

ORIGINAL CIVIL.

Before Mr. Justice, Beaman.

CAROLINA DOS SANTOS (PLAINTIFF) v. DOMINIE JOSEPH PINTO
AND OTHERS (DEFENDANTS).⁶

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July 3.

The Indian Succession Act (X of 1865), sections 7, 9, 10—Domicile—Domicile of origin—Domicile of choice—Domicile of origin acquired from parents at birth—Domicile of choice acquired from residence and intention that residence should be permanent—Change of residence per se for an indefinite period does not effect domicile of choice—Domicile of choice discarded by intention to abandon accompanied by actual abandonment—Declarations of a party abandoning domicile, how far relevant—Domicile of origin reviving proprio vigore on abandonment of domicile of choice—Onus of proof.

One P. P., a Native Christian, was born in Goa of parents domiciled in Goa, in Portuguese Territory. In 1858, at the age of fourteen, he came out to Bombay and lived there uninterruptedly, with the exception of brief visits to Goa, till his death in June 1915, when he was seventy-one years old. In 1871, he married his first wife, the mother of the defendants Nos. 1 to 3, and on her death in 1901 married the plaintiff in 1903. During the whole of his mature life in Bombay he carried on a flourishing coach-building business, providing himself with a house near his factory. From his conduct and declarations from time to time it appeared that he had settled in Bombay meaning it to be his fixed habitation. It also appeared that some time after 1913, and shortly before his death he formed an intention of returning to Goa and end his days there. On the 26th July 1909, he made a will in Bombay whereby he gave a legacy of Rs. 7 a month to the plaintiff, if she chose to live separate from the defendant No. 1, a legacy of Rs. 500 to the defendant No. 3, and the coach-building factory to the defendant No. 4, the minor son of defendant No. 1. He appointed defendant No. 1, the sole executor and residuary legatee. The entire moveable property belonging to him in his own right was valued by the plaintiff for Rs. 71,000; and by the defendant No. 1 for Rs. 19,000. The plaintiff disputed the will of her husband and contended that the deceased had Portuguese domicile at the time of his marriage with her in 1903, as well as at his death, and that under the Portuguese law she was entitled to a moiety of the estate left by the deceased. The defendant No. 3 who supported the plaintiff contended that in 1871, when the deceased married his mother, the deceased had a Portuguese domicile, and that he too became entitled to a share in the estate of the deceased under the Portuguese law.

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Held, (1) that at any time between 1865 when the deceased had attained majority and 1913, the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa.

(2) that in spite of the intention of the deceased to return to the domicile of his origin, the domicile of choice continued in law to exist at his death, as the intention was not accompanied by the actual abandonment of the domicile of choice.

(3) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along, from the year 1865 to the time of his death, been a British subject domiciled in Bombay.

(4) that the claim put forward by the plaintiff or the defendant No. 3 was not maintainable, as the devolution of the estate of the deceased was not governed by the law of Portugal.

The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents. It is not necessarily in itself local, that is to say, merely the place of birth.

The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence, and the intention is that the residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention, namely, the fact of abandoning the residence accompanied by the intention that that abandonment shall be final, and that upon any such mere abandonment of one domicile of choice without the acquisition of another, the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person.

The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way, the Courts would be slow to infer from the mere fact of residence however protracted that residence may be, the intention requisite to complete the substitution of domicile of choice for that of origin. The onus being upon the person alleging that a man has acquired a domicile of choice, he must prove to the Court that that man had that intention.

A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention, the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it.

The law of domicile in the Courts of England from the case of *Bruce v. Bruce*⁽¹⁾ to that of *Huntly v. Gaskell*⁽²⁾, considered.

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SUIT to recover a share in the property of a deceased person.

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One Pascoal Pinto, a Goanese, 71 years old, died at Bombay on or about the 10th June 1915, leaving him surviving his widow Carolina dos Santos, the plaintiff and three sons by a predeceased wife, Dominic Joseph Pinto, Louis Francis Pinto and Marian Francis Pinto being defendants Nos. 1, 2 and 3, respectively. The 1st defendant had a son John Reginald Pinto, a minor, defendant No. 4, represented by his father and guardian *ad litem* defendant No. 1.

The deceased was born in Goa. The father of the deceased was at the time of the birth of the deceased domiciled in Goa.

At the early age of fourteen the deceased came out to Bombay and lived there uninterruptedly with the exception of brief visits to Goa, till his death in June 1915.

In 1871, he married his first wife, the mother of the defendants Nos. 1-3. She died in about 1901. The deceased married the plaintiff in 1903.

During the whole of his mature life in Bombay the deceased conducted a flourishing coach-building business and provided himself with a house adjoining the factory, valued at about Rs. 2,000. At his death he left moveable property as the gains of his business which the plaintiff valued at about Rs. 71,000, and the defendants Nos. 1 and 2 at Rs. 19,000.

The deceased had property in Goa which was described as an old family house. During the period of 57 years spent by the deceased in Bombay, the deceased appeared to have made five short visits to his native village

(1) (1790) 2 Bos & P. 229, footnote.

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of Calangute in Goa. Shortly before his death the deceased spent money upon repairing the family house at Goa.

The evidence showed that the first wife of the deceased and a predeceased son by her died in Bombay and were buried in the cemetery at Dharavi, while the defendants resided for some part of their lives in Goa. One of the sons was brought up with the idea of being ordained a priest in Goa, but subsequently took up a lay profession in Karachi.

During the later years of his life and up to the year 1913 the deceased constantly declared that he had no desire whatever to return to Goa, that his life had been spent in Bombay and that all his interests were in Bombay.

The question at issue in the suit was what law should govern succession to the property of the deceased, the Indian Succession Act or the Portuguese Law?

The plaintiff alleged that her marriage with the deceased was governed by the Portuguese law, the deceased having been domiciled in Goa. The plaintiff claimed that under the form of marriage according to 'Costumue de Reins', i.e., the custom of the kingdom, she became entitled to a moiety of the estate belonging to the deceased at the time of her marriage with him and all property that was acquired by him during the continuance of the marriage.

On the 26th July 1909, the deceased made a will by which he bequeathed Rs. 500 to 3rd defendant, his coach-factory to the 4th defendant, a legacy of Rs. 7 per month to the plaintiff, and the residue of his estate to the 1st defendant. The 1st defendant was appointed the sole executor of the said will. The plaintiff contended that under the Portuguese law neither the husband nor the wife could dispose of by deed or will more than one-third

of his or her property. The defendant No. 1 contended *inter alia* that the succession to the property of the deceased was governed by the Indian Succession Act, the deceased having adopted Bombay as the domicile of his choice and had not abandoned the same and reverted to the domicile of origin, namely, Goa, assuming that to have been his domicile at his birth; that the will of the deceased was a perfectly good and valid will; and that the only interest the plaintiff had in the estate of the deceased was as a beneficiary to the extent of legacy of Rs. 7 a month if she chose to live apart from the defendant.

The defendant No. 3 sided with the plaintiff and contended that at the date of the first marriage of the deceased with the mother of this defendant in 1871, the deceased was domiciled in Goa and that according to Portuguese law he became entitled on the death of the deceased to a distributive share in the property of the deceased.

Wadia and *Mulla*, for the plaintiff.

Bahadurji and *Strangman*, for defendants Nos. 1 and 4.

M. J. Mehta and *Wadia*, for defendant No. 3.

Defendant No. 2 did not appear.

Wadia :—The plaintiff was married to the deceased according to Portuguese law. According to the Portuguese marriage law the community of goods being recognised, the plaintiff was entitled to a share in the property of the deceased: see the decision of the House of Lords in *De Nicols v. Curlier*⁽¹⁾ reversing the decision of the Court of appeal and restoring the decision of Kekewich, J. The domicile of origin of the deceased was Goa. It continued until a new domicile was acquired: see section 9 of the Indian Succession Act. Onus of proof of

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change of domicile lies on defendants Nos. 1 and 4 : see *In're Patience*⁽¹⁾ and *Winans v. Attorney-General*⁽²⁾.

[BEAMAN J.—The onus is on defendants Nos. 1 and 4. They should begin.]

Evidence was led by the parties on the preliminary issue : “ What was the domicile of the deceased at the date of his marriages ” ?

Wadia :—The main question is what was the domicile of the deceased at the time of his *second* marriage with the plaintiff in 1903. On evidence we have established (1) that the home of the deceased was Goa where he had some property ; (2) that money had been spent on repairs of that property ; (3) that the deceased occasionally visited Goa though on account of pressure of business, his stay at Goa was not for a considerable period ; (4) that shortly before his death he had a sense of homesickness and desired to end his days in his native land. There was no *animus manedi* on the part of the deceased to change his domicile. Law leans strongly in favour of retention of domicile of origin : see section 109 of the Indian Succession Act. Sections 4 and 44 of the Indian Succession Act do not apply : see *Miller v. Administrator-General of Bengal*⁽³⁾ and *Hill v. Administrator-General of Bengal*⁽⁴⁾. Defendants Nos. 1 and 4 rely on long residence and declarations. Change of residence however long does not *per se* effect a change of domicile. An express intention to change the domicile must be established : see *Moorehouse v. Lord*⁽⁵⁾ ; *Munro v. Munro*⁽⁶⁾ ; *Jopp v. Wood*⁽⁷⁾ ; *Udny v. Udny*⁽⁸⁾ and *Douglas v. Douglas*⁽⁹⁾. Counsel relied on section 10, Explanation, of the Indian Succession Act

(1) (1885) 29 Ch. D. 976.

(5) (1863) 10 H. L. C. 272.

(2) [1904] A. C. 287.

(6) (1840) 7 Cl. & F. 842.

(3) (1876) 1 Cal. 412.

(7) (1865) 34 L. J. Ch. 212.

(4) (1896) 23 Cal. 506.

(8) (1869) L. R. 1 H. L. (Sc.) 441.

(9) (1871) L. R. 12 Eq. 617.

and *Winans v. Attorney-General*⁽¹⁾ and *Huntly v. Gaskell*⁽²⁾,

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Mehta :—So far as the third defendant is concerned the Court is to determine the domicile of the deceased at the time of his first marriage in 1871. Evidently the deceased had not then an intention to change the domicile of origin. The third defendant must succeed even if the Court holds that the deceased had acquired a domicile in British India at the time of his second marriage with the plaintiff.

Bahadurji :—The deceased having already acquired a new domicile in British India at the time of his marriage with the plaintiff in 1903, the plaintiff did not acquire any rights by marriage in the property of the deceased : see section 44 of the Indian Succession Act. Acts, conduct and declarations of the deceased show that he had made Bombay his 'permanent home' or 'fixed habitation': see Lord Halsbury's definition of domicile as a 'permanent home': Halsbury's Laws of England, Vol. VI, Art. 280, p. 182 and *Lord v. Colvin*⁽³⁾. See also Dicey on Conflict of Laws, 2nd edition, pp. 101-110, showing that a new domicile is acquired by a combination of residence and intention. Intention is presumed from the nature of the residence: see *King v. Foxwell*⁽⁴⁾; *Marsh v. Hutchinson*⁽⁵⁾; *Cockrell v. Cockrell*⁽⁶⁾; *Doucet v. Geoghegan*⁽⁷⁾; *Drevon v. Drevon*⁽⁸⁾; *Bruce v. Bruce*⁽⁹⁾; *Hodgson v. De Beauchesne*⁽¹⁰⁾; *Bempde v. Johnstone*⁽¹¹⁾. Length of residence is an important factor to be taken into consideration whether

(1) [1904] A. C. 287.

(2) [1906] A. C. 56.

(3) (1859) 28 L. J. Ch. 361

at pp. 365, 366.

(4) (1876) 3 Ch. D. 518.

(5) (1800) 2 Bos. & P. 226.

(6) (1856) 25 L. J. Ch. 730.

(7) (1877) 9 Ch. D. 441.

(8) (1864) 34 L. J. Ch. 129.

(9) (1790) 2 Bos. & P. 229, foot note.

(10) (1858) 12 Moo. P. C. C. 730.

(11) (1796) 3 Ves. Jun. 198.

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a person has changed his domicile. Intention may not exist when a person first settles down in a new place. Intention may grow by lapse of time. See Halsbury's Laws of England, Vol. VI, Article 183, p. 186. When once a new domicile is acquired it continues until the former has been *resumed* or another has been acquired: see section 13 of the Indian Succession Act. It follows mere intention to abandon the domicile of choice without actual change is not sufficient. Similarly, new declaration to revert to the domicile of origin without resuming the domicile of origin would not in law change the domicile of choice once acquired: see *Ghalmers v. Wingfield*⁽¹⁾; *In re Steer*⁽²⁾ and *In the Goods of Raffeneil*⁽³⁾.

Wadia in reply.

BEAMAN, J.:—The plaintiff sues the defendants as heirs and representatives of the deceased Pascoal Pinto, on the ground that at the date of her marriage with the said Pascoal Pinto he was a domiciled subject of Goa in Portuguese India and that being so their marriage with all its legal incidents must be governed and determined by the law of Portugal. This being done she alleges that certain rights will then be adjudged due to her, and seeks to recover accordingly. The defendant No. 3, one of her step-sons, supports her case in the main and contends on his own behalf, that at the date of the marriage of his mother with the deceased Pascoal Pinto, Pascoal Pinto was a domiciled subject of Goa in Portuguese India and that in like manner with the plaintiff he, the defendant No. 3, was entitled to certain rights and benefits under the Portuguese law.

The defence is that Pascoal Pinto was, at the time of his two marriages, with the mother of defendant No. 3 in 1871 and with the plaintiff in 1903; a domiciled subject of British India and that in consequence none of

⁽¹⁾ (1887) 36 Ch. D. 400.

⁽²⁾ (1858) 3 H. & N. 594.

⁽³⁾ (1863) 32 L. J. P. & M. 203.

the rights or reliefs claimed by the plaintiff or defendant No. 3 can be awarded.

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In this state of the pleadings it was agreed that the question, whether Pascoal Pinto was at the date of his marriages subject to the law of Portugal, or, being a domiciled British Indian subject, subject to that of British India, was first to be inquired into and decided.

Although I understand that the defendant No. 1, upon whom the burden of the defence has rested, does not admit that the domicile of origin of his father Pascoal Pinto was Portuguese, he has nevertheless accepted the onus of proving that Pascoal Pinto acquired as his domicile of choice a British Indian domicile before and at the dates of his two marriages. And upon this question of fact a considerable amount of evidence has been laid before the Court on both sides. With the energetic assistance of the learned counsel for the defendant No. 1 and plaintiff, I have made the trial of this question an occasion for studying with some minuteness the course of the law of domicile in the Courts of England from the case of *Bruce v. Bruce*⁽¹⁾ to that of *Huntly v. Gaskell*⁽²⁾. The dicta of the most eminent writers and commentators on this branch of the law of nations have also been fully considered. The result of any such comprehensive survey is, in the first place, to leave an impression upon the mind that the law of domicile is extremely complex, recondite and in need of elaborate and constantly over-elaborated definition. It is hardly too much to say that a study of the leading cases on this subject reveals too often what appears to me much confusion of thought and almost always that great superfluity of verbiage which is the curse of case-law. There can, however, be little doubt that the attitude of the Courts in England towards the underlying principle of the law of domicile has undergone some slight change during the century under review. Not so much a

(1) (1790) 2 Bos. & P. 229, footnote.

(2) [1906] A. C. 56.

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change perhaps as to what really is required to constitute a change of domicile as with regard to the determining criteria for deciding whether those requisites have or have not been complied with in any given case. Leaving out of consideration any anomalies and complications which may properly be referable to the views held by the Courts at one time regarding the peculiar character of the East India Company and the legal consequences of accepting service under it, it still seems to me to be clear that in cases such as those of *Bruce v. Bruce*⁽¹⁾ and many which followed it the learned Judges thought that it was quite sufficient to have evidence that a person had taken up a habitation in a country other than that of his country of origin with the intention of remaining in that new country for an indefinite period to constitute this latter country his domicile of choice. Yet a very little examination of the law of domicile from its origin in the civil law and through all the process of its moulding and exposition in the English Courts should show, I think, that it rests upon extremely clear and simple fundamental principles. And if those principles had been invariably adhered to without one Judge after another and one eminent jurist after another endeavouring to improve upon them by definition after definition, I cannot myself understand how it ever could have been thought and indeed so frequently said in the highest tribunals in England that this topic of domicile regarded merely as a topic of law was one of great legal difficulty. It is only because of this unwearied desire to add in every case by some new definition, precision and clarity to what in itself has always seemed to me quite clear and precise, and in such processes, often confusing, not only that which is needed to understand the principle, but what are supposed to be useful rules of guidance in applying that principle to any set of given facts which happen to be interesting to the trying Courts, that the subject has now acquired its surface air of complexity and difficulty.

(1) (1790) 2 Bos. & P. 229, footnote.

Let us go to the beginning and see what is contained in and for that matter exhausts the legal notion of domicile. The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of the parents. It is not necessarily in itself local, that is to say, merely the place of birth; but it is seldom indeed that the determination of the origin of domicile has given rise to practical difficulty. In all the long array of cases I have studied during this trial, I think, it is only in a recent Calcutta case (*Bonnaud v. Emile Charriol*⁽¹⁾) decided by a single Judge, that the question of domicile of origin was of primary importance. The domicile of origin once ascertained in law clings and adheres, to use favourite judicial terms, to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence, and the intention is that the residence should be permanent. If we bear in mind that the domicile of choice can be discarded as easily as it can be acquired by a fact and an intention, namely, the fact of abandoning the residence accompanied by the intention that that abandonment shall be final, and that upon any such mere abandonment of one domicile of choice without the acquisition of another, the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person, we shall have fully exhausted all the legal contents of this much vexed and much discussed legal notion. The multiplication of terms in the innumerable definitions to be found in the writings of jurists and the judgments of Judges, to which I have already referred, as usually happens in such cases, only results in further clouding rather than clearing up the notion being analysed, for it is clear as a matter of logic that the more terms are given to definitions the more doors are opened to further dialectic

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disputes; and the best definition is that which contains the fewest terms provided they are sufficient and decisive. It is only upon one term virtually in the whole of this legal notion of domicile that any ambiguity can arise and no doubt the ingenuity of lawyers has made the utmost of it; and that term of course applies to the character of a domicile of choice and is to be given to the intention which along with the fact of residence completes the domicile of choice in the eye of the law; that is to say, the intention must be to make the domicile of choice in fact a residence and in intention a permanent residence. The difficulty to be found in some of the cases lies in the substitution, at one point or another in the legal history of this doctrine, of indefinite duration for permanence. It was then held sufficient to make out a good domicile of choice to prove that a man had taken up his residence in a country other than that of his domicile of origin for an indefinite period, say, for such a period as would enable him to make his fortune. If A. being English by origin goes to France saying: "I intend to remain there till I have made my fortune and then return to England", it is clear as a matter of plain logic that no Court ought to hold that he had abandoned his domicile of origin and substituted for it a domicile of choice; because while it is true that he might never make his fortune in France and therefore might remain there till he died, yet it is as true that he might make his fortune in six months and having expressed his intention to return to his domicile of origin when that had been done, there could never have been any intention of permanently abandoning the domicile of origin or permanently making his home in the domicile of choice. Yet in cases like *Bruce v. Bruce*,⁽¹⁾ where the intention was throughout clearly expressed, namely, a wish to return to the domicile of origin, and peculiarly in such cases as *Cockrell v. Cockrell*⁽²⁾ where the domicile of choice had

(1) (1790) 2 Bos. & P. 229; footnote. (2) (1856) 25 L. J. Ch. 730.

clearly been selected for no other purpose than that of trade, the Judges seem to have little hesitation in coming to the conclusion that because at the time of taking up their habitations in Calcutta, Bruce and Cockrell could not put a definite limit upon their sojourn there, this constituted a domicile of choice by residence, accompanied by an intention that that residence should be permanent. What was probably really meant in all cases of this kind was that a person leaving his domicile of origin and making his residence in another country for a period entirely indefinite might be shown to have intended, either at the commencement or at any time during the currency of that residence, to have made it permanent and entertaining any such intention at any moment of time in combination with the fact of residence would, no doubt, constitute an abandonment of the domicile of origin and an acquisition in substitution for it of a domicile of choice. What appears to me to be the difficulty in such cases as those I have referred to is that in the absence of express declaration it is hardly possible to infer from a mere residence for an indefinite period but for a definite purpose an intention permanently to abandon the domicile of origin. It is clear that in the like set of facts with the addition of express declarations to the contrary such as were to be found in *Bruce's case*,⁽¹⁾ the conclusion drawn by the Courts of Scotland and England must be thought in logic, however good in law, to be somewhat defective. It might be open to a Court to infer an intention from facts laid before it in the absence of any declaration either way; but with a declaration distinctly negating the intention to remain there permanently I think if the Courts have nevertheless found that intention from the facts, it must be referable to some other explanation than any which I so far have been able to discover. But this much is clearly a part of the law of domicile, as I have already said that

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(1) (1790) 2 Bos. & P. 229, footnote.

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a person may abandon his domicile of origin and acquire a domicile of choice absolutely good in the eye of the law and retain that domicile of choice as long as he pleases and may then again change his mind and determine either to substitute another domicile of choice for that which he means to abandon, or to resume his domicile of origin. I use the word "resume" rather reluctantly here, because, its use at least in one case has, I think, led to a decision which can hardly be good law. It is important, however, never to lose sight of this, that just as a domicile of choice is easy to acquire, so it is as easy to abandon. But for its abandonment two things are necessary: the abandonment in fact, and the intention that that abandonment shall be final and permanent. A man having acquired a domicile by choice may, after many years, turn home-sick and decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention, the result would be that the domicile of choice would persist and the distribution of his estate would have to be governed by it. In the case of *In the Goods of Raffeneil*⁽¹⁾, which so eminent a jurist and commentator as Dicey declares to have been well decided, with the greatest deference both to the learned Judge, Sir C. Crosswell, who decided the case, and to Mr. Dicey, I think it is easily demonstrable that the decision was wrong and as easy to show how it came to be wrong. The facts there were that an English woman, whose domicile of origin was of course English, married a Frenchman and so acquired by operation of law, a French domicile. After her husband's death, she made up her mind to abandon her French domicile and again accept her domicile of origin. With that intention in her mind she actually did abandon her French domicile

(1) (1863) 32 L. J. P. & M. 203.

in Dunkerque and got as far as Calais, where she went on board an English steamer, but being taken ill, she had to land and return to Dunkerque, and, the illness never leaving her, died there. This was as clear a case, I think, as any case ever could be of a *de facto* abandonment of a domicile of choice accompanied by an intention never to return to it. It may be conceded that throughout the trial no question whatever was made of both these facts. Therefore, in law Mrs. Raffanel had completely divested herself of her domicile of choice the moment she quitted her residence at Dunkerque with the intention of never returning to it. But Cresswell J. appears to have thought that as a person cannot be without a domicile, it was necessary for her to have effectually resumed her domicile of origin, that is to say, to have landed in England before she could divest herself of her domicile of choice. But nothing is clearer in the law of domicile than that the moment the domicile of choice is abandoned, the domicile of origin revives *proprio vigore* and without the need of any intention or further act on the part of a person; for example, if Mrs. Raffanel instead of intending to return to England and take up her abode there, at the time of her leaving Dunkerque meant to make a voyage round the world in quest of some other place which might be pleasing to her and died on that voyage, say, at the Canary Islands, there would be no question of any resumption, in the sense in which Sir C. Cresswell used that word, of the domicile of her origin. Yet it is equally certain that no lawyer would have been found to make, and no Court to listen to, such a contention as that at the date of her death, having abandoned the domicile of choice, she was not subject to the domicile of origin, and the value of Mr. Dicey's comment upon the case is somewhat discounted by finding that he brackets with it such a case as that of *In re Steer*⁽¹⁾. Now, there is absolutely nothing in common between the two cases. What was

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found in the case of *In Re Steer*⁽¹⁾ was, that although the man expressed his desire of retaining his English domicile in point of fact he had acquired a German domicile and had never had any intention whatever of abandoning it, never in fact had abandoned it, and died in Germany. All that there was to say for his English domicile was that he appears to have been under the mistaken impression that he could have two domiciles at once. Such a view was naturally rejected by the Courts, and, as the facts were found as I have stated them to be, it is clear that the case does not resemble the case of *In the Goods of Raffenet*⁽²⁾ in any material point, and was decided upon a quite different ground. Steer was found to have a domicile of choice and never to have abandoned it. Mrs. Raffenet was found to have had a domicile by operation of law, which in point of fact she did abandon and intended to abandon, but it was thought that as she had intended also to return to her native land, before she could divest herself of her foreign domicile, it was necessary that in fact as well as in intention she should set foot on her native shores. Steer never had any intention of abandoning his domicile. Mrs. Raffenet had. But the Courts thought that she had failed, fully and to the satisfaction of the law, to carry it out. That the latter view was wrong I have not the least doubt.

These, then, are some of the principal points of interest which have struck me in a review of the whole case-law and most of the authoritative writings of the jurists upon this subject. Perhaps the best definitions of "domicile" are those of Vattel and Savigny, though I think they are, certainly the last, too overloaded with terms; and for all practical purposes I do not see how a "domicile of choice" can be better defined than it is by Lord Halsbury in *Winans v. Attorney-General*⁽³⁾ as a permanent home, that is to say, a man,

(1) (1858) 3 H. & N. 594.

(2) (1863) 32 L. J. P. & M. 203.

(3) [1904] A. C. 287.

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who takes up his residence in a place other than that of his domicile of origin, makes it his domicile of choice, if he intends that it should be his permanent home. And the same simplicity and clarity are obtained by our own Legislature in section 10 of the Indian Succession Act where it is said that a man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. Here, no doubt, the term "fixed" is not quite so definite as the word "permanent", but it certainly has the same meaning in this context; and it is of the essence of the domicile of choice that the residence should be intended to be permanent, that is to say, a man making this choice should mean it to be final and definitely intend *quatenus in illo exuere patriam*, that is to say, to end his life in the residence which he had thus chosen, in a new place or country. Once that is clearly understood, taken in conjunction with what I have said already as to the ease with which this choice may be exercised, there should be no great difficulty in at once determining the proposition of law to which evidence is being led whether a person has acquired a domicile of choice in a competition between such alleged domicile of choice and his domicile of origin.

The indefiniteness of duration which has led to a great deal of confusion, I think, in the discussion upon this subject is on much the same level as the emphasis with which Judges, doubtless with the laudable desire of informing and instructing those who come after them, have insisted upon the length of time as a ground of inference. It is in the constant transition from definitions of true legal notions to generalizations in quite a different field, and in a field in which generalizations are not admissible at all, that the case-law on this subject is, as I said in an earlier passage of this judgment, so conspicuously baffling and confused. It

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is one thing to have clearly in view a legal notion or a legal principle. It is quite another to attempt to lay down rules for the guidance of Courts as to the manner in which inferences of facts are to be drawn from particular pieces of evidence. Here every Court will have to decide for itself on the facts laid before it and it is worse than useless to attempt to lay down in one case and with an eye to the particular facts therein disclosed, general rules for the guidance of other Courts in applying the same principles of law to necessarily varying sets of facts. It has always been a favourite dictum of Judges expounding this part of the law, that the length of residence is a very strong ground for inferring (where there is absence of express intention) an intention to make a residence so long inhabited a fixed habitation or permanent home. It ought to be evident, however, that such a generalization as that is infirm in character and open to many exceptions. Nor looking at the actual contents of the legal notion can it be said that duration of time has anything to do with the complete acquisition of a domicile of choice. In ninety cases out of hundred where it is a true case of acquisition of domicile by choice, the choice is made synchronously with the taking up of residence, that is to say, the domicile of choice is complete and has the effect of ousting the domicile of origin from the very first moment that the new residence is taken up. There are cases (and perhaps I have put the first percentage too high), there are cases doubtless in which a man drifts as it were into the notion of domicile of choice although it would be extremely hard to say at what point the intention which was not there at the beginning had formed and defined itself. Such a case was that of *Winans v. Attorney-General*⁽¹⁾ decided in 1902. It can hardly be said that the final decision of

(1) [1904] A. C. 287.

the House of Lords carries any very great conviction with it or that the methods of reasoning and discussion adopted by such eminent Lords as Lord Halsbury and Lord Macnaghten are any more convincing than those of Lord Lindley. I have not been able to find the record of this case in the Court of Appeal, but if the full array of judicial talent that was employed upon it were available I dare say that I should find as many eminent and learned Judges inferring from the facts one way as the other. And whatever may be said for the legal superiority of the decision arrived at by the majority of the House of Lords, I think that the weight of common sense would certainly be disposed to support the dissenting judgment of Lord Lindley. For this was surely a case of acquisition of domicile of choice, if indeed the domicile was so acquired not by original intention synchronizing with the first taking up of residence in England but by the slow compulsion of time and circumstances which must have, before Winans died, as Lord Lindley thinks, finally caused him to give up all hope of returning to his native Baltimore. But the majority of the House of Lords insisted here upon the need of proof of definite intention at any given moment, that is to say, they wanted to be satisfied that notwithstanding the virtual impossibility of Winans ever returning to America or quitting the domicile of choice (although no doubt it was in the first place compulsion rather than choice which led him to it), that he had this definite intention and failing that, they say, no amount of inferential evidence will satisfy them that he had formed any such intention and so had abandoned his domicile of origin. As I say there may be cases of that kind but in a large majority, where it is a genuine case of domicile of choice, the choice is made probably before the residence begins as in the case of emigrants to America who never intend to return to their native land.

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Therefore, in the absence of intention either way, the long duration of residence in a foreign country terminated by death may certainly be a ground for inferring that synchronously with the commencement of that residence there had been an intention of making the residence permanent. Inferences of that kind may easily be rebutted by facts which would explain the duration of residence compatibly with an intention to return to the domicile of origin, and the law, it must be remembered, leans very strongly in favour of the retention of the domicile of origin. It is thought that a man does not lightly give up his domicile of origin and substitute for it a domicile of choice. That being so, in every case where there are no declarations of intention either way, Courts, no doubt, would be slow to infer from the mere fact of residence, however protracted that residence may be, the intention requisite to complete the substitution of domicile of choice for that of origin. While the ground of inference, then, is thus seen often to be so insecure, the English Courts have not hesitated frequently to declare that the actual declarations of intention are but of secondary value and should be postponed to inferences drawn from proved facts. This is particularly applicable to mere declarations in instruments which are sometimes hardly more than descriptive. Still the question being, given the fact of residence, what was the intention of a man thus taking it up, I should certainly have thought that no better evidence could have been found than his own statement of intention one way or the other if that could be proved. In some of the judgments I have read the Courts discounted the value of direct evidence of intention on the ground of the untrustworthiness of human memory or the inaccuracy with which witnesses have reported conversations which must have taken place many years ago. But that of course amounts to

no more than saying that the Courts may not be satisfied that the declarations of intention were ever made and is no reason at all for diminishing the value which ought to be attached to them, if they are proved to have been made. In every case where the question is whether a man has acquired a domicile of choice the Courts have first to be satisfied that he had a residence in the new place or country and that in taking it up he intended it to be his permanent home, and no amount of additional definition refining upon this term or upon that could ever carry us beyond this point. We must always come back to it. In every case it must be a pure question of fact and in every case that question of fact must be answered upon the evidence laid before the Court. It is idle, indeed, I think, it is absurd, to enumerate what are called the *indicia* of an intention to make a residence a man's permanent home. Nor can there be any question, as will appear from the language so often used in the English Courts, of the degrees of clearness with which such an intention must be made out. The onus being upon the person alleging that a man has acquired a domicile of choice, he must prove to the Court that that man had that intention. It cannot be proved more or less clearly. It must be proved or not proved. If it is proved there is an end of the matter in favour of him who alleges that a domicile of choice has been acquired. If it is not proved then there is an end of the matter the other way. That being the law as I understand it and the question thus being narrowed down to a mere question of fact, I have to consider what the proper conclusion is to be drawn from the evidence laid before me.

It is not admitted that Pascoal Pinto had a Portuguese domicile of origin; but it is admitted that he was born in Goa. His name is that of a Goan. He had property in Goa which is described as an old family

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house and on several occasions during his long stay in Bombay he returned to Goá and lived on his own property there. I cannot entertain the least doubt but that the domicile of his origin was Goan or Portuguese. At the early age of fourteen he appears to have drifted into Bombay and to have lived there uninterruptedly, with the exception of brief visits to Goa, till his death in June 1915. In 1871, he married his first wife, the mother of the defendants. She died in 1901, or early in 1902, and he remarried the present plaintiff, in 1903. What he did during his early years in Bombay we do not know. But during the whole of his mature life, he appears to have been conducting a fairly flourishing coach-building business, and he provided himself with a house adjoining his factory. The house was probably of little value though it is stated in the schedule annexed to the probate application to be worth about Rs. 2,000. Its character does not appear to have been such as to give rise in itself to any very strong inference that in building it and taking up his residence there he necessarily meant to make it his permanent home. But there is the undoubted fact that he passed virtually the whole of his long life between the ages of fourteen and seventy-one in Bombay. The evidence laid before me only points to his having made five short visits to Goa, during the whole of that period of something like fifty-seven years. His business was in Bombay. And all these circumstances are at least consistent with the alleged contention of his having finally renounced his domicile of origin. But apart from the evidence of declarations, these facts might be insufficient. They certainly are not much stronger in themselves than the facts in *Winan's case*⁽¹⁾ for instance, although in that case there were many other facts, which do not appear here, e.g., express intention on the

(1) [1904] A. C. 287.

part of Mr. Winans to return to America and to retain his domicile of origin. In coming to their final conclusion upon that case, however, I doubt whether the House of Lords were so much influenced by these declarations of intention as by the actual facts before them upon which they hesitated to hold that Mr. Winans had ever had a deliberate intention of abandoning his domicile of origin and substituting England for it. There are also many other points of difference, as, for example, that to begin with Mr. Winans appears to have been driven to England by considerations of health. Whereas it is clear that Pascoal Pinto came to Bombay of his own accord and remained here ever since, not under any compulsion but because he preferred to live in Bombay. Assuming, then, that so far the facts might give rise to nicely-balanced inferences either way, we have to add to them certain other facts, which might tell against the conclusion that notwithstanding his long residence in Bombay he had never intentionally abandoned his domicile of origin. Such probably are his return, whenever he left Bombay, to his native village of Calangute; the fact that he had an old house there which he relinquished to purchase land and build a new house upon it; and that very shortly before his death he was certainly spending money upon repairing that house. His children resided for some part of their lives in Goa and one of them appears to have been brought up there with the idea of being ordained a priest. Subsequently he gave up the priesthood and took up a lay profession in Karachi. Still these are all points to be considered in judging of the probable truth or otherwise of the evidence given as to the actual declarations of the deceased himself.

Here we have for the defendants, who opened upon this point, the evidence of defendant No. 1 himself,

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followed by eight witnesses, four of whom are Parsees, two are Hindus and two Goans. And the gist of this evidence is that at any rate during the latter years of his life, Pascoal Pinto not once but many times declared to these witnesses that he had no desire whatever to return to Goa, that his life had been spent in Bombay, that all his interests were in Bombay, that his business was there, and that he felt that if he abandoned his business and returned to Goa, he would very soon die. Now, it is to be observed that the inferences drawn from protracted residence are always liable to be explained by sufficient cause being shown (a cause compatible with retaining an intention to return) for remaining so long out of the domicile of origin. As, for example, where a man is engaged, as the deceased was engaged, upon a fairly profitable business, so long as his residence out of the domicile of origin was conditioned merely by his desire to carry on that business and make a competence out of it, no matter what the length of that residence might be, no inference of any value can be drawn from it in favour of a deliberately formed intention to abandon the domicile of origin. This consideration has been expressly provided for by the Indian Legislature in section 10 of the Indian Succession Act. So that the case would always be weak where the length of residence out of the domicile of origin was fully occupied in the conduct of trade or business. If the business had been concluded some years before Pascoal Pinto's death and notwithstanding that, he had continued to reside and live upon his gains in Bombay, then it could have been inferred with tolerable certainty that at no time had he ever intended to return to Goa. But that was not the case here. He died before concluding his business, and there is evidence, as I shall presently show, that shortly before his death at any rate he was

contemplating a return to Goa. Nevertheless I have to consider the value of the evidence of actual declarations.

Now, the first of these witnesses, neglecting for the present the defendant No. 1 himself, is one Chhotalal Jekisondas. It is very difficult to see why this, or for that matter any of the other witnesses who have come forward to depose in defendant No. 1's favour, should care to take the trouble to come to Court and deliberately perjure themselves. Only two of them belong to the same nationality as the deceased, and these two are perhaps the least important, viz., Abel Braganza Pinto and Camillo D'Souza. This witness Chhotalal Jekisondas was once a solicitor's managing clerk and later became a pleader of this Court. He appears to have been on terms of intimacy with the deceased Pascoal Pinto during the latter part of his life. Pinto consulted him on legal matters and used to ask him to draw up notices and do other small legal jobs for him. He also drew the last will and testament of Pascoal Pinto in 1909 in which Pascoal Pinto is described as Portuguese inhabitant of Bombay. I attach little or no importance to such a description in a will so drawn, because I do not suppose that Jekisondas' attention was drawn to any such question as that of domicile and he would probably have followed the ordinary forms in use in Bombay in such cases. Nor indeed would it necessarily follow from the words employed that Pascoal Pinto meant to do more than state the simple fact, viz., that he was of Bombay at the time, and to go further and renounce his original domicile of origin by such a declaration. But this witness with all the rest is positive that on many occasions during the years of his intimacy with Pascoal Pinto the latter frequently said to him that he had nothing more to do with Goa and that his desire was to remain permanently in Bombay.

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To the same effect is the evidence of the next witness Panthaki, generally known by his trade name of Katrak. He has a soda-water factory in the same part as the coach-factory of Pascoal Pinto and appears to have been on very friendly terms with him for many years. It is urged against all these witnesses that their story is absurd on the face of it; that it is most unlikely that they would have constantly urged Pascoal Pinto to give up work and retire to Goa and he as constantly should have repeated to them that he had nothing whatever to do with Goa and meant to live and die in Bombay. After Katrak we have the evidence of Dadina, a highly respectable and educated gentleman whose word seems to be beyond question. He, however, was only acquainted with Pinto for about a year or at the most two years before his death; but his evidence is very important as showing that even at that late period Pinto's intention of living and dying in Bombay had remained unshaken. Dadina says that as late as 1914, when Pinto's health was beginning to fail he suggested to him a return to Goa, but Pinto would have none of it; and Dadina then proposed that he should give up his business and seek to improve his health by taking a house at Versova. This seems to have appealed to Pinto at the time but the scheme fell through as he was unwilling to pay the rents demanded by landlords in that locality. Still, if this be true and if Pinto really contemplated passing his closing years at Versova, that is consistent with the story told by the other witnesses for the 1st defendant that he did not intend to end his days in Goa during the last two or three years of his life. No attempt was made to discredit this witness; but it was probably because his evidence does not carry the proof of any express declaration back to the date which is really important, namely, the date of the deceased Pinto's marriage with plaintiff

in 1903. We come now to the witness, Lelinwalla, who professes to have held some kind of conversations with the deceased at least as far back as the date of his marriage with the plaintiff. Lelinwalla is an old man and a rival coach-builder but he seems to have been on very good terms with the deceased Pinto. And he says that he frequently suggested to him that he had much better give up his work now that he was growing old and retire to his native land but Pinto always declined to entertain any such idea saying that he would die if he stopped work and that he intended to end his days in Bombay. Very little could be said against witnesses of this kind except the general criticism that they may have some covert interest in the success of the defendant and the story that they have to tell is so easy and simple that they need not fear detection even if every word is perjured. But that kind of criticism can hardly apply to a man like Dadina or even Panthaki and Seervai and Lelinwalla. It is quite likely that both Lelinwalla and the Hindu witness, Govindji Pillaji, have stretched a point or two at the defendant's wish so as to carry their recollection back to a point before the marriage of Pinto with the plaintiff. It seems to me at least questionable whether either Lelinwalla or Pillaji can really recollect that the first of these conversations just happened before the death of the deceased's first wife and therefore of course necessarily before his marriage with the plaintiff. Nor do I really attach very much importance to a point which, I suppose, the defendant thought must be got over by evidence of this kind. After Lelinwalla we have the evidence of Seervai and that is important in one particular, because while he generally confirms the other witnesses as to the nature of the declarations of intention, frequently made to him by the deceased Pinto, he puts in one little characteristic touch of his

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own. He said that once when he was chaffing the deceased Pinto about his never riding in a carriage himself Pinto said: "Well, one day at any rate I shall ride in my carriage and pair to Matunga." That means that he intended to be buried at Matunga, and if he really said it and really meant it, it would imply that he had at that time made a deliberate choice and made Bombay his permanent home. The witness, Govindji Pillaji, is another old witness like Lelinwalla who professes to recollect declarations of intention made by the deceased going back much further than those made within the hearing of other witnesses. He is a man dealing in sheet iron with his works in the same oart as the deceased's coach building factory, and no reason is suggested why he should interest himself in this case or come forward to give perjured evidence in favour of defendant No. 1. Then, there is the witness, Abel Braganza Pinto, from Goa, whose evidence is chiefly important because, in a conversation, he says he had, apparently recently, with the deceased Pascoal Pinto on the subject of his will, Abel Braganza Pinto says that he reminded Pascoal Pinto that being a Portuguese subject the disposition of his will would be invalid under the law of that country, but that Pascoal Pinto said to him that he had become a British subject and had nothing to do with the law of Portugal. Now, if that be a true report of what passed, confirmed by the wording of the will, it would be conclusive evidence not only of what his intention was but what it all along had been. I do not attach much importance to the evidence of Camillo D'Souza, the baker, and I think it is unnecessary to dwell upon it.

Now, in addition to this oral evidence, I should mention that two of the members of Pascoal Pinto's family, that is to say, his first wife and one of his sons, died in Bombay and were both buried in the cemetery

at Dharavi. He purchased a grave on both occasions and it is suggested by defendant No. 1 that a necessary inference arises from this that he desired himself to be buried, when his time came, in his first wife's grave. And the evidence of the witnesses, I have already mentioned, sometimes goes the length of saying that they heard him express that intention or desire. Standing by itself, the purchase of these graves would not give rise to a very strong inference that Pascoal Pinto had formed the intention of renouncing his domicile of origin and acquiring a Bombay domicile in place of it, because the evidence is that these graves are for periods of two years and unless purchased may be re-opened and used for the interment of other corpses. So that it was very natural that any man possessed of sufficient means would desire to preserve the remains of those dear to him free from the risk of being thus disturbed after so short a period as two years, and the fact that Pinto not only bought his first wife's grave, but that of his son and that the cost of a grave is not more than Rs. 50, would certainly go far to reduce the value and cogency of any inference to be drawn from these facts alone.

On the other hand, we have the evidence of the plaintiff supported by six Portuguese witnesses, all of whom declare that at any rate during the last two or three years of his life and particularly at the time of his last illness, the deceased Pascoal Pinto had expressed to them his desire to hand over his business to one of his sons, settle up all his affairs in Bombay and retire for the rest of his days to his property in Goa. The evidence also relates to his sending the plaintiff herself to Goa in April 1915 for the sole purpose of repairing this house and making it fit to be the final residence of Pascoal Pinto and herself. I think that so much of the evidence for the plaintiff is probably true. I think she

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was sent to Goa in April and Pascoal Pinto gave her money to spend on repairing the house. Her version supported by that of Resurrection dos Santos, is that she was given Rs. 100, in cash, when she left Bombay for Goa; that Rs. 50 were sent her by registered letter; and that Rs. 100 were sent her by the hand of this Resurrection dos Santos when he himself went to Goa a short time afterwards. She was also authorized to collect some Rs. 19 in Goa. So that in all she is supposed to have spent about Rs. 270 upon the house. But the rest of the evidence of these witnesses is of little importance, I mean so much of it as professes to report declarations of intention made towards the close of his life by the deceased Pinto. For, as I shall show in a moment, I have very little doubt that when he found his end drawing near his thoughts naturally turned to the land of his birth and he may have felt at such a time, as in all human probability he would, a sense of home-sickness and desired to return and end his days in his native land.

But I think that the rest of the evidence, which I have summarized, relating to the actual declarations so repeatedly made by Pascoal Pinto during many years of his life, taken in conjunction with the undisputed facts, would fully warrant me in coming to the conclusion that between the years, I will not say of 1858, because he must have been a boy then, but let me say 1865, when he had attained majority, and 1913, when his health began finally to give way, he had taken up a habitation in Bombay meaning it all that time to be his fixed habitation or to use Lord Halsbury's phrase "his permanent home." That finding amounts to this, that at any time between 1865 and 1913, Pascoal Pinto had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa.

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I do not doubt that had he lived a few years longer he would have divested himself of that domicile of choice and returned to his native land, passing the last years of his life in his own house there and so reverting to his domicile of origin. Time was not given him for this. But it is quite likely that he intended, after having had the house repaired, to return to it when the monsoon was over but his last illness overtook him in May and he died in June. At that time I am ready to believe that he had the intention of divesting himself of his domicile of choice and thereby reviving by operation of law his domicile of origin had that intention only been accompanied by the requisite fact, that is, the abandonment of his domicile of choice. It is admitted that he never did abandon what I have now found to be his domicile of choice in Bombay. Whatever, then, his intention may have been, as deposed to by the witnesses for the plaintiff, the law of the matter is clear. The domicile of choice, namely, Bombay, supersedes the domicile of origin, and the making of his will and all other matters, governed by the Indian law of succession, are to be determined as though Pascoal Pinto had all along, from the year 1865 to the time of his death, been a British subject domiciled in Bombay.

That, I think, will dispose of the whole case since I do not understand that any part of the plaintiff's claim or that put forward by defendant No. 3 is maintainable except upon the supposition that at the date of Pascoal Pinto's marriage with the mother of defendant No. 3 in 1871 or with the plaintiff in 1903 his domicile of origin persisting, he was a Portuguese subject and governed by the law of Portugal.

I have come to my conclusion upon the acquisition of a domicile of choice not upon direct evidence going so far back as the date of Pascoal Pinto's marriage with

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the mother of defendant No. 3 or depending much upon the evidence actually relating to a period before the marriage of Pascoal Pinto with the plaintiff. It would hardly be possible in cases of this kind to bring forward evidence of actual declarations made so far back as 1871, nor would any Court be inclined to believe oral evidence of that kind if it was tendered. But finding all the facts to be consistent with the later declarations it seems to me not only to be logically justifiable but almost necessary to conclude that the intention had existed throughout the whole period of the long-drawn-out residence here.

I must, therefore, find upon this issue in favour of defendant No. 1 and against the plaintiff and defendant No. 3.

The suit will now be dismissed with all costs.

NOTE.—The other cases cited and considered were:—*Bempde v. Johnstone*⁽¹⁾; *Marsh v. Hutchinson*⁽²⁾; *Attorney-General v. Kent*⁽³⁾; *Munro v. Munro*⁽⁴⁾; *Cockrell v. Cockrell*⁽⁵⁾; *Hodgson v. De Beauchesne*⁽⁶⁾; *In re Steer*⁽⁷⁾; *Lord v. Colwin*⁽⁸⁾; *In the Goods of Raffanel*⁽⁹⁾; *Moorehouse v. Lord*⁽¹⁰⁾; *Drevon v. Drevon*⁽¹¹⁾; *Jopp v. Wood*⁽¹²⁾; *Udny v. Udny*⁽¹³⁾; *Brunel v. Brunel*⁽¹⁴⁾; *Douglas v. Douglas*⁽¹⁵⁾; *Hamilton v. Dallas*⁽¹⁶⁾; *King v. Foxwell*⁽¹⁷⁾; *Miller v. The Administrator-General of Bengal*⁽¹⁸⁾; *Doucet v. Geoghegan*⁽¹⁹⁾; *In re Patience*⁽²⁰⁾; *Chalmers v.*

(1) (1796) 3 Ves. Jun. 198.

(2) (1800) 2 Bos. & P. 226.

(3) (1862) 1 H. & C. 12.

(4) (1840) 7 Cl. & F. 842.

(5) (1856) 25 L. J. Ch. 730.

(6) (1858) 12 Moo. P. C. C. 285.

(7) (1858) 3 H. & N. 594.

(8) (1859) 28 L. J. Ch. 361.

(9) (1863) 32 L. J. P. & M. 203.

(10) (1863) 10 H. L. C. 272.

(11) (1864) 34 L. J. Ch. 129.

(12) (1865) 34 L. J. Ch. 212.

(13) (1869) L. R. 1 H. L. (Sc.) 441.

(14) (1871) L. R. 12 Eq. 298.

(15) (1871) L. R. 12 Eq. 617.

(16) (1875) 1 Ch. D. 257.

(17) (1876) 3 Ch. D. 518.

(18) (1876) 1 Cal. 412.

(19) (1877) 9 Ch. D. 441.

(20) (1885) 29 Ch. D. 976.

Wingfield⁽¹⁾; *Hill v. Administrator-General of Bengal*⁽²⁾; *De Nicols v. Curlier*⁽³⁾; *De Nicols v. Curlier*⁽⁴⁾; *De Nicols v. Curlier*⁽⁵⁾; *Winans v. Attorney-General*⁽⁶⁾; *Bonnaud v. Emile Charriol*⁽⁷⁾.

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Solicitors for the plaintiff: Mr. C. P. D'Cunha.

Solicitors for the defendants: Messrs. *Captain & Vaidya*.

Suit dismissed.

G. G. N.

(1) (1887) 36 Ch. D. 400.

(4) [1898] 2 Ch. 60.

(2) (1896) 23 Cal. 506.

(5) [1900] A. C. 21.

(3) [1898] 1 Ch. 403.

(6) [1904] A. C. 287.

(7) (1905) 32 Cal. 631.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

LAXMIBAI AND OTHERS (PLAINTIFFS) v. HUSSAINBAI AND OTHERS (DEFENDANTS).^{*}

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August 22.

Commissioner—Accounts—Power of the Commissioner to decide questions of law in the taking of accounts—High Court Rules (Original Side), Rules 397, 399—Rules of the Supreme Court in England, Order LV, Rule 69—Redemption suit—Motion for directions to the Commissioner.

The Commissioner to whom a suit is referred by a Judge on the Original Side of the High Court is entitled to decide questions of law which may arise while taking the accounts. It is not open to any of the parties to the reference to ask the Judge to give his opinion on questions of law which have arisen in the taking of accounts. The parties objecting to the decision of the Commissioner should proceed in the ordinary course by filing exceptions to his report.

Per MACLEOD J.—I must not be taken as holding that the Court, once a reference has been made to the Commissioner, loses all control over the proceedings until the Commissioner has made his report. There may be cases in which the Court may find it necessary to withdraw the proceedings from

* O. C. J. Suit No. 347 of 1912.