

sealed after the testatrix's death, without any appearance of the seal having been broken. The memorandum refers to only one paper, and one only was found in the envelope when opened. I have no doubt that the document referred to by the deceased was the paper found in the envelope after her death, and shall decree probate as prayed.

Probate granted.

IN THE GOODS OF LUIS BIANCHI (deceased), on Motion. June 1, 1859—Administration.—Practice.—Administration of the Effects in England of a domiciled Brazilian granted to an Attorney for that purpose duly appointed.—A. died domiciled in Brazil, intestate, leaving a widow and several children (all minors), and some personal property in England. The Judge of Orphans, a functionary in Brazil charged with the administration of estates belonging to minors, having appointed B. guardian of the children of the deceased, who appointed C, the Brazilian minister at Turin, his attorney in the matter, with power of substitution, issued letters of request to the judicial authorities in England to collect and deliver the property of the deceased to C. or his representative. C. appointed D., resident in England, his substitute.—Authenticated copies of the proceedings before the Judge of Orphans, and of the power of attorney to C., the original power of attorney to D, with affidavits of the facts of the case, and of the law of Brazil, having been filed, the Court granted administration to D.

[S. C 28 L J P. 139

Luis Bianchi, late of the city of Bahia in Brazil, died at Teneriffe in August, 1856, intestate, being then on his way to Europe for a temporary visit, leaving a widow, Angelique Bianchi, now the wife of Elzario de Moraes, and seven children, who are still minors.

The deceased, who was a Sardinian by birth, at an early age abandoned his domicile of origin, and acquired a domicile at Bahia in Brazil, where he amassed a considerable fortune. Upon his decease his widow returned to Bahia, and the succession to his estate, which by the law of Brazil devolved to his children in equal shares, was opened before the Judge of Orphans, the lawfully constituted authority in cases of minority to superintend the collection and administration of the [512] estate; for which purpose he is required to make inventories of all property in which the minors are interested, and to make partition thereof as between such minors and the widow, who is required to bring to such partition all the property that remained at the death of the husband, and who cannot alienate or appropriate to herself any portion of the estate prior to such partition.

The widow, who was in the first instance appointed by the Judge of Orphans the tutrix or guardian of the minor children, was, upon her subsequent marriage with her second husband also a Brazilian subject, *ipso facto* by the law of Brazil, deprived of the guardianship of the children; and the Judge of Orphans, as required by the law of Brazil, appointed another guardian in her stead, viz. Lieut.-Col Lourenço de Souza Marques, who is now the guardian of the minor children. The deceased at the time of his death had the sum of about £4,000 in the hands of Messrs. Heath and Co., of London.

On the 12th of July, 1858, the Judge of Orphans of Bahia, who, if the property is out of his jurisdiction, is required by the law of Brazil to apply to the competent authorities of the place where such property is situate to recover such property, with a view to the due administration thereof, issued letters of request to the Judge of Orphans, or other judicial authorities in England, to collect and deliver the property of the deceased to the Brazilian minister at Turin, Cesar Sauran Vianna de Lima, the attorney, with power of substitution, of Lourenço de Souza Marques, in order that the same might be remitted to Bahia, and enter into the future distribution of the property. Under this power of attorney, the Commander C S. Vianna de Lima executed a power of attorney, appointing Mr. W. H. Clerk his substituted attorney in London, for the purpose of receiving the personal estate of the deceased, and expressly authorizing him to obtain letters of administration of the personal effects of the deceased in England.

Proceedings had been also instituted before the Judge of Orphans at Bahia, in respect to the domicile of the deceased, and on the 2nd of April, 1859, sentence was

given to the following effect, viz. :—“ Having seen the depositions of the witnesses, I adjudge that the deceased Bianchi constantly [513] declared that he had abandoned for ever his primitive domicil at Genoa, establishing it definitely in the city of Bahia.”

An affidavit by Mr. W. H. Clerk had been filed in support of the foregoing statement, to which was annexed the original letters of request from the Judge of Orphans; authenticated copies of the proceedings had before him with reference to the deceased's domicil, and of the power of attorney from the guardian of the minors to Cesar Sauran Vianna de Lima; also the original power of attorney from the latter to Mr Clerk.

An affidavit by a Doctor of Laws and Advocate of the Court of Justice of the city of Penedo, in the Brazils, as to the law of Brazil in reference to the matters above referred to, was also filed.

Dr. Spinks moved the Court to decree letters of administration of the personal estate and effects of the deceased in England to be granted and committed to William Henry Clerk, as the attorney of Cesar Sauran Vianna de Lima, the attorney, with power of substitution, of Lourenço de Souza Marques, the guardian of the minor children of the deceased, under the usual security.

*Sir C. Cresswell*: I am satisfied. The grant will be made to Mr. Clerk, the Attorney of the Brazilian minister at Turin.

Motion granted.

IN THE GOODS OF MARIA WORMAN (deceased), on Motion. June 15, 1859.—Desertion of Husband.—Protection Order.—Administration granted to the Wife's Next of Kin of such Property as had been acquired by her after the Desertion.—M. W. having been deserted by her husband, obtained a protection order, under 20 & 21 Vict. c. 85, s. 21, by reason of his desertion. On her death, in the life of her husband, intestate, the Court decreed letters of administration, limited to such personal property as she had [514] acquired or become possessed of since the desertion, without specifying of what that property consisted, to be granted to one of her next of kin.

[S. C. 29 L. J. P. 164; 5 Jur. (N. S.) 687.]

Maria Worman, the deceased in this case, was married in 1847 to John Worman. On her marriage she was possessed (amongst other things) of certain leasehold property, and of £100 in a bank, which were then secured to her separate use. On the 13th of April, 1858, she was deserted by her husband. Shortly afterwards she received from him a letter, dated April 21, 1858, in which he enclosed the joint promissory note of W. C. Morris and J. Morris for £50, payable to himself John Worman or bearer, and told her to take it up whenever she required it, and to sell any of the furniture he had left in the house which she did not want for her immediate use. On the 25th of July, 1858, she obtained a protection order, under 20 & 21 Vict. c. 85, s. 21, by reason of her husband's desertion. The order was signed by two Justices of the Peace in Petty Sessions held for the district of Neath, in the county of Glamorgan, and was subsequently entered with the registrar of the county court at Neath, within the jurisdiction of which she then resided.

She died on the 8th of February, 1859, without child or parent, leaving her husband, five brothers and three sisters, her surviving, and property, consisting of the said note for £50 with interest due thereon, of £50 in a bank at Merthyr, of a note of hand for £35 payable to herself, of a small sum due to her for the sale of some furniture, and some wearing apparel.

Dr. Wambey moved for letters of administration of the personal estate and effects of the deceased, whereof she became possessed after the desertion of her husband, on the 13th day of April, 1858, to be granted to Wm. Davies, her natural and lawful brother and one of her next of kin, under the sum of £200. He submitted that the probate would include the promissory note for £50, which had been sent to the wife by the husband after his desertion, as well as the other property she had left.

*Sir C. Cresswell* I can make no order as to the promis-[515]-sory note. The Divorce Act (1857), sect 21, enacts “that a wife who has obtained a protection order by reason of her husband having deserted her, shall during the continuance thereof be and be deemed to have been during such desertion of her, in like position in all respects with regard to property as she would be if she had obtained a decree of judicial separation.”