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WHAT CONSTITUTES A VOTING RESIDENCE IN PENNSYLVANIA?

Ordinarily it is not difficult to determine the meaning of a constitutional provision, if well settled legal principles are kept steadily in view; and the one set forth in the title, which seems to have greatly troubled the bar and the public in recent years, is no exception to this rule. As the purpose of interpretation is to find what the makers of a writing meant by the words they used in it, and as language at best is but an imperfect vehicle for the conveyance of thought, it is of supreme importance that the interpreter, so far as may be, should put himself in the place of the makers, to the end that, seeing with their eyes and understanding with their minds, he may ascertain their intention with reasonable certainty. From this fundamental principle the following applicable rules of interpretation have arisen: (1) The language used in a constitution is not to receive a technical construction, but in the light of ordinary usage, as the common people (whom Lincoln said God must have loved since He made so many of them) probably understood it when they voted to adopt it as part of their charter.[1] (2) The language used in either a constitution or a statute is to be construed so as to give full effect to the purpose which

[1] Monongahela Nav. Co. v. Coons, 6 W. & S. 101, 114 (1843); Cronise v. Cronise, 54 Pa. 255 (1867); Com. v. Bell, 145 Pa. 374, 390 (1891); Keller v. Scranton, 200 Pa. 130 (1901); Com. ex rel. Lafean v. Snyder, 261 Pa. 57 (1918).

the people or the legislature had in view when they voted for it; i. e., by considering the old law, the mischief which arose under it, and the remedy sought to be applied in order to correct that mischief. Hence it has been said, (and this is particularly relevant to our present inquiry): "Residence is often used to express different meanings according to the subject matter. * * * In ascertaining the meaning [thereof] * * * the legislative purpose as well as the context must be kept in view."[2] (3) The language in a constitution, a statute or an opinion, must be construed according to the maxim *verba generalia restringuntur ad habilitatem rei vel personam.* Chief Justice Marshall well expressed this, so far as relates to opinions, when he said in Cohens v. Virginia:[3] "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

As the profession, commissions and courts, by neglect of the foregoing principles, have hesitated regarding the question now under consideration, and have frequently evaded answering it, the elector, whose interests may seem to invite him to select a given place for his voting residence, can hardly be blamed for imagining he has the right so to do, though he, and every one else, knows that an entirely different place is his home. As will be shown, however, his real home is his only voting residence, under Article VIII, Section 1 of the present consitution; which, being a growth from and

[2] Raymond v. Leishman, 243 Pa. 64, 68-9 (1914); Hunter v. Bremer, 256 Pa. 257, 263 (1917).

[3] 6 Wheat. 264, 399-400 (1821).

an expansion of provisions in prior Pennsylvania constitutions, must have its genesis stated historically, in order to comply with the second of the foregoing principles; a more detailed study being unnecessary because of its full consideration in Fry's Election Case.[4]

The constitution of 1776 says in Section 6, that "every freeman of the full age of twenty-one years, having *resided* in this State for the space of one whole year next before the day of election for representatives * * * shall enjoy the right of an elector." That of 1790 says in Article III, Section 1, that "every freeman of the age of twenty-one years, having *resided* in the State two years next before the election * * * shall enjoy the rights of an elector." That of 1838 says in Article III, Section 1, that "every white freeman of the age of twenty-one years having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election * * * shall enjoy the rights of an elector. But a citizen of the United States, who had previously been a qualified voter of this State and removed therefrom and returned, and who shall have *resided* in the election district * * * as aforesaid, shall be entitled to vote after *residing* in the State six months * * * ." In none of the foregoing constitutions is the word "resided" defined or explained, save in so far as it is used antithetically to "removed" in the last quoted section; though "reside," "resided," "residing" or "residence" are also used in Sections 7 and 42 of the constitution of 1776; in Article I, Section 3 of the constitution of 1790; and in Article V, Section 2 of the constitution of 1838.

The present constitution, in Article VIII, Section 1, says that, subject to certain restrictions not bearing upon the present inquiry, every male citizen "shall be entitled to vote at all elections" who "shall have *resided* in the State one year (or, having previously been a qualified elector or native-born citizen of the State, shall have removed therefrom and

[4] Fry's Election Case, 71 Pa. 302 (1872).

returned, then six months) immediately preceding the election" and "shall have *resided* in the election district where he shall offer to vote at least two months immediately preceding the election." Article VIII, Section 13, provides: "For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or on the high seas, nor while a student of any institution of learning, nor while kept in any poorhouse or other asylum at public expense, nor while confined in a public prison." The only other places where "reside" or any of its derivatives are used, are Article II, Section 5; Article V, Sections 11 and 19; and Article VIII, Section 16, which relate to the qualifications of senators, representatives, justices of the peace, aldermen, judges, and overseers of election, and require, of course, actual residence within the districts for which those officials were elected or appointed, as distinguished from the constructive or legal residence which may be sufficient for the technical law of domicil.[5] While this is not conclusive of the meaning of "resided" in Article VIII, Section 1, it furnishes a cogent argument that actual residence is intended thereby.

The question under consideration divides itself into two others, viz: (1) What does the word "resided" mean in the foregoing constitutional provisions?; and (2) Under what circumstances may an elector choose which of two or more places shall be his voting residence? These questions naturally and inevitably run into one another, rendering it difficult to consider one without, in a large degree, considering the other; but an endeavor will be made herein to answer them separately, as far as it is possible so to do.

As the maxim *expressio unius est exclusio alterius* is applicable to the constitution, and has been expressly ap-

[5] Mechem's Public Offices and Officers, sections 437–439; Fry's Election Case, *supra*, p. 307.

plied to this part thereof,[6] it follows that, save in the excepted cases, a voter must have his actual residence in a particular election division of the State, in order to qualify him to vote there; and no expedient or excuse will avail him if he has not. Since the constitution contains nothing antagonistic to this conclusion, it alone should solve the question in issue.

Under this maxim also, the same result is reached from the use of the words "removed therefrom and returned six months," for this proviso is unnecessary if the elector may retain his voting residence despite actual removal. Moreover, "returned," as there used, necessarily means actual return, for a domicil of choice may be gained, or a domicil of origin be restored, *eo instanti;* and hence, a "six months" return can only mean an actual return and residence in the Commonwealth during the period stated, after the right to there vote has been lost by removal.

It is obvious, therefore, that even a technical construction of the constitutional provisions compel the conclusion that, save in the excepted cases, the voter must have an actual, fixed residence, in fact, in the place where he offers to vote; and that no other character of occupancy will suffice. Moreover, under the first of the foregoing principles of interpretation, the constitution is not to be technically construed, but as the average voter probably understood it. Every such man would unhesitatingly say that, in order to "have resided in the election district where he shall offer to vote at least two months immediately preceding the election," the voter must have actually lived there; it must have been his home, as we know and love that term; not an imaginary or technical home, but an actual, established one; one which every unbiased citizen and neighbor would unhesitatingly say is the voter's home. To the every-day man the word "immediately," as therein used, excludes the possibility of any other conclusion. This alone should also determine the point under consideration.

[6] Page v. Allen, 58 Pa. 338 (1868).

Fry's Election Case, herein repeatedly referred to, is the leading case in Pennsylvania upon the question as to whether or not students temporarily living in college, solely for the purpose of pursuing their studies, are entitled to vote in the election district in which the college is situated, if they have complied with the other constitutional requirements in regard to suffrage. It was held they were not, for the reason that the word "resided" refers to a real home, and not to a mere temporary stopping place; and this is substantially the unanimous American view.[7] Maryland is an exception to this rule, for there, under prescribed constitutional limitations, one actually removing from one election district to another, may vote in the former until, by lapse of time, he has acquired a right to vote in the latter.[8]

When, however, Fry's Election Case says (page 307): "The elector must, therefore, vote at home, not only in the State, but in the district where his home is. His domicil must be there," and then defines and illustrates the latter term; it will be found upon examination, that although the first part of the quotation is a correct statement of the law, the inference drawn from the balance thereof and from the rest of the opinion, viz., that one may always vote at the place of his domicil, is incorrect, the definition is inaccurate and the illustrations are deceptive. Thus, (page 309) it quotes from Judge Story's Conflict of Laws, Section 41, as follows: "Two things must concur to constitute domicil—first, residence; and secondly, the intention of making it the home of the party. There must be found the fact and the intent"; and from Judge Rush:[9] "It may be defined to be a residence at a particular place, accompanied with positive or presumptive proof of continuing it an unlimited time." Most authors, compilers and courts have accepted this definition as accurate, and have only fought over the question as to whether or not the law of domicil requires that the party must intend to make the place his permanent

[7] Jacobs on the Law of Domicil, sec. 325.
[8] Howard v. Skinner, 87 Md. 556 (1898).
[9] Note in 1 Binney 351.

residence, or only to reside there for an indefinite period. Yet the original statement and each variation of it, is inexact and misleading, because, among other reasons, it asserts that without residence there can be no domicil; which is only true as to a domicil of choice newly acquired, and not to domicil generally. This is so either under the English rule, which holds that a domicil of origin is at once restored when one of choice is abandoned, and continues until another is acquired *animo manendi*;[10] or under the American rule, which maintains there is no such restoration, but that the abandoned domicil, whether or origin or choice, will continue as such until a new one is so acquired, with the single exception that the domicil of origin is at once restored when the citizen starts to return to it.[11] Under either rule one may be domiciled at a place where he has never resided and never expects to reside; as for instance the child of an emigrant born before his parents have actually acquired a new home; or the child of an explorer, gypsy or vagabond, when parent and child alike never have had or intended to have a true home at any time. "A man need not be a resident anywhere. He must have a domicil. He cannot abandon, surrender or lose his domicil until another is acquired. A cosmopolite, or a wanderer up and down the earth, has no residence, though he must have a domicil."[12]

The other illustrative cases quoted in Fry's Election Case only serve to increase the difficulty, and render uncertain what was intended to be decided. Thus it is said (page 309), in quoting from the Case of James Casey,[13] that "Removal out of the State, without an intention permanently to reside elsewhere, will not lose residence," unless a new home is actually acquired and occupied as such; a conclusion accurate enough so far as relates to the insolvent laws there being considered, but wholly inapplicable

[10] Udny v. Udny, 7 Session Cases, 3rd Series 89 (1869).
[11] Jacobs on the Law of Domicil, secs. 113–119.
[12] Borland v. Boston, 132 Mass. 89, 95 (1882).
[13] 1 Ashmead 126 (1827).

to the constitutional provision as to voting, for in the latter a loss of residence alone carries with it the loss of suffrage. And again (page 310), in quoting from White v. Brown,[14] "A man cannot be considered a vagabond or person without any domicil, for the domicil of origin is not abandoned until a new one has been intentionally and actually acquired"; a conclusion accurate enough in regard to the succession of title to a decedent's property then being considered, but wholly inapplicable to the constitutional provision as to voting, for, as already shown, the vagabond or person without a home cannot vote, though he must have a domicil.

Fry's Election Case further says (page 309) that the word "residence," as used in the constitution, "means that place where the elector makes his permanent or true home, his principal place of business, and his family residence, if he have one; where he intends to remain indefinitely, and without a present intention to depart; when he leaves it he intends to return to it, and after he returns he deems himself at home." This also is in part unfortunately expressed; for the residence required has no real connection with the "principal place of business"; nor is the intention to "remain indefinitely" a necessary factor, despite its use in this connection in many text-books and authorities. A man's residence is where he actually lives, no matter where his "principal place of business" may be; and it is still his home, though he has definitely determined to remove therefrom at a fixed date in the future. He must have actually removed before his residence is lost.[15]

For instance, I apprehend that if a citizen of the United States, formerly living in another State, abandons his residence there and moves into a house in Pennsylvania, which thereafter is his only home, and is occupied as such during the year prescribed by the constitution, he would be entitled to vote here, though he always intended to move away at some time in the future. Having given up his old home,

[14] 1 Wall. Jr. 217 (1848).

[15] Pfoutz v. Comford, 36 Pa. 420, 422 (1860); Hindman's Appeal, 85 Pa. 466 (1877).

there is no place to which the *animus revertendi* could apply; and the intention to move away from the new home at some time thereafter is at most a floating intention,[16] which may float out of sight when the beauties of our spring and fall lead him to feel he cannot improve his condition by going elsewhere, but may reappear with the chills of winter and the heat of summer.

"The intention [to return], the *animus revertendi*, must be a present fixed and continuous intention . . . . It is not a mere feeling or sentiment, a desire, the yearning of the untravelled heath, some ultimate purpose not having a present fixed object. It must not be a remote and secret intention over which the present intention of residence at the new place dominates . . . . Again, in considering the question of intention, it is always important to consider whether the party has anything to return to . . . If he takes his all with him and leaves no home behind him, then he may be thought more reasonably to carry his home with him. His places of residence have no fixed purpose and are easily moulded to any views which business, profit or pleasure may suggest. The intention where to reside may fluctuate from day to day."[17]

If the conclusion thus reached is not correct, then an intention to remove at some period, no matter how distant or uncertain, would exclude the right of suffrage, though the constitution does not so specify, but, on the contrary, says that those "possessing the qualifications [actually stated and not including this] shall be entitled to vote at all elections." This would not be construing the language used, but would be adding a condition, which even the legislature cannot do,[18] and, of course, the courts cannot; a condition in direct violation of the constitutional provision; one which the common people, who voted for the constitution, could not suppose was intended, and which is not necessary to

[16] Gilbert v. David, 235 U. S. 561 (1915); 19 Corpus Juris 407.

[17] Barton v. Irasburg, 33 Vt. 159, 162 (1860).

[18] Page v. Allen, 58 Pa. 338 (1868); McCafferty v. Guyer, 59 Pa. 109 (1868); Bredin's Appeal, 109 Pa. 337 (1885); 15 Cyc. 286; 9 Ruling Case Law 1024.

accomplish the purpose for which the time limits as to state and district residence were inserted. Since an abandonment of residence in one place and living in another does not necessarily effect a change of domicil, judges might differ on the question as to whether or not the facts above assumed would result in such a change; but no one could reasonably doubt that a new residence had been acquired in Pennsylvania and continued during the period fixed by the constitution, and from these facts the right of suffrage, which depends on residence and not on domicil, necessarily follows.

The same conclusion is reached when we consider what is the remedy intended by this clause of Article VIII, Section 1. As already pointed out, the word "residence is often used to express different meanings according to the subject matter"; and hence even if, commonly speaking, it was said that in the constitution it was equivalent to "domicil," not only would the general expressions on this subject, found in Fry's Election Case, have to be limited under the third of the foregoing rules of interpretation, but we would also have to ascertain the purpose intended to be accomplished by the constitution, in order to determine its true meaning.

It is, of course, necessary to decide where a man's domicil was at the time of his death, in order that his property may be administered and distributed according to the law of that place; for otherwise the varying statutes in the different jurisdictions might leave the whole subject in confusion; would tend to prevent the free transfer of movable property from one sovereignty to another, lest the title thereto, which was good where it came from, should be held bad in the place to which it is taken, and lest also the possessor thereof be held liable in the courts of the latter for keeping property which was his under the laws of the former. So, too, the technical law of domicil must be applied in matters arising under the poor, the tax, and the militia laws, for otherwise the citizen might escape many of his

public duties, and shift to others his share of the public burdens.

On the other hand, (*cessante ratione legis cessat ipsa lex*), it is wholly inapplicable in cases arising under the attachment laws,[19] for thereby the purpose is to secure the payment of a debt, by giving the creditor a right to attach property at its situs, if the owner is actually a non-resident and cannot be there served with process; and hence has nothing to do with the question of his domicil. Under the same maxim it is even more inapplicable to a voting residence, the reason of the constitutional provision being, as expressed in Chase v. Miller,[20] "to secure purity of elections, it (the Commonwealth) would have its voters in the place where they are best known on election day"; or, as stated in Fry's Election Case itself (page 308), "not only to identify the elector, but to prevent frauds in elections," which would be easily consummated if the "vagabond or person without any domicil," who exists in considerable numbers in every large city, were allowed to vote without showing he has (page 306) "an actual, fixed residence and home at the place he offers his ballot," which "was the evident purpose of the district residence" prescribed by the constitution. Under the second of the above stated rules of interpretation, the purpose thus plainly expressed must be carried into effect, and not weakened or destroyed by construction; and hence herefrom also the question under consideration is fully answered, though a few cases from outside sources may strengthen the conclusion.

"It is sometimes laid down as a general proposition that, in case of a removal by a person from one place to another, his first residence is not lost until the second is acquired. And this is true for some purposes, but not for the purpose of determining the right of such person to vote. That right ends in the place removed from, as soon as the voter completes his removal. It is acquired in the place

[19] Raymond v. Leishman, 243 Pa. 64 (1914); Hunter v. Bremer, 256 Pa. 257 (1917).

[20] 41 Pa. 403, 427 (1862).

removed to, only after such a residence therein as the law requires."[21]

"For the purpose of voting, a domicil once gained does not continue until a new one is acquired, nor does a right to vote at a particular poll or district continue until the right to vote elsewhere is shown."[22]

"In other words, the mere intent without the fact of residence or abiding, cannot constitute the domicil. Neither can the intent, without having the abode, the home, the place to dwell, constitute the residence. Residence, as there used, we think has reference to the fact that the citizen or person has a place that, to use an expressive word, is called 'home,' with no present intention of removing therefrom. * * * But bodily presence ordinarily is essential in effecting a domicil in the initiative. One might intend to dwell in a place as his permanent abode, and yet never see it. So he might dwell there without thought of remaining. In neither event would he be a resident within the meaning of the election laws."[23]

"It does not follow because a man must have a domicil somewhere, and that a domicil once gained remains until a new one is acquired, that a man must be entitled to vote somewhere, or that the right to vote at a particular poll, being once established, is presumed to continue until the right to vote elsewhere is shown. Permanent residence is but one of the requisites of the right to vote, and it must, in this State, always precede the election by an extended space of time * * *. But abandonment of a residence is instantaneous, and if it be, by a voter, of a residence in one voting district, at a date too near the election for the requisite intervening time of residence to be a voter in another voting district to which he has removed, the voter will be entitled to vote in neither voting district * * *. If a party were to remove his family to a particular district,

[21] McCrary on Elections 75, citing Thompson v. Ewing, 1 Brewster 103 (1861), to which might have been added Fry's Election Case, *supra*, p. 307.
[22] 9 Ruling Case Law, 1031.
[23] State of Iowa v. Savre, 129 Iowa 122, 125 (1905).

there build and furnish them a home, keep his property there, return there constantly, as leisure allowed, and remain there with his family during sickness and unemployed time, this would constitute his residence, notwithstanding he might be employed in labor in another district, and claim that to be his residence * * * for, on questions of domicil, less weight is given to the party's declaration than to his acts * * * his subsequently testifying that he had never intended to permanently abandon his residence here, but had all the time intended at some future time to return, could not control."[24]

From what has been said it is clear that if Fry's Election Case was so construed as to always allow a man to vote where he is domiciled, even though he did not actually reside there, it would permit the very thing the constitutional provision aimed to destroy, viz., a non-resident voting class. In Sieur Garengeau's Case[25] it was shown that for sixty-four years he had resided at places which were not his legal domicil; and in Mr. Aspeen's Case[26] that he had so resided elsewhere for forty-eight years. Under such circumstances it would be intolerable to allow a man to vote at the place where he is domiciled; and shorter periods of absence would only result in a difference in the degree and not in the kind of difficulty experienced. It could never be certainly known who were the actual voters; and an election might well be made to turn on the vote of tramps and vagrants, who never had a real home, who have no interest in the community where they seek to vote, but who have never lost their domicil of origin because they never had or even intended to have a permanent residence anywhere.

It is, therefore, altogether free from doubt that the constitutional provision and the technical law of domicil are, to the extent stated, at variance regarding the subject

[24] Kreitz v. Behrensmeyer, 125 Ill. 141, 194–196 (1888).

[25] 2 Denisart's *Collection de Decisions Nouvelles*, etc. (9 *me* Edit) 130, pl. 33.

[26] White v. Brown, 1 Wall. Jr. 217 (1848).

under consideration, notwithstanding the following quotation from Fry's Election Case (pages 310–11): "These principles enable us to dispose of the first of the two classes into which the case stated divides these students, viz.: 'Those who support themselves, or are assisted pecunarily by persons other than their parents, are emancipated from their father's families; have left the home of their parents and never intend to return and make it a permanent abode.' Having, as the case states, come to Allentown for no other purpose than to receive a collegiate education, and intending to leave after graduating, they have not lost their home domicil, and could vote there on returning to it, though they should not reenter their father's house. Emancipation from their father's family and independent support, and the leaving of the home belonging to their parents, have not forfeited their own domicil. Their father's house is not necessarily their home, but the place is where it is. Though not in the bosom of that family, the place of their residence is not lost to them until they have voluntarily changed it and found a new home. Upon the terms of the stated case, it cannot be said they have abandoned their original home, and actually obtained another."

If this language was limited to the only point raised by the case stated, it might now be dismissed as a moot question, for the constitution of 1873 preserves to every "student of any institution of learning," the right to vote in the election district of his old home, even though that home was finally abandoned when he went to pursue his studies. Inasmuch, however, as Fry's Election Case was decided under the constitution of 1838, which did not contain this exception, and as the language is broad enough to cover all cases of removal where a new domicil has not yet been acquired, two things may be added, by way of supplement, to the conclusive answer thereto already made: (1) The statement quoted is a wholly unnecessary *obiter dictum*, for the only question the court had to decide was whether or not the students could vote in the election dis-

trict in which the college was situated, and not whether they could vote elsewhere. (2) While no other conclusion could be reached, if, under the constitution of 1838 then in force, the word "residence" meant "domicil" in its full, technical sense, it was illogical and unreasonable under the present constitutional provisions, which say nothing on the subject of domicil, but require actual residence a specified number of days "immediately preceding such election." If the dictum quoted was sustained, then the "wanderer up and down the earth" would be entitled to vote in an election district where he never has "resided" and where he is wholly unknown, in direct violation of the express language of the constitution, and also of the purpose of its requirement as to residence.

It is repeated, therefore, as a matter of law, that, subject to the exceptions specified in the constitution, the residence prescribed by it must be an actual residence in the physical occupancy of the voter, his real home in fact and not in expression merely; and this brings us to the second question, viz.: Under what circumstances may an elector choose which of two or more places shall be his voting residence?, a question which might have been but was not raised in Fry's Election Case.

When the constitution of 1838 said that "every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election * * * shall enjoy the rights of an elector," it is evident, as Fry's Election Case points out, that "the state residence and the district residence are of the same nature, and whatever is necessary to constitute the one is essential to define the other, the only difference being in their time of duration." As the constitution of 1873 contains the same language, an identical conclusion must be reached thereunder. It follows that if a voter may elect to treat a particular place in Philadelphia or Allegheny County as his voting residence, though in fact he resides in some other

county, he may so elect though he resides in California or Florida. This *reductio ad absurdam* would make the constitutional provision as to residence a dead letter. Moreover such reasoning would result also in Article VIII, Section 13 becoming a wholly useless provision, for its purpose would be fully accomplished by those removing from the State electing to continue their old home here as their voting residence.

Notwithstanding the conclusive effect of the foregoing considerations, it seems to be supposed by some that an elector may determine where he shall vote, by simply asserting a stated place is his residence, though his real home is elsewhere; and by others, if, when changing his residence, he alleges he still lives at the old home, it will continue to be his voting residence, though thereafter his family never occupies it, and when he does it is for a temporary purpose only, intending, when this has been accomplished, to return to the new home, which his family and everybody else recognizes is his real home, and he does also for every other purpose than that of voting. What has been said above conclusively shows the constitution negatives both of these claims. A choice of that which does not in fact comply with the conditions precedent to the exercise of a right or privilege, in the nature of things will be wholly inefficacious; and hence a voter cannot select one of two or more places as his voting residence, unless it is his real home. It is only when he has more than one real home that a right of selection exists, as in the familiar instance of a country home for the summer and a city home for the winter, at each of which he and his family, if he has one, actually lives during a portion of the year, and to the one chosen as his domicil and voting residence he intends to return as soon as, by the lapse of time, the temporary purpose for which he went to the other has ended.

While it is doubtless true, as stated by Lord Cranworth in Whicker v. Hume,[27] "By domicil we mean home,

[27] 7 H. L. Cases, 124, 160 (1858).

the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages, will very much help you to it"; a few illustrations drawn from the English language and from Pennsylvania decisions, may give point to the conclusions already stated in regard to the elector's right of choice. For instance, if a man has a real summer home in Maine and a real winter one in Pennsylvania, he may select which of the two shall be his domicil and voting residence. But if the place in Maine is intended to be and in fact is occupied by him, either alone or with some one or all of his family, only for shooting or fishing, and is deserted when the season therefor closes, or when they get tired of the sport, he cannot select it as his domicil or voting residence, for it is not his real home. So also, if, as in Winsor's Estate,[28] he has two real homes, occupied at different seasons of the year, one of which has been treated by him as his domicil and voting residence, he may change to the other *eo instanti* by a statement to that effect, if his future acts accord with the declaration. On the other hand, as in Blessing's Estate,[29] if one moves with his family from a residence, no matter how long established, to another, which latter he and they occupy as a home, though the old house has never been entirely closed, but has been used by him, during the day-time, for resting and eating, and he has frequently spoken and written of it as his home, these facts alone will not suffice to enable him to select it as his domicil or voting residence, for it is not his real home.

The rule stated in this latter case, namely that the party's acts must accord with the choice he makes, applies even where there are two homes occupied at different seasons of the year; and *a fortiori* it does so where one thereof is but a perfunctory stopping place. In all such cases the statement that the voter has selected a certain place as his home,

[28] 264 Pa. 552 (1919).
[29] 267 Pa., 380 (1920).

must necessarily give way to proof of his acts; for one cannot be heard to so say, if in fact his actions show that some other place is his real home. "That actions speak louder than words is sound law as well as proverbial wisdom."[30] This principle, drawn from the highest known source, is so clear and so necessarily true, that but a few additional opinions will be quoted to show that it is of substantially universal application in the present matter.

"A person's wish to retain a domicil in one country will not enable him to retain it, if, in fact, he resides with the *animus manendi* in another."[31]

"The declarations of the person whose domicil is sought to be fixed are certainly not conclusive upon the question of intention; but with respect to the weight which is to be given to them it is difficult to lay down any rule. Acts are regarded as more important than declarations. * * * If they (the declarations) are not inconsistent with acts, and are faithfully reported, they often serve to turn the scale; but it is otherwise if they are contradicted by the acts and general conduct of the person making them."[32]

"It is always a question of fact where the place of a man's domicil is. As to most persons it is determined at once by the decisive facts which show permanent and unchanging residence in only one place. As to such persons, the question of domicil, that is, the question where they are to be taxed, or where they have a right to vote, presents no difficulty. There can be no right of election to the taxpayer between two places, when one is already fixed by the facts which go to establish domicil. It is only when the facts which establish permanent residence and domicil are ambiguous and uncertain, in the absence of any settled abode, and when the real intention of the party cannot be ascertained, that the question becomes difficult. It may then require an examination into the motives of the man, his habits and character, his domestic, social, political and

[30] Graham v. Dempsey, 169 Pa. 460, 462 (1895).
[31] Dicey's Conflict of Laws 116.
[32] Jacobs on the Law of Domicil, sec. 455.

business relations for a series of years; and the answer will depend in the end upon the weight of evidence in favor of one of two or more places * * *. The place of domicil, upon which so many important municipal obligations and privileges depend, is not left by the law to the choice of the citizen, except only as such choice may give character to existing relations and accompanying acts of residence which are not in conflict with it."[33]

These quotations might be multiplied, but in an endeavor (a vain one, perhaps, as witness Judge Bregy's attempt in Comm. v. Devine, 34) to make the answer to the question under consideration clear beyond cavil, this paper has already exceeded its intended limits. Suffice it to say, therefore, it is believed there are no authorities, worthy of the name, to the contrary thereof; and hence it need only be said as a resumé:

1. Subject to the exceptions specified in the constitution, an elector's voting residence is his actual, established home.

2. If he is a family man, the actual, established home is ordinarily where the family actually lives; if not it is where he normally and usually resides; and no temporary use of any other house, whether or not he formerly lived there, will justify a choice by him, or avail as against the actual, established home.

3. If he has two or more actual, established homes, he may select which of them shall be his voting residence; but not otherwise.

4. He cannot legally vote elsewhere than in the election district in which is situated his actual, established home, as hereinbefore defined.

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[33] Thayer v. Boston, 124 Mass. 132, 144–146 (1878).
[34] 14 D. R. 1 (Pa., 1905).