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## Conflict of Laws-Domicile-Residence

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## RECENT CASE NOTES

**CONFLICT OF LAWS—DOMICILE—RESIDENCE**—In an action under section 11247 to 11255, inclusive, Burns Ann. St. 1926, concerning the incorporation of towns, the facts show that many of the individuals casting votes opposed to incorporation lived in cottages situated within the territorial limits of the town and that these inhabitants had made statements that they had established their residence there. The cottages were of the ordinary lake front type, some even being without chimneys, and were used as dwelling places only part of the year. The evidence also shows that these citizens owned homes elsewhere which were substantially built houses containing modern improvements and conveniences. *Held*, (1) bodily residence in place, coupled with intention to make such place a home, establishes elector's residence. (2) Intention to establish residence must be determined by facts and conduct, elector's own statement being insufficient. *Brownlee v. Dugid*, 178 N. E. 174. Appellate Court of Indiana, October 29, 1931.

The term residence has been given many definitions. Webster defines residence as an act or fact of abiding or dwelling in one place for some time. It is at once apparent that the court has given the term a much narrower construction. The term "domicile" has often been used synonymously with residence but there are certain objections to such usage. Residence may simply require bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's home. *Beale on Residence and Domicile*, 4 Iowa Law Bul. 1. It is evident therefore that one may have more than one residence and it is equally well settled that one may have only one domicile. *Gilman v. Gilman*, 52 Me. 165; *Jacobs on Law of Domicile*, 73. It seems that the definition laid down by the court in the instant case is more applicable to *domicile* than to *residence*. This practice of confusing the term has become so common, not only with our courts but with all courts, that to quarrel with such usage would be more pedantic than helpful. It is now well settled that when the term resident is used in statutes concerning requirements for voting it is construed as meaning domicile. *Goodrich, Conflict of Laws*, 27; *American Law Institute Restatement, Conflict of Laws*, draft I, sec. 12, subsec. b; and cases collected in 4 Iowa L. Bull. 5.

The same is true with statutes concerning taxation, founding of jurisdiction, statute of limitations, etc. *Brookover v. Case*, 41 Ind. App. 102.

Assuming then, that the court in laying down a definition of residence has really defined domicile, the only inquiry should be directed at the accuracy of the explanation. The American Law Institute has defined a domicile as "the place with which a person has a settled connection for legal purposes; either because his home is there or because the place is assigned to him by the law." "In order to acquire a domicile (other than by law) a person must be physically present in a place with the intention of making it his home." *Restatement of Conflicts*, topic I, sec. 10, sec. 17, (2-3). The explanation in the present case and that of the Restatement are identical in essence and are supported by the authors, Indiana cases,

and decisions in other jurisdictions alike. *Goodrich, Conflict of Laws*, 30; *Story, Conflict of Laws*, (7th Ed.) 41; *Dicey, Conflicts II*, 731 et seq.; *Quinn v. State*, 35 Ind. 485.

In the case under consideration there is no dispute as to the actual inhabiting of the cottages by those claiming domicile therein; that fact is admitted by the appellants. The only question remaining is whether that physical act was exercised concurrently with the intention to make it a "home." A home, as used in this subject, is a dwelling-place of the person whose home it is, distinguished from other dwelling-places by the relation between the person and the place. *Jacobs on Domicile*, 125; *Wharton, Conflict of Laws*, (3rd Ed.) 56; *State v. Scott*, 171 Ind. 349; 19 C. J. 401.

The question as to which of several houses is the home of a person is determined by considering a number of objective acts and facts in order to arrive at the true intent of the individual. Some of these facts suggested are: (1) Its physical characteristics; (2) The time he spends therein; (3) The things he does therein; (4) The persons and things therein; (5) His mental attitude toward the place; (6) His intention when absent to return to the place; (7) Elements of other dwellingplaces of the person concerned. *Restatement of Conflict of Laws*, draft I, Sec. 15, (c). These tests of determining intent have been rather uniformly accepted and have been adopted in the following cases: *Pedigo v. Grimes*, 113 Ind. 148; *Sanders v. Getchell*, 76 Me. 158; *Putnam v. Johnson*, 10 Mass. 488; *Vanderpoel v. O'Hanlon*, 53 Iowa 246.

The facts as reported in the present case do not afford much information upon which to base these tests. It is noted that the individuals in question had substantial houses without the territory in which they lived a greater portion of the year. It may be reasonably inferred that the cottages were built some time after their owners had established themselves in the more convenient dwelling-places located elsewhere, for such is the usual custom as regards cottages of this type. In the case of *Gilman v. Gilman, supra*, one X, domiciled in Maine, continued to keep his home but also bought a house in New York and lived in the same a portion of the year claiming it as his residence. The court held that he had never abandoned his Maine domicile and that it should remain his legal domicile until he had forsaken any intention of returning thereto, establishing a domicile elsewhere. Applying this interpretation to the facts in the instant case it is apparent that the cottage owners were not technically "residents within the territory" and in the absence of contrary non-reported facts the decision of the court on this point is in precise line with authority.

In light of the preceding comment a consideration of the court's second ruling, viz., that the elector's own statement regarding intention is insufficient but that the same must be determined by facts and conduct, seems superfluous. In offering the above tests to be used in determining the intent of an individual it may be logically implied that that intent must be a bona fide one to make the place a home and not merely an intent to establish a domicile for the purpose of evading or attaining certain legal results. In *Kerby v. Town of Charlestown*, 78 N. H. 301, one X, being domiciled in New Hampshire, wished to become a resident of New York in order to evade certain tax laws. To effectuate her purpose, she removed all her securities to New York, leased and occupied a hotel room there, and "intended" to become domiciled there. Nevertheless the court held

that her domicile was still in New Hampshire since she did not have the necessary intent to make her real "home" there but only to establish a legal domicile there in order to accomplish an outside motive. It has been often held that the removal to another place coupled with a statement that the latter place is one's domicile is insufficient to establish legal domicile. *Bartlett v. Town of Boston*, 93 Atl. 796; and cases collected in 3 Dec. Dig. Vol. 11, pp. 6-8. It is imperative that the intent be present to make the place of removal a true home and that intent must be ascertained by a consideration of all facts and circumstances. *State v. Red Oak Bank*, 267 S. W. 566; *Swift & Co. v. Licklider*, 7 F. (2d) 19.

From a review of these authorities it appears that the Appellate Court has adopted and accurately applied the rules rendered practically uniform by prior decisions in this and other jurisdictions.

H. W. S.