ORIGINAL CIVIL.

Before McNair J.

THOMAS EDMUND TEIGNMOUTH SHORE

v.

HUGH CAREY MORGAN.*

1935

Jan. 28, 29 ;
Feb. 5.

Domicil—Domicil of Origin—Abandonment—Acquiring new domicil—Evidence—Onus of proof.

Earnest Faulkner Brown, who was born of British parents in England in 1854, came out to India in December, 1880, to serve as a member of the Oxford Mission Brotherhood of the Epiphany, and, except for visits to England on leave for about six months at a time in the years 1888, 1894, 1901, 1907, 1911, 1914 and 1920, he lived in Calcutta, working as a missionary, continuously for fifty-two years, until his death in January, 1933. By his will, dated the 27th of April, 1932, he made certain bequests to religious and charitable uses, which would be void under section 118 of the Indian Succession Act, 1925, if he were domiciled in India at the time of his death. He appointed as executors of his will, Harry Faulkner Brown and Reginald Massey Brown, both residents of England.

The Oxford Mission Brotherhood was founded at Oxford in 1880 and E. F. Brown, who was one of its founders, was chiefly responsible for the drawing up of its constitution. The objects of the Brotherhood were, *inter alia*, to remain in intimate contact with the people of Bengal and to bring the Kingdom of Christ amongst the more educated natives of the province. The constitution made it obligatory on every member of the Brotherhood to strive to attain these objects, by working throughout his life in Bengal, unless his health broke down or he wished to leave the Brotherhood.

Apart from two occasions, one in 1894, when the testator had contemplated leaving the Brotherhood, and the other in 1920, when he was in England, and it was doubtful whether his health would permit of his return to India, he had always intended to live, work and die in India.

Held, that whether a man has abandoned his domicil of origin and acquired a new domicil would depend on his residence and intention.

Udny v. *Udny* (1) and *Douglas* v. *Douglas* (2) referred to.

Held, further, that the onus lies on a person, who alleges a change of domicil, to prove it.

Held, also, that at his death the testator had an Indian domicil by choice and was governed by the Indian Succession Act, 1925.

ORIGINAL SUIT.

The material facts are fully set out in the judgment.

*Original Suit No. 2113 of 1933.

(1) (1869) L. R. 1 H. L. Sc. 441. (2) (1871) L. R. 12 Eq. 617.

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Pugh (with him *Ormond*) for the plaintiff. The testator's duties as a priest kept him in India; if he could not continue as a priest he would have gone back to England where he had his domicil of origin. See section 10 of the Indian Succession Act. The residence must not be enforced, but must be one of free choice to effect a change in domicil. If intention to change the domicil of origin was uncertain or was not proved, the domicil of origin adhered. See *Attorney-General* v. *Yule* (1) and *Winans* v. *Attorney-General* (2). If there was no explanation of long residence in a country, that might lead to an inference of intention to change domicil, but in this case the testator was in India in discharge of his office. It does not matter what the testator himself had thought; what matters is that he did not consciously abandon his domicil of origin. The fact that he appointed only English executors of his will, although he had property in India showed that he expected to die in England.

S. N. Banerjee (*Sr.*) and *Clough* for the defendants. Here it was a question of fact whether the testator was domiciled in England or in India. It is clear from the evidence that the testator intended to live indefinitely in Bengal and to die here. See *Santos* v. *Pinto* (3), *Doucet* v. *Geoghegan* (4), *Douglas* v. *Douglas* (5) and *Wright* v. *Wright* (6).

Cur. adv. vult.

McNAIR J. In this suit, the plaintiff, who is the Superior of the Oxford Mission Brotherhood of the Epiphany, sues Hugh Carey Morgan, the administrator in India, with the will annexed, and also Harry Faulkner Brown and Reginald Massey Brown, the executors in England of the said will, for a declaration that the Rev. Ernest Faulkner Brown died domiciled in the United Kingdom, and that the

(1) (1931) 145 L. T. 9.
(2) [1904] A. C. 287.
(3) (1916) I. L. R. 41 Bom. 687.
(4) (1878) 9 Ch. D. 441.
(5) (1871) L. R. 12 Eq. 617.
(6) (1930) I. L. R. 58 Calc. 259.

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charitable bequests in his will, including bequests to the Oxford Mission, are good and valid, and that the bequest in favour of the Oxford Mission was intended to refer to the Oxford Mission Brotherhood of the Epiphany and its members, for a decree for administration of the Indian or, if necessary, of the whole estate of the testator, and for necessary directions, accounts and enquiries.

The testator Ernest Faulkner Brown, who was generally known as "Father Brown", was born at Chester in England of English parents and died in Calcutta on the 31st January, 1933, leaving assets in India of the value of Rs. 1,15,000 and assets in England of the value of about £11,500.

The Oxford Mission Brotherhood of the Epiphany is a self-governing religious community, now of the Indian Church, but formerly of the Church of England. It conducts missionary work at 42, Cornwallis Street, Calcutta, and holds property and investment through trustees appointed by deed and resident in England.

The Oxford Mission in Calcutta was founded in Oxford in the year 1880 for the purpose of maintaining, supporting and assisting the Oxford Mission Brotherhood of the Epiphany. It acts as agent in England of the Brotherhood but does not exercise control over its actions in India.

Father Brown, was the son of natural born British parents and was born at Chester in England on the 7th March, 1854. He came out to India in December, 1880, and completed over 52 years of service in this country. He was one of the founders of the Oxford Mission, and was in charge of their boys' school until 1929. For some years he was a Canon of Calcutta. He was a familiar figure in Calcutta, and counsel and witnesses refer to the great work that he did during his career in this country and to the great affection that was felt for him alike by all classes of the community and by all races and creeds.

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During his 52 years' service in India, Father Brown went on leave for six months at a time in 1888, 1894, 1901, 1907, 1911, 1914 and 1920 and we have it in evidence that ordinarily members of the Mission go home to England on six months leave once in six years, but this leave depends largely on the circumstances prevailing at the time when it is due, that is to say, on which members of the Brotherhood are available for service and the need for individual members to be absent on sick leave.

In 1915, Father Brown is said to have made a will in favour of the Oxford Mission, but details of that will are not known.

In 1920, he went home suffering from *elephantiasis*, which he had contracted during his work in East Bengal. He returned to Calcutta in 1922, after which date he never returned to England.

The will, which is now in dispute, was dated the 27th April, 1932.

The testator described himself as "of the Oxford "Mission, 42, Cornwallis Street, Calcutta." He divided his estate into two portions, one being his property in India, and the other being his property in the United Kingdom. He appointed his brother, Harry Faulkner Brown, and his cousin, Reginald Massey Brown, his executors and trustees and bequeathed to them all his real and personal property in India upon trust to pay his funeral and testamentary expenses within the Empire of India and all death duties payable to the government of such empire, and to convert and sell such part of his Indian estate as was not in ready money and to hold the proceeds of sale and conversion in trust for the Oxford Mission in Calcutta, at present carrying on its work at 42, Cornwallis Street, Calcutta, and he declared that the receipt of the Superior of the Brotherhood for the time being of the said Mission should be a good discharge to the trustees for all moneys paid to him by them and that the trustees should not be concerned to see to the application of such money.

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He disposed of his estate within the United Kingdom and elsewhere outside India in favour of his trustees upon trust to convert, sell and pay the duties payable within the United Kingdom and elsewhere outside India, and his funeral expenses if he died within the United Kingdom or elsewhere except within the Empire of India, and, after payment of certain legacies in favour of named persons and institutions, to stand possessed of the residue in trust for his niece, Mrs. Ethel Quin.

He declared further that the moneys held for him in the Calcutta Branch of the National Bank of India, Ltd., should be part of his property situate within the Empire of India and empowered his trustees to decide whether a particular property belonged to his English or Indian estate.

In the final paragraph of his will, the testator made the following declaration. "I hereby declare "that, in the event of the bequest of my property "situate within the Empire of India hereinbefore "contained becoming void under the provisions of "section 118 of the Indian Succession Act, 1925, or "otherwise, this property within the Empire of India "shall fall into and form part of the residue of my "estate bequeathed by this my will and go and be "distributed in like manner."

The manner in which this will came to be made appears from the evidence on commission and from letters which were written at the time. Early in 1931, Mrs. Harry Brown, the testator's sister-in-law, wrote suggesting a meeting in Ceylon. That meeting eventually took place at Kandi in February, 1932, and the testator later referred to it as one of the happiest times in his life. Mr. and Mrs. Harry Brown came from England while the testator went by sea from Calcutta.

The brothers discussed the testator's will and the testator set down on paper the rough lines on which

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he proposed to dispose of his property. In that document he stated:—

My estate consists entirely of shares, which I divide into two nearly equal parts: (*a*) shares whose certificates are held by the National Bank of India, Ltd., Bishopsgate, London, and (*b*) shares whose certificates are held by the Calcutta Branch of the same bank. I bequeath (*b*) to the Oxford Mission in Calcutta, which has been the chief interest of my life.

With regard to (*a*) certain legacies and annuities were mentioned, and the residue was to go to his niece, Mrs. Quin.

On the 1st of March, 1932, the testator's brother wrote from Kandi to a Mr. Williams, a solicitor of Chester:—

I have another piece of business for you relating to the new will for my brother Ernest. Unless you are well up in the law of domicile you had better read a bit. I mention the matter as you will be receiving documents, which you may not understand, but you need not actually do anything until we meet. Before you get this we shall have turned our noses homeward.

The will was drawn up by Mr. Williams, and, on the 15th April, 1932, he sent it to the testator with a covering letter in which he stated:—

The will, I hope, carries out all your wishes, but, even if it does not quite do so, it would be better for you to execute the will and return it to me. When returning the will to me duly executed and dated you can, if necessary, let me know of any alteration you may wish to have made, and I will send you a new will so altered. The Indian Succession Act of 1925, section 118 (copy enclosed) provides for the deposit of a will bequeathing any property to religious or charitable use, and the will must be deposited at Somerset House. This will be done as soon as I receive it.

On the 28th April, 1932, the testator wrote to Mr. Williams:—

I return my will duly executed and dated. There is one point I wish to raise. It appears that, according to the Indian Succession Act, the legacy to the Oxford Mission will lapse in the case of my death within the year. But this same provision was in my former will in 1915. So that it has already existed for seventeen years and the object of the regulation has been amply fulfilled. Can this difficulty be met in any way? My age is now seventy-eight and, though I am in excellent health, it is quite within the bounds of probability that I may not live for another year.

On the 27th May, 1932, Mr. Williams wrote acknowledging receipt of the will and saying that it would be deposited forthwith as required by

section 118 of the Indian Succession Act. "That "section," he wrote—

> provides not only that the will must be executed twelve months before death, but that it must also be deposited within six months after its execution. Both these conditions must be complied with, and the second one not having been complied with in the case of your former will, I know of no way in which the difficulty you refer to can be met, except for you to live for a year after the 27th of April last—a requirement which we all hope you will fulfil with a very ample margin.

The testator replied to this letter:—

> Many thanks for your letter in which you refer to the charitable bequests. It strikes me I must have been let down by Messrs. G & Co. Now I must try to live till April, 1933. If I do not, I suppose the money becomes part of my residuary estate and so will go to Mrs. Quin.

On the 4th August, 1932, Mr. Williams wrote to the testator:—

> You are right in thinking that if you do not survive until 27th April, 1933, the charitable bequests will fall into your residuary estate and will, therefore, go to Mrs. Quin.

From this correspondence, it is clear that the brothers discussed the manner in which the testator wished to dispose of his property, and the testator had made it perfectly clear that he wished his estate to be divided into two more or less equal portions, one half of which was in England, and the other half in India; the Indian portion to go to the Oxford Mission, and the English portion, after providing certain legacies to relations and charities, to go to his niece, Mrs. Quin.

It was apparently assumed by the solicitor and the testator's brother that the testator had an Indian domicile and that, therefore, the provisions of the Indian Succession Act were applicable to him. It does not appear that either the brother or Mr. Williams ever enquired from the testator what actually he considered to be his domicile. The solicitor gave his interpretation of section 118 of the Act, which he thought required the will to be sent to England in a particular way and deposited at Somerset House. This advice was obviously erroneous.

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The question now arises, what was the domicile of the testator at the time of his death. If he were domiciled in England, the charitable bequest would be valid. If he were domiciled in India, the provisions of section 118 of the Indian Succession Act have not been complied with and the charitable bequests, more particularly (so far as we are concerned in this case) of the Indian estate in favour of the Oxford Mission fail.

It is clear that the testator, who was born of British parents in England, had a domicile of origin in England. The question I have to determine in this case is, whether on the facts before me the testator still retained that domicile at his death, or whether he had chosen to abandon it by substituting a domicile of choice for the domicile of origin. "The "acquisition of a domicile of choice is a legal inference "which is drawn from the concurrence of evidence "of the physical fact of residence with evidence of "the mental fact of intention that such residence "shall be permanent." Here the burden lies on the defendants to prove definite intention on the part of Father Brown to abandon his domicile of origin and to acquire a new domicile.

The whole of the testator's property was movable property and section 19 of the Indian Succession Act provides that, if a person dies leaving movable property in British India, in the absence of proof of domicile elsewhere, succession to the property is to be regulated by the law of British India.

The testator's birth certificate has been produced, and there can be no doubt that his domicile of origin was in England.

Section 9 of the Succession Act provides that the domicile of origin prevails until a new domicile has been acquired. The onus is, therefore, on the defendants to show that he had abandoned his domicile of origin and acquired a new domicile.

Section 10 of the same Act provides 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, but there follows an explanation to the effect that a man is not to be considered as having taken up his fixed habitation in India merely by reason of his residing there in his Majesty's Civil or Military or Air Force service, or in the exercise of any profession or calling.

Section 11 of the Act provides a special mode of acquiring domicile in British India by depositing in some office in British India a declaration in writing of the desire to acquire such domicile.

It is admitted that the testator never made any such declaration.

There is ample evidence in the present case of physical residence on the part of the testator. It is not disputed that he had spent fifty-two years of his life in India, and that since 1922 he had remained in this country without ever going to England even on leave. But physical residence is not enough. The real question in the case is whether this prolonged residence in India was accompanied by an intention on the part of the testator to choose India as his permanent home in preference to the country of his birth.

It is contended that his residence since 1922 was necessitated by reason of the testator's infirmity. In addition to *elephantiasis*, he suffered from a form of *arthritis* which made it pratically impossible for him to bend his knees.

Members of the Mission have given evidence that in conversation Father Brown frequently stated that he was prevented from going to England by his fear of the difficulty, if not of the impossibility, of getting up the ship's gangway. Curiously enough, Father Brown went to Ceylon by steamer, and none of the Brotherhood seems to know how he embarked and disembarked at Calcutta and Colombo.

I have already set out the facts which show the duration of the testator's residence in India. The

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more difficult task remains to decide whether Father Brown intended his residence in India to be permanent.

Evidence of the testator's brother, Harry Faulkner Brown, one of the executors, who met him in Ceylon, has been taken on commission, also the evidence of his wife who accompanied him to Ceylon, and of Mr. Williams, the solicitor, who drew up the will. Harry Faulkner Brown, the executor, refers to the letter he wrote to Mr. Williams asking him to draw up the will. He says he raised the question of domicile because he thought it was open to contention as to whether the testator had changed his domicile. On his return to England, he discussed his brother's will with Mr. Williams, but he gave him no instructions in regard to domicile, and he has no recollection of discussing the question of domicile with Mr. Williams. Mrs. Brown expresses an opinion that the testator was physically incapable of going to England, and she did not think that he wanted to do so. She also says that he was deeply interested in his work and eager to die in harness. Her evidence does not appear to me of much value, for it conveys the impression that she had formed a definite opinion, which she states, but I am unable to discover on what facts that opinion is based.

Mr. Williams' recollection differs from that of Mr. Brown as to whether they discussed the question of domicile. He says that when he drafted and despatched the will to the testator he had no doubt that the testator was domiciled in India. The reasons he says were "that it was a matter of common "knowledge in clerical circles that Father Brown had, "to an exceptional degree, devoted himself to his "work in India and cut himself off from his friends." Obviously this is not evidence. He admits that he never pointed out to Father Brown that section 118 of the Indian Succession Act did not apply to persons domiciled in England, and it is clear from his evidence generally that he had assumed from the beginning that the testator's domicile was Indian.

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Father Shore and two other members of the Brotherhood of the Oxford Mission, Father Holmes and Father Douglas, who knew the testator intimately, have given evidence as to the facts within their knowledge; their evidence is that in the course of conversation Father Brown more than once discussed the question of going to England, but that he expressed his unwillingness owing to his physical infirmity and possibly also owing to the fact that he was a very bad sailor.

A matter which has some bearing on the question whether Father Brown knew something of the legal import of domicile, and which may, therefore, have some bearing on his intention, was the death in Calcutta of Bishop Lefroy, who was then the Metropolitan. On his death, the question of his domicile was raised and of its effect on his will. Father Shore says that, while discussing the matter with Father Brown, they were both somewhat naturally indignant with the attempt to divert legacies, intended for the diocese, to Bishop Lefroy's relations in England. Father Shore says that they realised that in Bishop Lefroy's case the important point was whether his domicile was in England or in India. Father Holmes says that they discussed the case of Bishop Lefroy most openly and freely, because they believed it had a great bearing on their own position. "I understood our position to be", he says, "that unless we distinctly renounced our "domicile, it would remain what the position was into "which we were born, and this Father Brown under-"stood thoroughly." In cross-examination, when asked, if he and Father Shore "understood the "importance of the question in Bishop Lefroy's case" he says—

> We knew, yes. The importance was, as to whether the bequest left to some charitable institution would be valid, unless the will was registered somewhere in India. If you are domiciled in India, you must register your will. If in England, you come under the English law and you do not have to register your will.

The evidence is that Father Brown had realised that there was no need to deposit a will unless he was

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domiciled in India and he says "We all believed that "that question had been settled for us for ever by that "case".

It is clear from this evidence that the testator had considered the question of domicile and that he realised that if he were domiciled in India his will must be deposited with the proper authority, and within the stipulated time, if any bequest to charity was to be valid. There is also a suggestion that he was under the impression, as were the Brotherhood, that in order to change the domicile of origin there must be some sort of declaration to that effect. This, of course, is not so.

In *Ross* v. *Ellison* (1), Lord Buckmaster says :—

> Declarations as to intention are rightly regarded in determining the question of a change of domicil, but they must be examined by considering the person to whom, the purpose for which, and the circumstances in which, they are made and they must further be fortified and carried into effect by conduct and action consistent with the declared expression.

Some evidence of intention is afforded by the constitution of the Oxford Mission. One of its objects was—

> to remain in intimate contact with the people of Bengal, and to bring the Kingdom of Christ especially amongst the more educated natives of this province, and so long as the Mission continues, a member of the Brotherhood is expected to attain this object by working throughout his life in Bengal unless his health breaks down, or he wishes to leave the Brotherhood.

It is in evidence that Father Brown was one of the founders of the Mission, and that the constitution was to a great extent laid down by him, and it is admitted that, apart from the exceptional cases of a breakdown in health, or leaving the Brotherhood, a Brother was expected as part of his obligation to remain permanently in India and work for the objects of the Mission in Bengal.

Father Shore states that, in 1894, Father Brown had contemplated leaving the Oxford Mission and joining another Society in England. And again, in 1920, he was very doubtful whether or not he would

(1) [1930] A. C. 1, 6-7.

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return to India. Apart from these two exceptions, Father Shore admits that the testator's whole life was given to Bengal, and especially to Calcutta, and his intention was to live, work and die amongst the people of this country. And he says, in answer to the question as to whether Father Brown meant to make Calcutta his permanent home, apart from the two occasions in 1894 and 1920, "he certainly meant "to spend the rest of his days in Calcutta, when he "returned on the last occasion". He was then asked: "From 1922 Father Brown's intention was to remain "permanently in Calcutta, with possibly an occasional "visit to England?" The answer was: "Yes". This evidence is important, particularly the evidence as to the constitution of the Brotherhood, for the framing of which Father Brown was largely responsible.

It was clearly his intention that those individuals, who took upon themselves the duty of spreading the Gospel and of living in intimate relationship with the people amongst whom they worked, should devote their lives to that service and carry on their work to that end, so long as health and strength permitted. His intention, Mr. Banerjee says, was shown by his life. "His motto was", he says, "come to India, live "in India, work in India and die in India." He spoke the language fluently, and identified himself with the lives of Indians of all classes and creeds, and his ideal was an ideal of service so long as his capacity for serving continued. It is true that no Brother was bound to continue to serve if his inclination lay elsewhere, but there is nothing to show that, except on the two occasions which Father Shore mentions, Father Brown ever intended to give up the life of service to which he had concentrated himself. It is admitted by both sides that Father Brown had devoted his life to service and that service was the essence of his life. As it is the ideal of the soldier to die for his country, so it is the ideal of members of this fraternity to devote their lives, even unto death,

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to the service of the cause which they have adopted. There is no doubt that Father Brown latterly expected to die in Calcutta. But Mr. Pugh contends that had he been prevented from carrying on his service, he would undoubtedly have returned to his native country. His residence here, it is said, was merely residence due to his profession or calling, which does not constitute the choice of a new domicile within the meaning of section 10 of the Indian Succession Act, any more than the exercise of a civil or military career or being engaged in a commercial venture in this country.

This argument, in my opinion, fails to take into consideration the real essence of an assumption of a domicile of choice, *viz.*, the intention. The man who does military service, or is in the civil service, or who comes out to a mercantile career, comes out with a fixed intention of serving here for a time, and at the end of that time there is, as a rule, an equally fixed intention to return and end his days in his country of origin. The constitution of the Oxford Mission is of a different nature. Those who undertake that service definitely undertake it (and such was the founders' intention) not for a period of years but for the period of their lives; it is a mission of self-sacrifice; but should there be any disinclination to continue, the constitution does not prevent a Brother from leaving this country and taking up other work for which he may consider himself better fitted. Similarly, if his health fail, it is obvious that his service can no longer be satisfactory. These appear to be the only reasons which were contemplated by Father Brown as reasons for which the Brotherhood would give up their service and residence in India and go elsewhere.

I have been referred to a number of cases, including the case of *Udny* v. *Udny* (1) and to the speech of Lord Westbury, which was quoted with

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

approval in *Haldane* v. *Eckford* (1), Lord Westbury said (2):—

> Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicil and not a definition of the term. There must be residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness : and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case so soon as the change of purpose, or *animus manendi*, can be inferred the fact of domicil is established.

In my opinion, the facts which have been established in this case do show a definite *animus manendi*, and the fact of domicile is established. Father Brown had spent the greater part of his life in India. He had founded a mission whose members devote themselves to work in India throughout their lives; that was undoubtedly his own intention, and it is apparently the intention of the other members who constitute the Brotherhood. It may be that on the two previous occasions, which have been mentioned Father Brown, had thought that he might be able to do useful work in some other sphere; but it is now known that after he came out in 1922 he expected to die in Calcutta, and in spite of his great infirmity, there is no doubt that he was to the best of his ability carrying out the ideal to which he was dedicated. The discussion of the question of domicile at the time of Bishop Lefroy's death shows that the matter had been present to his mind, and at the time when he made his will, and during the correspondence with the solicitor who drafted that will, the provisions of the Indian Succession Act were clearly before him, and he never at any time suggested that they would not be applicable to him because he had an English domicile. He was under the impression that if the advice which was given to him by Mr. Williams was correct the Mission could not benefit, as he wished it to. Several

(1) (1869) L. R. 8 Eq. 631. (2) (1869) L. R. 1 H. L. Sc. 441, 458.

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witnesses were asked if they or any of the Brotherhood belonged to the domiciled community in this country, and whether they were entered on the electorate roll of that community. Father Holmes, in his evidence, stated that, so far as he remembered, he had been put on all the three rolls, the Indian roll, the domiciled community roll and the European roll, and his vote was canvassed by all the three communities.

The question of domicile should not be confused with nationality, nor with civil status. The test is residence and intention. To effect a change of domicile there must be—

> An intention to settle in a new country as a permanent home, and that if this intention exists, and is sufficiently carried into effect certain legal consequences follow from it, whether such consequences were intended or not, and perhaps even though the person in question may have intended the exact contrary.

Douglas v. *Douglas* (1).

There can be no doubt that the testator's intention was to divide his property into two portions, and that he intended the property which was in India to go to the Mission, which he had founded, and to which he had devoted the greater part of his life. The evidence is clear that he had faith in his creation, that he loved the people and his work, and that he had striven throughout his life to further that work, and he wished that, after his death, the property which he had left in India should be devoted to the continuance of that work. It is difficult not to criticise the legal adviser in England who took upon himself the duty of carrying out the testator's intentions. His knowledge of Indian law is obviously negligible; in fact such knowledge could hardly be expected from a practitioner in an English country town. It is unfortunate that he did not realise his ignorance and insist that a local practitioner in India, familiar with the law by which Mr. Williams assumed that the testator was governed, should scrutinise the draft that had been prepared and give the testator the benefit of his special knowledge.

(1) (1871) L. R. 12 Eq. 617, 644.

There is no doubt that had he done so, a legal practitioner in India could have suggested to Father Brown methods by which his object could be achieved in conformity with the law of this country.

In my opinion, it has been established that Father Brown had chosen an Indian domicile; he was governed by the provisions of the Indian Succession Act, and the provisions of the will which direct that the Indian estate should be held in trust for the Oxford Mission in Calcutta are void owing to their failure to comply with section 118 of that Act. It has been established that the bequest in favour of the Oxford Mission in Calcutta was intended to refer to the Oxford Mission Brotherhood of the Epiphany and all its members. The question of domicile was by no means free from doubt and I consider that the Oxford Mission was justified in bringing this matter before the Court for adjudication. It would not have been safe for the executors to distribute the estate without getting directions from the Court. In the circumstances I direct that the costs of all parties as between attorney and client be paid out of the estate.

Suit dismissed.

Attorneys for plaintiff: *Leslie & Hinds.*

Attorneys for defendants: *Sandersons Morgans.*

P. K. D.