in the same position as simple contract debts, their *situs* being thus fixed, not at the place where the instrument creating them may happen to be, but at the place where the debtor died; and by section 6 of the second, British ships are for the same purpose deemed to be at the time of the owner's death at the port at which they are registered, though in fact they may be elsewhere. That, however, does not help much the appellants' argument in this case. Probate duty would before the passing of the Finance Act in 1894 have undoubtedly been payable in respect of these bonds upon which the estate duty now sought to be recovered has actually been paid—(*Attorney-General* v. *Bouwens*, 4 M. & W. 171; *Stern* v. *The Queen*, [1896] 1 Q.B. 211). If, therefore, there is nothing in the principles of international law, or in the requirements of public or international convenience, to preclude the application of the general words of the earlier part of section 1 of the Act of 1894 to bonds such as those the duty upon which forms the matter of controversy in this case, as in my opinion there is not, the next question is, are there any other provisions of that statute which necessitate that the general words of the section should be so narrowed as to exclude property so placed? First, as to the last three lines of the section, what is the nature of the duties mentioned in the first schedule which are not to be levied if estate duty is paid? First, they are the probate duties thenceforth payable on the affidavit which by section 29 of the Act of 1881 any person applying for probate or letters of administration in England or Ireland must lodge, setting forth the estate in respect of which probate or letters of administration are required to be granted. This affidavit is thenceforth to bear a stamp indicating the duty paid, which duty is measured by the assets of the deceased over which the Probate Court has jurisdiction, namely, assets situate within England or Ireland as the case may be. An inventory is substituted in the case of Scotland. Par. 2 of the schedule deals with the duties leviable on accounts of certain descriptions of personal and movable property of a person dying after the 1st June 1881. The section refers to property of which the deceased within three months before his death (extended by the Act of 1889 to twelve months), disposed by some voluntary disposition or alienation by reason of which it escaped probate duty. The duties are imposed on these accounts at the same rates as they are imposed on the affidavits or inventories required to be lodged for probate, and the object of the section apparently is to tax the property alienated by these semi-testamentary dispositions as if it had been disposed of by will or the deceased had died intestate in respect of it, an object analogous to that which section 3 of the Act of 1894 is designed to effect. The interest of a successor in the property included in this account, or in leaseholds passing to him by will or devolution of law, is not made liable to the additional succession duty imposed by the statute mentioned in the next paragraph of the schedule, namely, section 21 of the Inland Revenue Act 1888. The next paragraph deals with the temporary estate duty payable on the property included in the affidavit or inventory lodged for probate or letters of administration or on the personal or moveable property included in the above-mentioned account where the same exceeds £10,000, or where the value of any succession exceeds that sum in the case of a deceased owner dying before the 1st June 1896. Par. 5 describes fully the duties with which it deals. Upon the fact that the several statutes referred to in this schedule are not repealed, but it is merely provided by section 1 of the Act of 1894 that the duties imposed by them shall not be levied in respect of property chargeable with estate duty, an

argument has been founded that the field over which the latter extends does not comprise within it, or is not coterminous with, the field over which the duties mentioned in the schedule extend. Possibly that may be so. I do not think that it is so, but even if it be so, that fact lends no support whatever to the contention that these bonds are removed from the operation of section 1 of the statute on the principle *Mobilia sequuntur personam.* In addition, in section 7, sub-section 4, and section 20, sub-section 1, of the Act, the right of foreign countries and British possessions to levy a duty—a duty upon property situate within their bounds—is clearly recognised, even though that property should by reason of the provisions of section 2, sub-section 2, of the Act of 1894 be liable to estate duty in this country. Lastly, section 6, sub-section 2, of that Act expressly provides that the executor of the deceased shall pay the estate duty in respect of all personal property, wheresoever situated, of which the deceased was at the time of his death competent to dispose, on delivering the Inland Revenue affidavit. That affidavit is, according to the definition in section 22, sub-section 1 (*n*), the affidavit made under the statute mentioned in the second schedule, the affidavit to lead to a grant of probate. By sub-section 7 of the same section the duty which is to be collected on this affidavit is due on the delivery of the affidavit. It is fixed and due therefore while the estate is in bulk, not only before it has been actually administered, but before the executor has even acquired the right to take possession of it or interfere with it—before, too, its ultimate destination, the persons who are to succeed to it or to any part of it, or by whom it or any part of it is to be enjoyed, has to be considered. For all these reasons I am clearly of opinion that estate duty was rightly exacted on the estimated value of these bonds, and that this appeal must fail. Counsel for the appellants contended strongly, as I understood, that under the provisions of section 2, sub-section 1, some of those kinds of property which are to be deemed to pass at the death of the deceased, but do not in fact pass, would not be liable to estate duty even though situated within this realm, when the person on whose death they were to be deemed to pass had a foreign domicile. He failed to convince me that he was right in this; but if he were right, it would by no means follow that bonds situate as these bonds are, the property in which clearly passes at the death of the deceased owner, in respect of which it is not necessary to resort to section 2, sub-section 1, at all, would not be liable to estate duty. Therefore I think that this appeal should be dismissed, with costs.

LORD GORELL—Your Lordships have to consider on this appeal the question whether under the provisions of the Finance Act 1894, and in the circumstances of the case, estate duty became payable upon the death of Mr William Louis Winans in respect of certain foreign bonds. Mr Winans died in London on the 22nd June 1897. He left a will, dated the 4th February 1897, whereby he appointed the appellants his executors, and probate was granted to them on the 3rd September 1897 out of the principal registry. He was a citizen of the United States of America, and was domiciled at the time of his death in one of those states. At the time of his death the testator was the owner and in possession of a considerable number of foreign bonds issued by states, cities, and railway companies in the United States, and by foreign governments, the principal value of which amounted to £1,573,962, 10s. 11d. These bonds were then in England. None of them were registered in his name nor did his name appear in them. Each of them was a marketable security in England passing title by delivery, was payable to bearer, and was transferable in England by delivery only, without any act being done out of England. The appellants included the whole of the bonds in the Inland Revenue affidavit which they carried in to obtain probate of the will, and they paid estate duty on the bonds, but they alleged that the bonds were not property situate in the United Kingdom, and that the testator was domiciled in the United States of America, and contended that the bonds were not liable to estate duty, which they only paid under protest. On the 2nd June 1899 the appellants presented a petition of right praying the return to them as such executors as aforesaid of the sum of £130,060, being the difference between £192,280 estate duty at the rate of 8 per cent. in respect of the sum of £2,403,587, 17s. 5d., on which estate duty had actually been paid by them, and £62,220 estate duty at the rate of 7½ per cent. in respect of the sum of £829,625, 6s. 6d., being the value of the testator's estate upon which estate duty had been paid after deducting the value of the said bonds. The grounds of the petition were (1) that the testator was at the date of his death domiciled out of the United Kingdom, and (2) that the bonds did not constitute property which was at such date situate within the United Kingdom. The plea of the Attorney-General on behalf of the Crown alleged that the deceased was at his death domiciled in the United Kingdom, and in effect that the bonds were property situate in England at the time of the death of the testator. It was decided by your Lordships' House on the 10th May 1904 in a suit by information on the Revenue side of the King's Bench Division, which had been commenced by the Attorney-General on behalf of the Crown, claiming legacy duty in respect of the testator's estate, that at the date of his death he was domiciled in the United States of America —(*Winans* v. *Attorney-General*, [1904] A. C. 287). Afterwards, on the 16th July 1907, the petition of right was dismissed by Bray, J., who decided that the property mentioned in the schedule to the petition, that is to say, the bonds, was situate in the United Kingdom at the time of the death of the testator, and was included in the

property which passed on his death within the true intent and meaning of the Finance Act 1894, upon which duty was leviable. An appeal by the appellants to the Court of Appeal was dismissed with costs on the 17th March 1908 ([1908] 1 K.B. 1022). It is against these decisions that the appellants now appeal. The appellants could hardly dispute that the duties in respect of probate imposed by the Customs and Inland Revenue Act 1881 would have been payable upon the value of the bonds if the Act of 1894 is not applicable, and if their present contention involves any such point it is, in my opinion, to be decided against them in accordance with the case of *Attorney-General* v. *Bouwens* (4 M. & W. 171), where it was laid down that probate duty is payable in respect of bonds of foreign governments held at the time of his death by a testator dying in this country, which have come to the hands of the executors in this country, such bonds being marketable securities within this kingdom, saleable, and transferable by delivery only, it not being necessary to do any act out of this kingdom to render the transfer of them valid. It was considered clear that the ordinary could administer all chattels within his jurisdiction, and if an instrument was created of a chattel nature, capable of being transferred by acts done here, and sold for money here, there was no reason why he or his appointee should not administer that species of property; that such an instrument was in effect a saleable chattel, and followed the nature of other chattels as to the jurisdiction to grant probate. That case was decided after full argument by very eminent counsel and consideration by a strong Court presided over by Lord Abinger, C.B., who delivered the judgment of the Court, and it has been acted on ever since. It was followed in *Stern* v. *The Queen* ([1896], 1 Q.B. 211), where Wright, J., states the position with great clearness, and there appears to be no reason for differing from it now. The point urged by the appellants was that principles similar to those applied to duties on legacies and successions to personal estates should be applied in this case. These principles are very fully discussed and the cases based upon them given in Williams' Law of Executors and Administrators, 10th ed., pp. 1846-1853. It may be stated generally, without examining exceptions and the difference in rules applicable to succession duty on testamentary appointments under English instruments, that if a British-born subject or a foreigner dies domiciled out of England, the whole of his personal estate wherever situate at the time of his death is to be regarded as situate in the country of domicile, and therefore exempt from these duties, and that if such a person dies domiciled here, all his personal assets wherever situate are liable thereto. This is based upon the general principle that personal property follows the person, and is to be considered as situate wherever the domicile of the proprietor is. Accordingly, the wide terms of the legacy and succession duty Acts have received a limited interpretation, as, for instance, in the case of *Arnold* v. *Arnold* (2 My. & Cr. 256), where Lord Cottenham, L.C., referring to 36 Geo. III, c. 52, observed that when the Act speaks of "any will of any person" and of the legacies being payable out of the personal estate, it must be considered as speaking of persons and wills and personal estate in this country, that being the limit of the sphere of enactment. The personal property is distributed according to the law of the domicile, and those who are benefited receive their benefits according to that law. The duties imposed by these statutes in the case of a person dying domiciled in this country are in substance charged against the persons taking the benefits, and the duties vary with the persons benefited. These Acts, and the principles applicable to their construction, do not appear to me to assist in the construction of an Act which does not deal with the accession to the property of a deceased person, but with what has to be done and paid before the property can be reached and dealt with. A short review of the more important legislation before 1894 will make the position plain, and it will be sufficient for present purposes to deal only with England. When the Act of 1894 was passed there were five death duties in existence in England—probate duty, account duty, temporary estate duty which was imposed for a period of seven years expiring in 1896, legacy duty, and succession duty. It is unnecessary to refer to the early Acts as to probate duty. In 1815 was passed the Act 55 Geo. III, c. 184, imposing an *ad valorem* stamp duty, which was one-half greater on letters of administration than upon the granting of probate. In 1880 by the Customs and Inland Revenue Act 43 Vict. c. 14, the rates for both were made uniform, and in 1881 the Customs and Inland Revenue Act of that year, 44 Vict. c. 12, exempted personal estates under £100 in value from payment of probate duty, and required the stamp to be placed on the affidavit of value instead of on the grant itself. The duty was payable on such part only of the assets as the executors or administrators could recover by virtue of the probate or letters of administration. It was not payable in respect of property which was not situate within the jurisdiction of the Court of Probate. The *ad valorem* duty was accordingly fixed in the schedule to the Statute of 1815, and continued afterwards, as on the value of the estate and effects for or in respect of which the probate or letters of administration were granted, and the courts were not to grant probate or letters of administration without an affidavit that the "estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted" was under the value of a certain sum to be therein specified. The Act of 1880 required an account of the particulars of the personal estate for or in respect of which probate or letters of administration is or are to be granted, and of the estimated value of such particulars

to be delivered with the affidavit. Account duty was imposed by section 38 of the Act of 1881, amended by section 11 of the Customs and Inland Revenue Act 1889, 52 Vict. cap. 7. This was a stamp duty intended more particularly to cover certain personal and movable property not covered by probate duty, disposed of during the lifetime of a deceased person, which, if it had passed on death, would have been liable to probate duty. Temporary estate duty was a duty of 1 per cent. imposed by the above-mentioned Act of 1889 upon estates exceeding £10,000, and was charged on both realty and personalty, and according to section 7 of the Act was not to be payable where the death took place after the 1st June 1896. The other two duties are the legacy duty and the succession duty. The former depends upon 36 Geo. III, cap. 52, 55 Geo. III, cap. 184, 43 Vict. cap. 14, and 44 and 45 Vict. cap. 12; the latter upon the Succession Duty Act 1853 (16 and 17 Vict. cap. 51) as amended by other Acts, whereby certain dispositions of property not touched by the Legacy Duty Acts were made subject to duty. The first three duties are in fact superseded by the Act of 1894 in the case of persons dying after the 1st August 1894. The legacy duty is left very much where it was, and the succession duty has been altered (see especially section 18 of the Act), but the amendments made with respect to these two duties do not, in my opinion, require to be examined minutely for the purposes of this case. The broad point with regard to these duties is that the first three dealt with the duty on the amount of property passing, whatever its destination, while the other two dealt with the duty on the value of the interests taken, and the duty varied with the relationship of the person taking to the person from whom the interest was derived, or the predecessor. Section 1 of the Act of 1894 provides that "In the case of any person dying after the commencement of this part of this Act there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, real and personal, settled or not settled, which passes on the death of such person, a duty called 'estate duty' at the graduated rates hereinafter mentioned, and the existing duties mentioned in the first schedule to this Act shall not be levied in respect of property chargeable with such estate duty." Now, what were the existing duties mentioned in the schedule for which the new duty is substituted? Par. 1 of the schedule mentions the stamp duties imposed by the Act of 1881. Par. 2 refers to stamp duties at the like rates with those last mentioned which were imposed by section 38 of the Act of 1881, as amended by section 11 of the Act of 1889—that is to say, the account duty. It may be noticed here that section 41 of the Act of 1881 provided for the cesser of legacy and succession duty at the rate of 1 per cent. imposed by 55 Geo. III, cap. 184, and the Succession Duty Act of 1853 where the duty according to the value has been paid on the affidavit and account. Par. 3 refers to a charge imposed by the Customs and Inland Revenue Act 1888, section 21, in respect of succession duty additional to that charged by section 10 of the Succession Duty Act 1853, of 10s. per cent. upon the value of the interest of the successor where he is the lineal issue or lineal ancestor of the predecessor, and £1, 10s. per cent. on the value of the interest of the successor in all other cases mentioned in such section. But the additional duty is not payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereon duty is payable under the Act of 1881. The fourth duties referred to are the temporary estate duties above mentioned. They are in addition to those imposed on the affidavit and account by the Act of 1881. The fifth duty mentioned in the schedule is the duty, at the rate of 1 per cent. which would by the Acts in force relating to legacy and succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively estate duty has been paid, or under any other disposition under which estate duty has been paid. I have referred somewhat fully to these duties existing at the time of the passing of the Act of 1894 in order to see whether that Act, by not repealing the provisions relating to these duties and substituting the estate duty granted by it in respect of property chargeable with such duty, has produced an inconsistency which would lead to the conclusion that the Act is not applicable to the present case, and I fail to see that any such conclusion can be arrived at. Convenience may have dictated the form in which the statute is framed. It is difficult, if not impossible, to suggest any case in which, with regard to persons dying after the commencement of the Act of 1894, the new duty is not substituted for the old probate duties, and certainly no sufficient reason was given why the substitution should not apply in the present case, unless there is something in the sections which makes it inapplicable. Then do the sections of the Act lead to any different conclusion? Section 1 in its terms applies to the present case unless those terms are to be read in the limited manner suggested by the appellants. The generality of the section is limited by the words "save as hereinafter provided," and a perusal of the subsequent express provisions does not assist in showing that the present case should be excluded from the burden of the estate duty. If Mr Winans had died before the passing of the Act his executors would undoubtedly have had to take out probate in respect of his personal estate situate in this country, and to pay the probate duties which were then charged by the State when authorising the executors to act. They could not without the probate have acquired possession of and the title to his personal assets in this country. The death having taken place after the 1st August 1894, when the first

part of the Act came into operation, the case falls within the language used in section 1, subject to the limitations and provisions of the Act. What is there to show that the section does not apply to the case of a foreigner domiciled abroad so far as his property is situate in this country? I cannot find anything, nor is there anything unreasonable in the application of the Act thus far. The executors cannot, without the authority of the Probate Court acting for the State, obtain possession of and title to the assets in this country. According to sec. 6, sub-sec. 1, the estate duty is to be a stamp duty collected and recovered as therein mentioned. Sub-sec. 2 provides that "the executor of the deceased shall pay the estate duty in respect of all personal property wherever situate of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit"—that is, the affidavit to lead to a grant; see the definition, sec. 22, sub-sec. 1 (*n*)—"and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the person accountable for the duty in respect thereof request him to make such payment." Sub-sec. 7 provides that "the duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof or on the expiration of six months from the death, whichever shall first happen." Under the Act, therefore, the appellants were bound to pay the estate duty in order to get possession of the bonds in question. The estate duty in this case was on the property in this country, for although all his property passed on the death of the deceased, sec. 2, sub-sec. 2, operated. Under that sub-section "Property passing on the death of the deceased, when situate out of the United Kingdom, shall be included only if under the law in force before the passing of this Act legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes." This provision protects adequately the representatives of a person dying domiciled abroad, for, under the decisions already referred to the property of such persons when situated out of the United Kingdom would not be liable to legacy and succession duty. I am not here including the cases of succession on testamentary appointments under English instruments. It may be noticed that it is equally clear that the effect of the Act of 1894 is to make all the property, wherever situate, of a person dying domiciled in this country, in respect of which legacy and succession duty is payable, liable to estate duty, although before the Act it would not have been liable to probate duty except so far as it was situate in this country. Sec. 8 is of considerable importance. It is a long section, and therefore I do not state its terms, but I would refer especially to sub-secs. 1 and 3, the latter of which obliges the executor to specify to the best of his knowledge and belief, in appropriate accounts annexed to the Inland Revenue affidavit, all the property upon which estate duty is payable upon the death of the deceased, and makes the executor accountable for the estate duty in respect of all personal property wherever situate of which the deceased was competent to dispose at his death, but not liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect and default have received. It seems to me to be unnecessary to refer to the other sections of the Act, which justify the views which I have been endeavouring to express. It is sufficient for present purposes to say of cases where property is left by will or under an intestacy by a person dying after the commencement of the first part of the Act, that the scheme of the Act, based upon the general principle that statutes of this country may affect citizens thereof and persons temporarily resident here, and property situate here although belonging to persons abroad, appears to be that the State should take toll, where it can properly do so, on such property passing on the death of such person, independently of the destination of the property; that it should take such toll on the property found in this country to whomsoever it belongs; and that it should take toll even on property outside the country if the deceased is domiciled in this country where such property is liable to legacy and succession duty. The result is, that to succeed in this case the appellants must make out that the property in question was not situate in this country, and this, having regard to the nature of the bonds, they fail to do. I have examined at some length the statutes and principles which require consideration, for the amount involved is large and the case is of a kind which may no doubt commonly occur, but after doing so I feel no difficulty, notwithstanding the arguments which were strongly pressed by counsel for the appellants, in coming to the conclusion that the case is free from real doubt, and that no substantial ground has been shown for interfering with the decision of the Court of Appeal. The appeal should, in my opinion, be dismissed with costs.

LORD SHAW—On the 10th May 1904 it was decided by your Lordships' House that William Louis Winans was at the date of his death domiciled in the United States of America. He died on the 22nd June 1897, possessed of a large estate, a considerable portion of which was in this country. The suppliants in the present petition of right are the executors of his will. By the affidavit of the Inland Revenue, to which I shall refer afterwards, it was alleged that of the net amount of personal property in account No. 1, Schedule A, namely, £2,403,000, the sum of £1,573,000 was not liable to duty. This latter sum was made up of bonds granted in various States of

the American Union, in Russia, and in Germany. They bear the convenient designation of "bearer bonds"—that is to say, the transfer thereof and the title thereto pass by delivery only. It is admitted that this property which the testator possessed was at the time of his death physically situated in England. The question in the case is whether estate duty falls to be levied and paid upon that property under the Finance Act 1894. Section 1 of that Act is as follows—"In the case of every person dying after the commencement of this part of this Act there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided, of all property, real or personal, settled or not settled, which passes on the death of such person, a duty called estate duty at the graduated rates hereinafter mentioned, and the existing duties mentioned in the first schedule to this Act shall not be levied in respect of property chargeable with such estate duty." The Act accordingly starts with language of comprehensive generality. The duty has to be levied on all property passing on the death of every person dying after the commencement of that part of the Act. The generality is limited by the words "save as hereinafter expressly provided." As is shown with much care in Mr Austen-Cartmell's treatise on the Finance Acts, at p. 3, the exceptions are numerous, no fewer than nineteen in number. It may be that according to the rules of comity acknowledged among nations there may be further exceptions, but upon that point it is not necessary to form any opinion in this case. The case before your Lordships' House is within clear and definite limits; it has reference, admittedly, to personal property alone, and to such property alone as was at the date of the testator's death locally situated within the bounds of the United Kingdom. The third admission which was candidly made in the able and exhaustive argument for the appellants was that such property would have been liable to probate duty before the Finance Act 1894. It was maintained, however, that *quoad* property of the above character probate duty was still and was alone exigible, and that estate duty was not exigible. An appeal was made in particular by both parties to sec. 2, sub-sec. 2, of the Act. That sub-section is in the following terms — "Property passing on the death of the deceased, when situate out of the United Kingdom, shall be included only if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes." In my opinion it cannot be successfully maintained that the "bearer bonds" in this case fall within that category. It is quite true that they would not have been liable to legacy or succession duty. These duties are duties upon the accession to property by legatees and successors, and the levy of them is, in my opinion, an incident of such accession meant to be governed under the law of the domicile of the deceased which regulates the distribution of his personal estate. Estate duty is of a different character; the levy and payment thereof occur not at the point of accession to property, but of the passing of property by the death of a testator. The statute provides for the graduation of rate according to the magnitude of the estate thus passing at death. In the case of an English citizen all his property "wheresoever situate" subject to the exceptions in the Act is aggregated, and with that aggregation, to confine oneself to the matter in hand, all personal property situate out of the United Kingdom must come, unless legacy or succession duty would not have been payable in respect thereof. In the case of the foreign citizen, no taxation of course falls except upon property situate within the United Kingdom, and I know of no reason, either under the law of nations or in the nature of things, why property within the jurisdiction of this country, possessed and held under the protection of its laws, should not upon transfer from the dead to the living pay the same toll which would have been paid by property enjoying the same protection but owned by a deceased British subject. In the second place, while it is thus seen that estate duty is not at the point or in the ratio of its incidence analogous to legacy or succession duty, it humbly appears to me to be almost entirely analogous in those respects to the probate duty which would by admission have fallen to be levied upon the bonds in question. I think in substance that probate duty is not, and that estate duty is, leviable for the simple reason—and again I expressly confine myself to the kind of property here dealt with and do not think it necessary to make a more exhaustive pronouncement—that estate duty has absorbed probate duty. I think that this is the sound construction of section 1. The whole scheme of the Act appears to me to make it perfectly plain. Section 6 (1) declares that "estate duty shall be a stamp duty collected and recovered as hereinafter mentioned." By section 6 (2) "the executor of the deceased shall pay the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit." It appears to me to be clear that on the occasion of the delivering of this affidavit it was the duty of the Inland Revenue to see to it that estate duty was paid, and I think that they would have been failing in their duty by omitting to ingather in terms of an obligation for payment imperatively and expressly laid. When is the occasion? It is on delivering the affidavit. By section 22 (1) "Inland Revenue affidavit means an affidavit made under the enactments specified in the second schedule," and the second schedule includes section 29 of the Customs and Inland Revenue Act 1881, which provides for the affidavit to be required or received from any person applying for probate or letters of administration. The argument

for the appellants was that probate was simply a condition imposed by law upon the obtaining of a title to administer. That may quite well be, but the payment of estate duty not the less appears to me to be now set up not only on a similar occasion but even as a similar condition. In the instance under consideration the appellants in this case by their affidavit for Inland Revenue, dated the 1st August 1897, state—"We desire to obtain the probate of the will of the above-named William Louis Winans." This is exactly what would have had to be done prior to the Act of 1894 if the probate duty alone had been exigible, and as section 6 (2) says that the executor "shall pay the estate duty . . . on delivering the Inland Revenue affidavit," it appears to me that something closer than the analogy to the probate duty has been reached, namely, that payment of the estate duty is made a peremptory condition of probate. I may add that I think that this conclusion is confirmed by subsequent portions of the Finance Act 1894, and in particular by the elaborate provisions of section 8. I respectfully agree with the result of the judgment of the Court of Appeal.

Appeal dismissed.

Counsel for Appellants — Danckwerts, K.C.—Lush, K.C.—Willoughby Williams. Agent—E. H. Quicke, Solicitor.

Counsel for Respondent — Attorney-General (Sir W. Robson, K.C.)—Sir R. B. Finlay, K.C.—Austen-Cartmell. Agent—Solicitor of Inland Revenue.

HOUSE OF LORDS.

Wednesday, December 8, 1909.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Shaw.)

ATTORNEY-GENERAL *v.* TILL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Income Tax—True and Correct Statement of Profits—Negligent Delivering of False Statement—Penalty—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 52, 55.

Delivery of an incorrect statement of profits and gains under the Income Tax Act 1842, sec. 52, although without fraud, renders the deliverer liable to the penalty for non-deliverance of a true and correct statement under sec. 55, if he has made the statement negligently and not to the best of his knowledge and belief.

The respondent had delivered an incorrect statement of profits under the Income Tax Act 1842. Under the circumstances stated in the opinion of Lord Gorell, he was found liable by LORD ALVERSTONE, C.J., and a jury for the penalty imposed by section 55 for non-delivery of a correct statement. This judgment was reversed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and BUCKLEY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I hold that this appeal should be allowed, and in view of the exhaustive criticisms to which your Lordships have subjected these somewhat obscure sections I will only say a few words. I attach great importance to the rule that unless penalties are imposed in clear terms they are not enforceable. Also, where various interpretations of a section are admissible, it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive. After listening attentively to the argument and considering the 55th section both by itself and in connection with other parts of this and other Acts to which we were referred, I have come to the conclusion that neither canon is violated by the contention of the Crown. When the 55th section enacts "that if any person who ought by this Act to deliver any list, declaration, or statement as aforesaid, shall refuse or neglect so to do within the time limited in such notice," he shall be liable to a penalty, surely it means that he must either be liable to the penalty or must do what by the Act he ought to do as to the delivery of the list, declaration, or statement. What he ought to do is described in the preceding sections, and among them is section 52, which requires him to deliver "a true and correct statement in writing." If he does not deliver a true and correct statement, or if he does not deliver any statement at all, he in either case equally fails to do what he ought to do under the Act. I confess that the distinction sought to be drawn between the use of the words "any statement" and the possible but not adopted use of the words "such statement" seems to me to take more account of grammar than of substance. If the latter words had been used the meaning of the section would, it is true, have been incontestable. As it is I think that it does not offend against grammar and is sufficiently clear and would have been so regarded but for the fact that with a severe precision in the use of language the thought underlying the words might have been still more plainly expressed. Lord Gorell has adduced additional reasons from the other contents of this, and from the contents of other sections, fortifying this conclusion, and I will not dwell upon them. They seem to me very cogent. Mr Till, however, argued that upon this view a very hard penalty may fall upon a person who without any fault on his own part makes a statement incorrect even in a small particular; and he urges that it is no answer to say that the Crown would never use such a power. I entirely agree with him that such an answer could not prevail. But I do not think that it is true that an innocent mistake exposes a man to