

thereupon became at once, and remained, vested in the trustees residing there, where the trusts were and were intended to be carried into execution, was to give the property settled a permanent foreign situs, to remove it completely from the control of the law of the domicile of the testator, and to render it in future subject only to the law of the State of New York; and for this reason, and for the additional reason that the Succession Duty Act, as it stood when that settlement was made, did not include or affect such a settlement, the property settled was not subject to succession duty.

The settlement of 1902 comprised certain cash on hand in New York and other property of a character similar to that in the previous settlement, locally situated wholly in the United States. The debentures were kept in the same vault, of which the testator had the key. When about to make this settlement, the testator wrote to his New York agents authorizing them to transfer his account from his name to the names of three of his sons, adding, "I wish to have my affairs in good shape, as I have not been feeling very well of late"; and shortly afterwards executed a document whereby he purported to transfer to his four sons the cash and debentures, in trust for his wife, and after her death to be divided equally between the four sons, subject to a charge for the education of two grandchildren. This settlement was made at a city in Ontario, where the testator, his wife, and three of his sons resided. The agents transferred the account to the names of the three sons, and notified them and the testator that they had done so; and it was arranged that access to the vault in which the debentures were kept could be secured only by the three sons and the wife, and thereafter the annual receipts for the rent of the vault were given in the name of the wife. No remittance of income to Ontario was ever made by the New York agents under the second settlement, nor any other definite action of any kind taken by the trustees to realize or get in the trust property in the lifetime of the testator.

*Held*, that the property settled was subject to succession duty.

Construction of the Succession Duty Act and amendments.

Judgment of FALCONBRIDGE, C.J.K.B., affirmed as to the first settlement and reversed as to the second.

*DuVernet and Ingersoll*, for plaintiff. *W. Nesbitt, K.C.*, and *Collier, K.C.*, for adult defendants. *Frank Ford*, for infant defendants.