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Adoption-Domicile-Infants-Residence

ADOPTION—DOMICILE—INFANTS—RESIDENCE—The infant daughter of parents domiciled in X county was sent by her mother, after the death of her father, to live with appellants in Y county. The mother died a few days thereafter on May 16, 1930. On this same day the parents of the mother filed a verified petition for the adoption of said child in the circuit court of X county, and on June 2, 1930, an order of adoption was entered by said court.

Meanwhile the appellants had filed their verified petition in the circuit court of Y county on May 23, 1930, for the adoption of said child, and on that day an order of adoption was entered. On June 12, 1930, the aforesaid grandparents of the child who has procured the order of adoption in X county, filed a verified petition in the circuit court of Y county, asking said court to vacate its order of adoption of May 23, 1930. After hearing the evidence, the court of Y county did vacate its order on the ground that since the child was not a "resident" of Y county, the court there had no jurisdiction to enter an order of adoption. The statute in question reads as follows: "Any person desirous of adopting any child may file his petition therefor in the circuit court in the county where such child resides."[1] Appellants appealed after motion for a new trial was overruled. *Held,* judgment affirmed. The word "resides" as used in the statute refers to "domicile" of the child.[2]

The legal domicile of the child was obviously in X county. An infant not being *sui juris* is incapable of fixing or changing its domicile.[3] The domicile of an infant is that of its father during his lifetime, and at his death becomes that of the mother.[4] If both parents have died, the domicile last derived from them continues to be the domicile of the child until it reaches majority and effects a change thereof, or until said domicile is changed by law.[5]

The troublesome question is encountered in attempting to ascertain the intended meaning of the word "resides" as used by the legislature. Was

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[1] Burns' R. S. 1926, Sec. 913.

[2] *Johnson v. Smith,* Appellate Court of Indiana, March 11, 1932, 180 N. E. 188.

[3] *Warren v. Hofer* (1859), 13 Ind. 167.

[4] *In re Thorne* (1925), 240 N. Y. 444, 148 N. E. 630.

[5] See *Hiestand v. Kuns* (1847), 8 Blackf. (Ind.) 345; *Warren v. Hofer* (1859), 13 Ind. 167, and *Wheeler v. Burrows* (1862), 18 Ind. 14.

it intended to refer to the actual and technical "residence" of the child, or was it used as synonymous with legal "domicile"?

Bouvier defines "domicile" as "that place where a man has his true, fixed, and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning."[6] Of "residence" he writes as follows: "A residence is different from a domicile, although it is a matter of great importance in determining the place of domicile. The essential difference between residence and domicile is that the first involves the intent to leave when the purpose for which one has taken up his abode ceases. * * * If his intent be to remain, it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is his residence."[7] Thus it is apparent that the predominating feature in determining one's domicile is *intent.* As state in *In re Green's Estate,*[8] "residence is preserved by the act, domicile by the intention." While a person can have but one domicile at a time, he may have concurrently a residence in one place and a domicile in another.[9] He may have several residences at one time, but *only* one domicile.[10] The peculiar element that distinguishes domicile from mere residence is well emphasized by the statement that "domicile expresses the legal relation existing between a person and the place where he has, in contemplation of law, his permanent home,"[11] while residence is often used to denote mere temporary sojourn in a place. In view of these fundamental rules, it is obvious that although the domicile of the child in question was in X county, its residence was unmistakably in Y county where it was actually making its abode.

One writer has expressed the question of statutory interpretation as follows: "The word 'domicile,' although so often used and commented upon by our courts, is rarely to be met with in our constitutions or legislative enactments. 'Residence' is the favorite term employed by the American legislator to express the connection between person and place, its exact signification being left to construction, to be determined from the context and apparent object sought to be attained by the enactment. It is to be regretted that these lights are often very feeble, and that not a little confusion has been introduced into our jurisprudence by the different courts with regard to the exact force of this and similar words when applied to substantially the same subject-matter. 'Residence,' when used in statutes is generally construed to mean 'domicile.' * * * This is especially true with regard to the subjects of voting, eligibility to office, taxation, jurisdiction in divorce, probate and administration, etc."[12]

The Indiana cases substantiate the foregoing analysis. "Residence" as a qualification for voting privileges has been decided to refer to "domicile."[13] The word "inhabitant" as used in a section of the statutes

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[6] Bouvier's Law Dictionary, 3rd Revision, p. 915.

[7] *Idem.,* p. 2920. Also see *Shaefer v. Gilbert* (1890), 20 Atl. 434.

[8] 164 N. Y. S. 1063, 1073 (1917).

[9] *Croop v. Walton* (1927), 199 Ind. 262, 157 N. E. 275.

[10] See *Hayward v. Hayward* (1917), 65 Ind. App. 440, 115 N. E. 966.

[11] Jacobs on Domicile, Sec. 72.

[12] *Idem,* Sec. 75.

[13] *Maddox v. State* (1869), 32 Ind. 111. (This case is also of historical interest in so far as it considered the domicile of a master as being that of his infant apprentice.) *Quinn v. State* (1871), 35 Ind. 485.

regarding taxation[14] has been held to mean one "domiciled" within the state.[15] On the other hand, a statute providing that "Whoever kidnaps, or forcibly or fraudulently carries off or decoys from his place of *residence*, or arrests or imprisons any person, with the intention of having such person carried away from his place of *residence*, unless it be in pursuance of laws of this state or the United States, is guilty of kidnapping. * * *"[16] was for obvious reasons construed not to refer to the legal "domicile" of the kidnapped individual. The court said "the evident purpose was rather to provide against the kidnapping of a person from any place where he has a right to be, whether that be the place of his temporary sojourn or permanent domicile."[17] P. J. D.

CONSTITUTIONAL LAW—DUE PROCESS CLAUSE—Appellant is a Wisconsin corporation licensed to carry on the business of writing fire insurance in Minnesota. A fire insurance policy was issued to appellee's assignor by appellant which was in the standard form as required by a Minnesota statute, which provided that all insurance policies issued by fire insurance companies licensed to do business in Minnesota should contain a provision for determining by arbitration the amount of any loss (except total loss of building) when the parties fail to agree as to the amount. The statute provided for the method of selecting appraisors and an umpire by both parties and also made a provision applicable to the selection in case one party refused to take part. The decision by this board, unless grossly excessive, or inadequate, or procured by fraud, was by this statute made conclusive as to the amount of the loss but not as to the liability under the policy.[1] The insured's property was damaged by fire and a demand was made on appellant to have the amount of the loss determined by arbitration as provided for in the policy. Appellant refused to participate in the arbitration and appellee proceeded to have the arbitrators selected and the amount determined by the statutory method provided for in such a case. This suit was brought to recover the amount of the award. The appellant contends, and it is the single point relied upon, that so much of the statute as requires appellant to use the arbitration provision of the policy and makes the award thus found conclusive is a violation of the due process and equal protection of laws clauses of the 14th Amendment of the Constitution of the United States. This contention was rejected by the Minnesota Supreme Court[2] and an appeal was taken to the United States Supreme Court. *Held*, affirmed.[2a]

The Supreme Court of the United States has never attempted a precise definition of the term "due process of law" although the term has often

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[14] Burns' Ann. Stat. 1926, Sec. 14050.

[15] *Croop v. Walton* (1927), 199 Ind. 262, 157 N. E. 275 (wherein Martin, J., has made a comprehensive discussion of the problem of domicile and residence).

[16] Burns' R. S. 1894, Sec. 1988.

[17] *Wallace v. State* (1890), 147 Ind. 621, 47 N. E. 13.

[1] Mason's Minn. Stat. 1927, Secs. 3314, 3366, 3512, 3515, 3711.

[2] *Glidden Company v. Retail Hardware Mut. Fire Ins. Co. of Minnesota* (1930), 181 Minn. 518, 233 N. W. 310.

[2a] *Hardware Dealers Mutual Fire Insurance Company v. Glidden Company* (1931), 284 U. S. 151, 62 Sup. Ct. 69.