[415] Case 216.—BURN and his WIFE, *Appellants*; COLE, alias ALLIN, *Respondent*. Privy Council, 7th April 1762.

One dies intestate, having personal property in England and abroad. Distribution must be according to the law of that country where he was resident when he died. (See *Pipon* v. *Pipon*, ante, 25; 3 Hill's MSS. 276.)

On appeal from the sentence of the *Court of Ordinary* in *Jamaica*, and heard *ex parte*, the respondent not appearing.

Jacob Allin, having two legitimate children, *viz. Sarah Whitcomb*, and the wife of the appellant, and being in *Jamaica*, made his will, of the 1st of May 1755, and after giving several legacies and annuities, and, *inter alia*, £50 a-year to the respondent for life, by the description of *Julia*, the daughter of *Mary Cole*, formerly *Mary Archould*, declaring at the same time that it was more than she deserved, from the pride, insolence, and ingratitude with which she had treated him, gave the residue of his real and personal estate unto his daughter *Anne*, the appellant's wife, for life, with remainder to the heirs of her body, with remainders over, and made *John Pool* executor. Soon afterwards *Jacob Allin* came to *England*, where he resided till his death in 1756. In June 1757, the will was proved in *Jamaica*, and in July 1757 administration, with the will annexed, was granted by the Judge of Probates in *Jamaica*, to the appellant, and the widow of the testator, during the absence of *Pool*. Afterwards *Pool* renounced, and the widow declining to act, administration was granted to the appellant.

The respondent set up a latter will of 11th April 1756 which was made in *England*, and having obtained probate thereof from the *Prerogative Court* of *Canterbury*, and an exemplification under the seal of the same Court, applied to the Judge of Probate in *Jamaica*, to get a repeal of the administration which had been granted to the appellant. She succeeded, and obtained administration to herself. The sentence was appealed from.

The respondent making default, the appeal came on to be heard *ex parte*.

[416] Lord Chief Justice *Mansfield*, after having taken time to consider of it, delivered the opinion of the Lords, That the sentence should be affirmed; which, he said, went upon this foundation, that *Jacob Allin* was resident and died in *England*, and had assets here, and administration of his will had been granted by the Prerogative Court here. Whenever that is the case, and the residence of the party in *England* is not merely as a visitor, the Judge of Probate in the Plantations is bound by the administration here, and ought to grant it to the same person.(1) That it would be very mischievous if it was otherwise; there would be great litigation, different sentences, and great confusion. In *Pipon* v. *Pipon* [ante, p. 25; post, p. 799], in Chancery, Trin. 1744, the distribution of intestate's effects was held to be according to the laws of the country where the intestate resided and died.

His Lordship cited two cases upon this question, which came on before the Privy Council. *Browne* v. *Phillips*, in December 1739. One died intestate in *England*; administration granted in *England* to *A.* a creditor. The attorney of *A.* applied in *Jamaica* for administration, but refused; and upon an appeal to the King in Council, which was heard *ex parte*, the sentence was affirmed, because, as none of the kin applied, it was discretionary in the Judge to grant administration to a creditor.

Williams v. ———, in 1747. ——— resided and died intestate in *England*; administration in *England* was granted to his widow, in *Jamaica* to his sister, and their husbands. Application by the widow to the Judge in *Jamaica*, for administration, and refused. On appeal to the King in council, the sentence was reversed. Lord Chief Justice *Lee*, who then attended in Council, gave his reasons, that the Plantations being within the diocese of *London*, are subordinate to the prerogative [Court] of *Canterbury*, and therefore bound by the probate of that Court; but Lord *Mansfield* declared himself dissatisfied with that reason; for the Plantations are considered as within the diocese of *London* for some purposes only, and not in every respect or point of jurisdiction. He said, the better and more substantial reason for such a determination is the residency.

(1) See *Atkins* v. *Smith*, 3 Atk. 63, where it was said by Lord *Hardwicke*, that administration taken out here will not extend to the Colonies; but if an executor sends out an exemplification of the probate to the Colony, the person who is employed

as the agent there by the executor, may, by letter of attorney from him, collect in the effects of the testator, and he is chargeable as much as if the executor had got them in himself. Administration granted in a foreign court, is not taken notice of in the courts in this country. *Tomlin* v. *Flower*, 111 P. W. 370.—See *Pike* v. *Hoare*, post, 428.

[417] Case 217.—READ *against* TRUELOVE.

If an executor administer part of the assets, he shall be charged with the receipts, though he renounced the executorship, and paid the money to the other executor, who proved the will.(1)—[Lib. Reg. 1761, B. fol. 347 a.] In Chancery, 21st and 22d May 1762, before Sir *Thomas Clarke*, Master of the Rolls, in the absence of *Lord Chancellor*.

Bill by plaintiffs, as residuary legatees, for an account of the personal estate of *Thomas Read*, possessed by the defendants *Truelove* and *More*. The defendant *Truelove*, after having possessed assets to the amount of £216 which he insisted was not received by him *qua* executor, renounced administration, and on the same day *More* proved the will. Afterwards *Truelove* paid the £216 to *More*, and, by an authority from *More*, who lived in *London*, at a distance from the effects, received other part of the assets, to the amount of £466, and paid the same to *More*; which was proved in the cause, and admitted by *More* in his answer.

The *Master of the Rolls* gave his opinion, That as *Truelove* had administered, though without proving the will, the renunciation afterwards was void; and that he ought to be charged with all the subsequent receipts as executor, and in the first instance, without decreeing against *More*, though *More* was not proved to be insolvent; and decreed accordingly, without prejudice to any demand he might have against *More* for the money which he had paid to him. (Vide *Hensloe's* case, 9 Co. 33 b. *Wantyford* v. *Wantyford*, 1 Salk. 299. *Harrison* v. *Graham*. 3 Hill's MSS. fo. 239, and 1 P. Wms. 241, note.)(2)

(1) See *Underwood* v. *Stevens*, 1 Meriv. 717. Lord *Shipbrook* v. Lord *Hinchingbroke*, 11 Ves. 253; 16 Ves. 478. In *Doyle* v. *Blake*, 2 Sch. & Lef. 244, Lord *Redesdale*, said, " Executors must either wholly renounce, or if they act to a certain extent " as executors and take upon them that character they can be discharged only by " administring the effects themselves or by putting administration into the hands of a " court of equity." In *Doyle* v. *Blake*, *A.* named executor in a will acts on behalf of particular legatees, disclaiming an intention of interfering generally. He afterwards renounces formally in favour of *B.* who was named a trustee in the same will, who thereupon obtains administration, *Cum testamento, annexo*. *B.* possesses himself of the assets and afterwards dies insolvent, *A.* is liable as executor notwithstanding his renunciation and is answerable for the acts of *B.* it appearing that he had a controul over the assets and *B.* being considered as having obtained possession thereof by his means.—It is a general rule with respect to executors that if an executor *does any act* by which money gets into possession of another executor, the former is equally answerable with the latter. *Langford* v. *Gascoigne*. 11 Ves. 335, unless that act be positively necessary for the purposes of the testators estate, *Hovey* v. *Blakeman*, 4 Ves. 608. See *Bacon* v. *Bacon*, 5 Ves. 335, for cases where Executors have or not been held liable for joining in a receipt, see exparte *Belcher*, exparte *Parsons*, ante, 218. In *Walker* v. *Symonds*, 3 Swanst. 64, it was said by Lord *Eldon*, that executors seem formerly to have been charged on much shorter principles if they joined unnecessarily though without taking the whole of the money; that rule is now altered. It may be laid down now, as in *Price* v. *Stokes*, 11 Ves. 819, that though one executor has joined in a receipt, yet whether he is liable will depend upon his acting, and see *Doyle* v. *Blake*, 2 Sch. & Lef. 242. In 6 Mad. See *Cross* v. *Smith*, 7 East, 236; 11 Vin. Abr. 203.

(2) Decree declared that, " the defendant *Truelove*, ought to stand charged with the " several sums of money part of the said testators estate received by him and suggested " to have been paid over by him to the defendant *More*, but this to be without pre- " judice " as in the text.