PROOF OF DOMICIL

The question what evidence is sufficient to prove and is calculated to prove domicil is one of considerable practical importance. The substantive rules for regulating domicil leave it so much a matter of fact that every domicil in the last analysis must rest on evidence; and as one of the facts is a mental attitude of the person concerned, it is most difficult to establish.

Counsel are greatly aided in establishing domicil by the rule that when a domicil has once been shown to exist it is presumed to continue until another domicil is proved by sufficient evidence.[1] The burden of proof is therefore on a party who alleges the change of domicil.[2]

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[1] Frederick v. Wilbourne, 198 Ala. 137, 73 So. 442 (1916); Holmes v. Holmes, 212 Ala. 597, 103 So. 884 (1925); Prather v. Palmer, 4 Ark. 456 (1841); Cover v. Hatten, 136 Iowa 63, 113 N. W. 470 (1907); Nugent v. Bates, 51 Iowa 77, 50 N. W. 76 (1879); Dolan v. Keppel, 189 Iowa 1122, 179 N. W. 515 (1920); Keith v. Stetter, 25 Kan. 100 (1881); Green v. Moore, 206 Ky. 724, 268 S. W. 337 (1925); Succession of Franklin, 7 La. Ann. 395, 408 (1852); State v. Steele, 33 La. Ann. 910, 913 (1881); Harvard College v. Gore, 5 Pick. 370 (Mass. 1827); Kilburn v. Bennett, 3 Met. 199 (Mass. 1841); Chicopee v. Whately, 6 Allen 508 (Mass. 1863); Sullivan v. Ashfield, 227 Mass. 24, 116 N. E. 565 (1917); Matter of Nichols, 54 N. Y. 62 (1873); Nixon v. Palmer, 10 Barb. 175 (N. Y. 1850) [reversed on another point, 8 N. Y. 398 (1855)]; Tucker v. Field, 5 Redf. 139, 175 (N. Y. 1881); Webster v. M. W. Kellogg Co., 168 App. Div. 443, 153 N. Y. Supp. 800 (1915); Matter of Morgan, 95 Misc. Rep. 451, 159 N. Y. Supp. 105 (1916); Matter of Horton, 175 App. Div. 447, 161 N. Y. Supp. 1071 (1916); Dodge v. Holbrook, 107 Misc. Rep. 257, 176 N. Y. Supp. 562 (1919); McQuirk v. Dean, 123 Misc. Rep. 612, 206 N. Y. Supp. 50 (1924); Ferguson v. Wright, 113 N. C. 537, 18 S. W. 691 (1893); Mills v. Alexander, 21 Tex. 154 (1858); *In re* Bunting's Estate, 30 Utah 251, 84 Pac. 109 (1906); Lindsay v. Murphy, 76 Va. 428 (1882); Bowen v. Com., 126 Va. 182, 188, 101 S. W. 232 (1919); Mitchell v. United States, 21 Wall. 350 (U. S. 1874); Agassiz v. Trefry, 260 Fed. 226 (D. C. 1919); Adams v. Adams, 2 Juta (Cape Colony) 24 (1916).

[2] Mitchell v. U. S., 21 Wall. 350, 353 (1874); State v. Scott, 171 Ind. 349, 86 N. E. 409 (1908); Botna Valley State Bank v. Silver City Bank, 87 Iowa 479, 54 N. W. 472 (1893); Kinder v. Scharff, 125 La. 594, 51 So. 654 (1910); Le Blanc v. Loughridge, 153 La. 109, 95 So. 419 (1923); Lorio v. Gladney, 153 La. 993, 97 So. 16 (1923); Kilburn v. Bennett, 3 Met. 199 (Mass. 1841); Matter of Newcomb, 192 N. Y. 238, 250, 84 N. E. 950 (1908); Matter of Martin, 94 Misc. Rep. 81, 157 N. Y. Supp. 474 (1916), reversed on another point, 173 App. Div. 1, 158 N. Y. Supp. 915 (1916); *In re* Norton, 96 Misc. Rep. 152, 160, 159 N. Y. Supp. 619 (1916); *In re* Harkness's Estate, 183 App. Div. 396, 399, 170 N. Y. Supp. 1024 (1918); Smith's Estate, 43 Ore. 595, 73 Pac. 336, 75 Pac. 133 (1904); Price v. Price, 156 Pa. 617, 27 Atl. 291 (1893); Barclay's Estate, 259 Pa. 401, 103 Atl. 274 (1918); Prater v. Prater, 87 Tenn. 78, 9 S. W. 361 (1888); Cooper's Admr. v. Com., 121 Va. 338, 349, 93 S. E. 680 (1917);

The presumption of continuance of domicil may fail in an extreme case. Where, for instance, a continuance of a domicil once proved would upon the breaking out of war impose upon a citizen of one country a hostile character which is determined by his domicil, it would be improper on the ground of this presumption to impose upon a loyal citizen the stigma of enemy. The hostility of a citizen due to his being domiciled in an enemy country in time of war should only be determined by direct evidence of such enemy domicil; and in this case there is therefore no presumption of the continuance of domicil.[3] And after a decree of separation there is no presumption that a wife's domicil remains her husband's.[4]

The presumption does not work backwards. Domicil at a certain time being shown there is no presumption of its existence at an earlier time.

A change of domicil may be established like any ordinary fact by circumstantial evidence;[6] and it has been said that less evidence is required to establish a change of domicil from one state to another than from one nation to another.[7]

The establishment of a domicil will ordinarily go back to the proof of two facts: first, the actual presence of the party at a place which is alleged to have become his domicil; and second, the intention of the party at the time he was present there to make the place his home. On the first of those questions no special examination of method of proof is called for. It is an ordinary fact provable by the same sort of evidence that is made use of to prove other typical facts of life. The second question,

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In re Bassett, 189 Fed. 410 (D. C. 1911); *In re* Davis, 217 Fed. 113 (D. C. 1914); Waddington v. Waddington, 36 T. L. R. 359 (Eng. 1920); Moffett v. Moffett (1920), 1 Ir. 57; In the Goods of Miller, 1 New Zeal. Jur. (N. S.) S. C. 70.

[3] Stoughton v. Hill, 3 Woods 404 (C. C. 1877).

[4] Percival v. Percival, 106 App. Div. 111, 94 N. Y. Supp. 909 (1905), affd. 186 N. Y. 587, 79 N. E. 1114 (1906).

[6] Clough v. Kyne, 40 Ill. App. 234 (1891).

[6] Farrow v. Farrow, 162 Iowa 87, 143 N. W. 856 (1913).

[7] Matter of Newcomb, 192 N. Y. 238, 84 N. E. 950 (1908).

however, is one which involves special difficulties in proof and with these difficulties it is the object of this paper to deal.

In general it is not intended to discuss the question of the admissibility of evidence, although that is an important consideration in dealing with declarations of intention. The main purpose of this paper is to indicate the kind of evidence which is given consideration by the court in determining the intention to make a home.

When the attempt is made to prove the intent-element of domicil by declarations as to intention of the party whose domicil is to be proved, the problem of the admissibility of such evidence as mere hearsay is presented and also the question of what weight can be given to such a declaration. The question of admissibility will be dealt with hereafter. On the general question of the weight of evidence it is to be considered that such declaration may be the expression of a reasonable, fixed determination, or on the other hand, it may have been hasty and ill-considered or made under the influence of passion or prejudice.[8] A statement of future intention may be well-settled intention soon to be acted on, or it may be a mere loose speculative suggestion not intended seriously.[9] It must, therefore, be observed in all such cases that a declaration of intention must derive its weight from all the circumstances under which it is uttered; and that these circumstances are therefore capable of controlling the weight of evidence in every possible way.[10]

The statement has been made on the highest authority[11] that "declarations of intent as to residence are in general admissible," and this is the doctrine of the better and later cases.[12] There is a considerable body of authority, however, opposed to

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[8] Thomaston v. St. George, 17 Me. 117 (1840); Wayne v. Greene, 21 Me. 357 (1842).

[9] Wooldridge v. Wilkins, 3 How. 360 (Miss. 1839).

[10] Beason v. State, 34 Miss. 602 (1857); Seibold v. Wahl, 164 Wis. 82, 159 N. W. 546 (1916).

[11] 3 WIGMORE, EVIDENCE, Section 1784.

[12] Kreitz v. Behrensmeyer, 125 Ill. 141, 195, 17 N. E. 232 (1888); Viles v. Waltham, 157 Mass. 542, 32 N. E. 901 (1893) (*semble*); Wilbur v. Calais, 90 Vt. 335, 98 Atl. 913 (1916) (*semble*).

this doctrine.[13] It has been held that the testimony of a wife as to the intention with which she and her husband came to a place is admissible.[14]

Though such declarations are in general admissible, it is clear that mere declarations of intention made in view of a possible contested domicil are entitled to no weight;[15] and therefore declarations made under the advice of counsel for the purpose of furnishing evidence of a change of domicil are not admissible; or if given under such circumstances that they happen to be admissible as for instance as part of *res gesta,* are entitled to no weight whatever.[16]

Upon the issue of a person's intention to establish a home his own testimony as to such intention given in court is admissible, not being hearsay; though of course it is not conclusive evidence of the fact.[17]

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[13] Griffin v. Wall, 32 Ala. 149 (1858) (*semble*); Ham v. State, 156 Ala. 645, 658, 47 So. 126 (1908); Knox v. Montville, 98 Me. 493, 57 Atl. 792 (1904); Rumford v. Upton, 113 Me. 543, 95 Atl. 226 (1915) (*semble*); Derby v. Salem, 30 Vt. 722 (1858); Fulham v. Howe, 62 Vt. 386, 20 Atl. 101 (1890); See Davis v. Adair (1895) 1 Ir. 379.

[14] Porto Rico R. L. & P. Co. v. Cognet, 3 Fed. (2d) 21 (C. C. A. 1924); Pinchin v. Pinchin, 20 Austral. L. R. 54.

[15] Cole v. Lucas, 2 La. Ann. 946 (1847); Watson v. Simpson, 13 La. Ann. 337 (1858); Ayer v. Weeks, 65 N. H. 248, 18 Atl. 1108 (1889); Doyle v. Clark, Fed. Cas. No. 4053 (1876); Canadian Pacific Ry. v. Wenham, 146 Fed. 207 (C. C. 1906).

[16] Fidelity Trust & Safety Vault Co. v. Preston, 96 Ky. 277, 28 S. W. 658 (1894); Plant v. Harrison, 36 Misc. Rep. 649, 74 N. Y. Supp. 411 (1902).

[17] One was allowed to testify as to his intention to establish a home in the following cases: O'Brien v. O'Brien, 16 Cal. App. 103, 116 Pac. 692 (1911); Hesterly v. Ingram, 18 Ga. App. 532, 89 S. E. 1049 (1916); Keith v. Stetter, 25 Kan. 100 (1881); Brewer v. Linnaeus, 36 Me. 428 (1853); Parsons v. Bangor, 61 Me. 457 (1873); Stockton v. Staples, 66 Me. 197 (1877); Knox v. Montville, 98 Me. 493, 57 Atl. 792 (1904); Rumford v. Upton, 113 Me. 543, 95 Atl. 226 (1915); Fisk v. Chester, 8 Gray 506 (Mass. 1857); Hallett v. Bassett, 100 Mass. 167 (1868); Reeder v. Holcomb, 105 Mass. 93 (1870); Venable v. Paulding, 19 Minn. 488 (Gil. 422) (1873); Searles v. Searles, 140 Minn. 385, 168 N. W. 133 (1918); McGean v. McGean, 60 N. J. Eq. 21, 46 Atl. 656 (1901); Tracy v. Tracy, 62 N. J. Eq. 807, 46 Atl. 657, 48 Atl. 533 (1901); De Meli v. De Meli, 120 N. Y. 485, 24 N. E. 996 (1890) (affirming 67 How. Pr. 20); Bump v. New York, N. H. & H. R. Co., 38 App. Div. 60, 55 N. Y. Supp. 962 (1899); affd. in 165 N. Y. 636, 59 N. E. 1119 (1901); Pennica v. Delaware L. & W. R. R. Co., 148 App. Div. 787, 133 N. Y. Supp. 295 (1912); Watson v. North Carolina R. R., 152 N. C. 215, 67 S. E. 502 (1910); Cornelison v. Blackwelder, 38 Okla. 1, 131 Pac. 701 (1913); Hulett v. Hulett, 37 Vt. 581 (1865); Clarke v. Territory, 1 Wash. Terr. 68 (1859); Hall v. Hall, 25 Wis. 600 (1870); Johnston v. Oshkosh, 65 Wis. 473, 27 N. W. 320 (1886); Seibold v. Wahl, 164 Wis. 82, 159 N. W. 546 (1916); Figi v.

An affidavit or other statement on oath of a man's intention to make a home in a certain place is admissible to prove his domicil there,[18] as for instance an affidavit filed with the assessors for taxes,[19] or an affidavit to obtain a marriage license.[20]

Declarations of intention as to domicil made while the acts of removal from one place to another are actually in progress are admissible as part of the *res gesta*.[21] To be admitted under this rule, the declarations may be made while the removal is actually in progress[22] or at the time of leaving[23] or even at other times, as for instance, shortly before leaving the former domicil[24] or upon arrival in the new place,[25] two weeks before

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Figi, 181 Wis. 136, 194 N. W. 41 (1923); Eisele v. Oddie, 128 Fed. 941 (C. C. 1904); Rucker v. Bolles, 80 Fed. 504 (C. C. A. 1897); Ricordi v. Columbia Graphaphone Co., 258 Fed. 72 (D. C. 1919); Bell v. Kennedy, L. R. 1 Sc. & Div. A. C. 307 (Eng. 1866); Jones v. City of St. Johns, 30 Can. 122 (1899); Davis v. Adair (1895) 1 Ir. 379.

[18] Chambers v. Hathaway, 187 Cal. 104, 200 Pac. 931 (1921) (oath upon registering as voter); Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917) (oath to plead for divorce); Covington v. Shinkle, 175 Ky. 530, 194 S. W. 766 (1917) (the party "made oath on several occasions"); George v. George, 143 La. 1032, 79 So. 832 (1918) (affidavit for purpose to establish jurisdiction of court); Matter of Barbour, 185 App. Div. 445, 173 N. Y. Supp. 276 (1918); Matter of Frick, 116 Misc. Rep. 488, 190 N. Y. Supp. 262 (1921).

[19] Guggenheim v. Long Branch, 80 N. J. L. 246, 76 Atl. 338 (1912); Matter of Lydig, 191 App. Div. 117, 180 N. Y. Supp. 843 (1920); Matter of Lyon, 117 Misc. Rep. 189, 191 N. Y. Supp. 260, 192 N. Y. Supp. 936 (1921).

[20] Seifert v. Seifert, 32 Ont. L. R. 433, 23 Dom. L. R. 440 (1915).

[21] 3 WIGMORE, EVIDENCE, Section 1784; Flemister Grocery Co. v. Wright M. & L. Co., 10 Ga. App. 702, 73 S. E. 1077 (1912); Hurst v. Flemingsburg, 172 Ky. 127, 188 S. W. 1085 (1916); Gardner v. O'Connell, 5 La. Ann. 353 (1850) (*semble*); Belmont v. Vinalhaven, 82 Me. 524, 20 Atl. 89 (1890); Knox v. Montville, 98 Me. 493, 57 Atl. 792 (1904); Chase v. Chase, 66 N. H. 588, 29 Atl. 553 (1891); Pittsburgh C. R. Co. v. Hasty, 106 Okla. 65, 233 Pac. 218 (1925); Doyle v. Clark, Fed. Cas. No. 4053 (1876).

[22] Brookfield v. Warren, 128 Mass. 287 (1880); Etna v. Brewer, 78 Me. 377, 5 Atl. 884 (1886); Knox v. Montville, 98 Me. 493, 57 Atl. 792 (1904); Matter of White, 116 App. Div. 183, 101 N. Y. Supp. 551 (1906); Cherry v. Slade, 2 Hawks (9 N. C.) 400 (1823) (*semble*); Burnham v. Rangeley, Fed. Cas. No. 2176 (1845).

[23] Wallace v. Lodge, 5 Bradw. 507 (Ill. App. 1879); Burgess v. Clark, 3 Ind. 250 (1851); Gorham v. Canton, 5 Greenl. 266 (Me. 1828); Wayne v. Greene, 21 Me. 357 (1842); Brundred v. Del Hoyo, 20 N. J. 328 (1844); Hegeman v. Fox, 31 Barb. 475 (N. Y. 1860).

[24] Brandt v. Buckley, 14 Ga. App. 389, 94 S. E. 233 (1917); Cole v. Cheshire, 1 Gray 441 (Mass. 1854); Wilson v. Terry, 11 Allen 206 (Mass. 1865); Viles v. Waltham, 157 Mass. 542, 32 N. E. 901 (1893); Jericho v. Huntington, 79 Vt. 329, 65 Atl. 87 (1906).

[25] Brandt v. Buckley, *supra*, note 24; Monson v. Palmer, 8 Allen 551 (Mass. 1864); Clark v. Likens, 2 Dutch. 207 (N. J. 1856); *In re* Paris, 107 Misc. Rep. 463, 176 N. Y. Supp. 879 (1919).

moving,[26] three weeks before,[27] one year after the change[28] and at various times during the stay[29] have all been held times bringing the declaration within the *res gesta*. Such declarations are of course not conclusive.[30]

Declarations of a deceased person as to his intention in residing at a place are admissible evidence of his domicil there,[31] though of course not conclusive, for the purpose of determining the principal place of administering his estate or of validity of his will,[32] for the collection of succession duties[33] and it would seem for other purposes as well.[34] Declarations of a deceased person might also of course be admitted under the *res gesta* rule.[35]

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[26] Madison v. Guilford, 85 Conn. 55, 81 Atl. 1046 (1911).

[27] Kilburn v. Bennett, 3 Metc. 199 (Mass. 1841).

[28] Thorndike v. Boston, 1 Metc. 242 (Mass. 1840).

[29] Denny v. Sumner County, 134 Tenn. 468, 184 S. W. 14 (1915); *Ex parte* Blumer, 27 Tex. 734 (1865); Wilbur v. Calais, 90 Vt. 335, 98 Atl. 913 (1916).

[30] Beason v. State, 34 Miss. 602 (1857).

[31] Such declarations were admitted without objection in Kelson v. Detroit, G. H. & M. Ry., 146 Mich. 563, 109 N. W. 1057 (1906); Waddington v. Waddington, 36 T. L. R. 359 (Eng. 1920).

[32] Holmes v. Holmes, 212 Ala. 597, 103 So. 884 (1925); Thorn v. Thorn, 28 App. D. C. 120 (1906); Coffey v. Mann, 200 Ill. App. 143 (1916); *In re* Estate of Rowe, 179 Iowa 541, 161 N. W. 626 (1917); Pattison v. Firor, 146 Md. 243, 126 Atl. 109 (1924); Seccomb v. Bovey, 135 Minn. 353, 160 N. W. 1018 (1917); Hairston v. Hairston, 27 Miss. 704 (1854); Chase v. Chase, 66 N. H. 588, 29 Atl. 553 (1891); Dupuy v. Wurtz, 53 N. Y. 556 (1873); Matter of Green, 167 N. Y. Supp. 1084 (1917); *In re* Paris, 107 Misc. Rep. 463, 176 N. Y. Supp. 879 (1919); *In re* Curtis, 178 N. Y. Supp. 286 (1919); Matter of Gates, 117 Misc. Rep. 800, 191 N. Y. Supp. 757 (1921); Matter of Newcomb, 192 N. Y. 238, 84 N. E. 950 (1908); In the Matter of Roberts, 8 Paige Ch. 519 (N. Y. 1840); Isham v. Gibbons, 1 Bradf. 69 (N. Y. 1849); Matter of Cruger, 36 Misc. Rep. 477, 73 N. Y. Supp. 812 (1901); *In re* Barclay, 259 Pa. 401, 103 Atl. 274 (1918); Hascall v. Hafford, 107 Tenn. 355, 65 S. W. 423 (1901); Smith v. Smith, 122 Va. 341, 94 S. E. 777 (1918); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899); Drevon v. Drevon, 34 L. J. Ch. 129 (Eng. 1865); *In re* Hardiman, Macessey 984 (N. Z. 1869).

[33] Staiar's Admr. v. Com., 194 Ky. 316, 239 S. W. 40 (1922); Matter of Wise, 84 Misc. Rep. 663, 146 N. Y. Supp. 789 (1914); Matter of Green, 167 N. Y. Supp. 1084 (1917); Matter of Frick, 116 Misc. Rep. 488, 190 N. Y. Supp. 262 (1921); Dalrymple's Estate, 215 Pa. 367, 64 Atl. 554 (1906); Pennsylvania v. Ravennel, 21 How. 103 (U. S. 1858); *In re* Tyson, 10 Queensland L. J. Rep. 151 (1900).

[34] Ashland v. Catlettsburg, 172 Ky. 364, 189 S. W. 454 (1916); Wilson v. Terry, 9 Allen 214 (Mass. 1864); Givernaud v. Variel, 86 N. J. Eq. 80, 97 Atl. 49 (1916) affd. 87 N. J. Eq. 654, 103 Atl. 1054 (1917); Gilbert v. David, 235 U. S. 561 (1915); Heath v. Samson, 14 Beav. 441 (Eng. 1851).

[35] Gorham v. Canton, 5 Greenl. 266 (Me. 1828); Monson v. Palmer, 8 Allen 551 (Mass. 1864); Wilson v. Terry, 11 Allen 206 (Mass. 1865); Chase v. Chase, 66 N. H. 588, 29 Atl. 553 (1891); Hegeman v. Fox, 31 Barb. 475 (N. Y. 1860).

A statement by a grantor in a deed executed by him as to the place of his domicil is evidence that his domicil is in fact in accordance with his declaration.[36] If the statement is against his present contention he is not absolutely concluded by his recital.[37] On the other hand, a recital in favor of his present contention is not of much weight.[38] A recital of the domicil of the grantee in a deed accepted by him is not definite evidence in his favor that his domicil was in the place named in the recital.[39] If, however, he accepts a deed containing a recital of his domicil which is contrary to his present contention that his domicil is elsewhere the recital may be taken as evidence against him as an admission,[40] though as such it may be controlled by other evidence supporting his present contention.[41]

A recital in a will as to the domicil of the testator is evidence of his domicil at that time and even of his domicil at the time of his death where his death soon followed.[42] Like any evidence,

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[36] Brittenham v. Robinson, 18 Ind. App. 502, 48 N. E. 616 (1897); Fidelity T. & S. V. Co. v. Preston, 96 Ky. 277, 28 S. W. 658 (1894); Ward v. Oxford, 8 Pick. 476 (Mass. 1829); Spaulding v. Steel, 129 Mich. 237, 88 N. W. 627 (1902); Seccomb v. Bovey, 135 Minn. 353, 160 N. W. 1018 (1917); Matter of White, 116 App. Div. 183, 101 N. Y. Supp. 551 (1906); United States Trust Co. v. Hart, 150 App. Div. 413, 135 N. Y. Supp. 81 (1912); Matter of Chadwick, 109 Misc. Rep. 696, 181 N. Y. Supp. 336 (1919); Matter of Usatorres, 112 Misc. Rep. 437, 183 N. Y. Supp. 142 (1920); Matter of Frick, 116 Misc. Rep. 488, 190 N. Y. S. 262 (1921); Matter of Lyon, 117 Misc. Rep. 189, 191 N. Y. Supp. 260, 192 N. Y. Supp. 936 (1921); Matter of Barbour, 185 App. Div. 445, 173 N. Y. Supp. 276 (1918); Pickering v. Winch, 48 Ore. 500, 87 Pac. 763 (1906); Cartwright v. Hinds, 3 Ont. 384 (1883); Munt v. Findlay, 25 N. Zeal. L. R. 488 (1906).

[37] Tillman v. Mosely, 14 La. Ann. 710 (1859).

[38] Heirs of Dohan v. Murdock, 40 La. Ann. 376, 4 So. 338 (1888); Wright v. Boston, 126 Mass. 161 (1879).

[39] Heirs of Dohan v. Murdock, 40 La. Ann. 376, 4 So. 338 (1888); Weld v. Boston, 126 Mass. 166 (1879). See Valentine v. Valentine, 61 N. J. Eq. 400, 48 Atl. 593 (1901).

[40] Weld v. Boston, 126 Mass. 166 (1879); Babcock v. Slater, 212 Mass. 434, 99 N. E. 173 (1912).

[41] Sanderson v. Ralston, 20 La. Ann. 312, 319 (1868).

[42] State v. Red Oak T. & S. Bank, 167 Ark. 234, 267 S. W. 566 (1925); Covington v. Shinkle, 175 Ky. 530, 194 S. W. 766 (1917); McKowen v. McGuire, 15 La. Ann. 637 (1860); Pattison v. Firor, 146 Md. 243, 126 Atl. 109 (1924); Holyoke v. Holyoke, 110 Me. 469, 482, 87 Atl. 40 (1913); Ward v. Oxford, 8 Pick. 476 (Mass. 1829); Jennison v. Hapgood, 10 Pick. 77, 99 (Mass. 1830); *In re* Lankford Estate, 272 Mo. 1, 197 S. W. 147 (1917); *In re* Baylis' Estate, 121 Atl. 787 (N. J. Ch., 1923); United States Trust Co. v. Hart, 150 App. Div. 413, 135 N. Y. Supp. 81 (1912) [affd. on this point, 208 N. Y. 617,

however, this recital is not conclusive and may be controlled by other evidence.[43]

A recital that a person is "of" a place or "resident" in a place is not a statement of a legal conclusion, but merely of the fact and at most also of the intention to make a home in the place. Where, therefore, a person has in reality two homes, a description of himself in a will or deed as of or resident at one of them is quite compatible with his legal domicil being in the other home.[44]

A recital in a will or deed may be explained by proof that the declaration was inserted by the scrivener without directions.[45]

A recital of domicil in a passport, issued on the application of the party, is some evidence as to his domicil;[46] so is a recital in an insurance policy,[47] a bond,[48] or a bill of sale.[49] Evidence of naturalization as a citizen of a certain state is admissible, but is not conclusive of domicil;[50] in fact, any statement as to domicil in a legal document may of course be controlled by other facts in the case.[51] Nor is a grant of probate on petition alleging the

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102 N. E. 1115 (1913)]; Matter of Blumenthal, 101 Misc. Rep. 83, 167 N. Y. Supp. 252 (1917); Matter of Chadwick, 109 Misc. Rep. 696, 181 N. Y. Supp. 336 (1919); Horne v. Horne, 9 Ire. L. (31 N. C.) 99 (1848); Ennis v. Smith, 14 How. 400, 422 (U. S. 1852); Munt v. Findlay, 25 New Zeal. L. R. 488 (1906); Sells v. Rhodes, 26 New Zeal. L. R. 87 (1907).

[43] Gilman v. Gilman, 52 Me. 165 (1863); Tucker v. Field, 5 Redf. 139 (N. Y. 1881); Matter of Riley, 86 Misc. Rep. 628, 148 N. Y. Supp. 623 (1914); Matter of Lydig, 191 App. Div. 117, 180 N. Y. Supp. 843 (1920); Dalrymple's Estate, 215 Pa. 367, 64 Atl. 554 (1906).

[44] Gilman v. Gilman, 52 Me. 165 (1863); Isham v. Gibbons, 1 Bradf. 69 (N. Y. 1849).

[45] McConnell v. McConnell, 18 Ont. 36 (1890).

[46] United States Trust Co. v. Hart, 150 App. Div. 413, 135 N. Y. Supp. 81 (1912) [affd. on this point 208 N. Y. 617, 102 N. E. 1115 (1913)]; Matter of Usatorres, 112 Misc. Rep. 437, 183 N. Y. Supp. 142 (1920).

[47] Beecher v. Detroit, 114 Mich. 228, 72 N. W. 200 (1897).

[48] Jopp v. Wood, 4 DeG. J. & S. 616, 34 L. J. Ch. 212 (Eng. 1865).

[49] Smith v. Croom, 7 Fla. 81 (1857).

[50] Matter of Mesa, 87 Misc. Rep. 242, 149 N. Y. Supp. 536 (1914).

[51] Ricard v. Kimball, 5 Rob. (La.) 142 (enrollment of boat) (1843); Hill v. Spangenburg, 4 La. Ann. 553 (notarial act) (1849); Davis v. Binion, 5 La. Ann. 248 (authentic act) (1850); New Orleans v. Sheppard, 10 La. Ann. 268 (notarial act) (1855); Hegeman v. Fox, 31 Barb. 475, 1 Redf. Sur. 297 (bill in equity) (N. Y. 1869); Guerra v. Guerra, 158 S. W. 191 (Tex. Civ. App. 1913) (citation).

last domicil of the deceased conclusive on the petitioner.[52] A statement of domicil in a libel for divorce signed by the party is some evidence, though of course open to dispute.[53]

Registering at a hotel as resident of a certain place is some evidence of domicil at that place.[54]

An effort to have one's name inserted in a city directory is not evidence of legal domicil at that place, especially where it is offered to prove domicil at a previous date.[55]

Since actions speak louder than words the conduct of a person is the most important evidence of his intention to acquire a domicil in a place.[56] In any case of discrepancy between his declarations and his acts, his declared intention yields to the conclusion drawn from his acts.[57]

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[52] Flatauer v. Loser, 156 App. Div. 591, 141 N. Y. Supp. 951 (1913); Matter of Grant, 83 Misc. Rep. 257, 260, 144 N. Y. Supp. 567 (1913); Matter of Mesa, 87 Misc. Rep. 242, 149 N. Y. Supp. 536 (1914); Tilt v. Kelsey, 207 U. S. 43 (1907); Concha v. Concha, 11 App. Cas. 541 (Eng. 1886).

[53] Rockland v. Deer Isle, 105 Me. 155, 73 Atl. 885 (1909).

[54] Hewes v. Baxter, 48 La. Ann. 1303, 20 So. 701 (1896); Holyoke v. Holyoke, 110 Me. 469, 87 Atl. 40 (1913); Emery v. Emery, 218 Mass. 227, 105 N. E. 879 (1914); *In re* Paullin, 92 N. J. Eq. 419, 113 Atl. 240 (1921); Matter of Usatorres, 112 Misc. Rep. 437, 183 N. Y. Supp. 142 (1920); Miller v. Miller, 67 Ore. 359, 136 Pac. 15 (1913); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899).

[55] Fulham v. Howe, 60 Vt. 351, 14 Atl. 652 (1888).

[56] State v. Frest, 4 Harr. 558 (Del. 1845); Holt v. Hendee, 248 Ill. 288, 83 N. E. 749 (1910); Ludlow v. Szold, 90 Iowa 175, 57 N. W. 676 (1894); Richmond v. Vassalborough, 5 Greenl. 396 (Me. 1828); Hallett v. Bassett, 100 Mass. 167 (1868); Sweeney v. Sweeney, 62 N. J. Eq. 357, 50 Atl. 785 (1901); Crawford v. Wilson, 4 Barb. 504 (N. Y. 1848); People v. Crowley, 21 App. Div. 304, 47 N. Y. Supp. 457 (1897); Matter of Wise, 84 Misc. Rep. 663, 146 N. Y. Supp. 789 (1914); Matter of Harkness, 183 App. Div. 396, 170 N. Y. Supp. 1024 (1918); Reed v. Reed, 59 Pa. Super. 178 (1914); International & G. N. Ry. v. Anderson County, 174 S. W. 305 (Tex. Civ. App. 1915); Ricordi v. Columbia Graphophone Co., 258 Fed. 72 (D. C. 1919); Doucet v. Geoghegan, 9 Ch. D. 441 (Eng. 1878); Munt v. Findlay, 25 New Zeal. L. R. 488 (1906); Forster v. Forster (1907) Victoria L. R. 159.

[57] Estate of Samuel, Myr. 228 (Cal. 1879); People v. Kirkpatrick, 164 Ill. App. 328 (1911); Holt v. Hendee, 248 Ill. 288, 93 N. E. 749 (1910); Saunders v. Flemingsburg, 163 Ky. 680, 174 S. W. 51 (1915); Ashland v. Catlettsburg, 172 Ky. 364, 189 S. W. 454 (1916); Semple v. Com., 181 Ky. 675, 205 S. W. 789 (1918); Martin v. Martin, 194 Ky. 361, 233 S. W. 894 (1922); Spaulding v. Steel, 129 Mich. 237, 88 N. W. 627 (1902); McHenry v. State, 119 Miss. 289, 80 So. 763 (1919); Firth v. Firth, 50 N. J. Eq. 137, 24 Atl. 916 (1892); Sherwood v. Judd, 3 Bradf. 267 (N. Y. 1855); New York v. Beers, 163 App. Div. 495, 148 N. Y. Supp. 438, 117 N. E. 1064 (1917); Shelton v. Tiffin, 6 How. 163 (U. S. 1848); Butler v. Fransworth, Fed. Cas. No. 2240 (1821).

Thus the holding of public office in a certain place at least where domicil is a necessary qualification for office is evidence of domicil,[58] though in an exceptional case it may not be regarded as very important evidence.[59] Mere candidacy for office is not very strong evidence of domicil.[60]

Church connection is some evidence of domicil.[61]

In a few cases the actual place of death has been regarded as evidence of domicil.[62] The place of burial is certainly to be regarded as evidence of domicil at the place,[63] and so for what it is worth is evidence of procuring a burial place or tomb,[64] or the expression of a desire to be buried in a certain place.[65] Such evidence, however, is not of great weight.[66]

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[58] Caufield v. Cravens, 138 La. 283, 70 So. 226 (1915); Harvard College v. Gore, 5 Pick. 370 (Mass. 1829); Cole v. Cheshire, 1 Gray 441 (Mass. 1854); McHenry v. State, 119 Miss. 289, 80 So. 763 (1919); Mackenzie v. Mackenzie, 3 Misc. Rep. 200, 23 N. Y. Supp. 270 (1893); Matter of Martin, 173 App. Div. 1, 58 N. Y. Supp. 915 (1916); *In re* Kane's Estate, 93 Misc. Rep. 406, 156 N. Y. Supp. 1004 (1916); Buchanan v. Cook, 70 Vt. 168, 40 Atl. 102 (1897); Butler v. Hopper, Fed. Cas. No. 2241 (1806) (of prodigious weight); *In re* Tyson, 10 Queens. L. J. R. 151 (1900).

[59] Sanderson v. Ralston, 20 La. Ann. 312, 319 (1868).

[60] Mandeville v. Huston, 15 La. Ann. 281 (1860); Hascall v. Hafford, 107 Tenn. 355, 65 S. W. 423 (1901).

[61] Helm v. Com., 135 Ky. 392, 122 S. W. 196 (1909); Pettit v. Lexington, 193 Ky. 679, 237 S. W. 391 (1922); Gardiner v. Brookline, 181 Mass. 162, 63 N. E. 397 (1902); Pickering v. Winch, 48 Ore. 500, 87 Pac. 763 (1906); Cooper's Admr. v. Com., 121 Va. 338, 93 S. E. 680 (1917); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899); Gilbert v. David, 235 U. S. 561 (1915); Dunn v. Trefry, 260 Fed. 147 (C. C. A. 1919).

[62] King v. United States, 27 Ct. Cl. 529 (1892); Dresser v. Edison Illuminating Co., 49 Fed. 257 (C. C. 1892); Guier v. O'Daniel, 1 Binn. 349 (Pa. 1808); *In re* Barclay, 259 Pa. 401, 103 Atl. 274 (1918); Kellar v. Baird, 5 Heisk. 39 (Tenn. 1871); In the Goods of Millar, 1 New Zeal. Jur. (N. S.) S. C. 70 (1875).

[63] Dresser v. Edison Illuminating Co., 49 Fed. 257 (C. C. 1892); State v. Red Oak T. & S. Bank, 167 Ark. 234, 267 S. W. 566 (1925); Isham v. Gibbons, 1 Bradf. 69 (N. Y. 1849); Matter of Barbour, 85 App. Div. 445, 173 N. Y. Supp. 276 (1918); Matter of Green, 99 Misc. Rep. 582, 164 N. Y. Supp. 1063, 165 N. Y. Supp. 1088 (1917); Pickering v. Winch, 48 Ore. 500, 87 Pac. 763 (1906); Dunn v. Trefry, 260 Fed. 147 (C. C. A. 1919); Heath v. Samson, 14 Beav. 441 (Eng. 1851); Jopp. v. Wood, 34 L. J. Ch. 212, 218, 4 DeG. J. & S. 616 (Eng. 1865).

[64] Cooper's Admr. v. Com., 121 Va. 338, 93 S. E. 680 (1917); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899); Munt v. Findlay, 25 New Zeal. L. R. 488 (1906).

[65] Matter of Cruger, 36 Misc. Rep. 477, 73 N. Y. Supp. 812 (1901); Munt v. Findlay, 25 New Zeal. L. R. 488 (1906).

[66] United States Trust Co. v. Hart, 150 App. Div. 413, 135 N. Y. Supp. 81 (1912); Hood's Estate, 21 Pa. 106 (1853).

Evidence of general reputation as to a person's domicil is inadmissible;[67] though it has been held that the general reputation within the family is admissible.[68]

The very fact of actual residence in a place is a circumstance which tends to prove domicil in that place; since it is reasonably inferable from a man's establishing a residence in a place, that that place is his home.[69] The mere fact of residence in a place is therefore *prima facie* evidence of domicil there and in the absence of other evidence on the point, justifies a finding that the place is the domicil of the one resident there.[70] It is, however, very uncommon to find the fact of residence the only fact bearing on intention proved in the case and it is seldom, therefore, that evidence of actual residence alone will justify a finding of domicil.[71]

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[67] Griffin v. Wall, 32 Ala. 149 (1858); Ferguson v. Wright, 113 N. C. 537, 18 S. E. 691 (1893).

[68] Fleming v. Straley, 1 Ired. L. (23 N. C.) 305 (1840).

[69] State v. Steele, 33 La. Ann. 910 (1881); Lotio v. Coladney, 153 La. 993, 97 So. 16 (1923); Hegeman v. Fox, 31 Barb. 475, 1 Redf. Sur. 297 (N. Y. 1860); Horne v. Horne, 9 Ired. L. 99 (N. C. 1848); Mitchell v. U. S., 21 Wall. 350 (U. S. 1874); Kemna v. Brockhaus, 5 Fed. 762 (C. C. 1881).

[70] State v. Toner, 39 Ala. 454 (1864); Dow v. Gould & C. S. M. Co., 31 Cal. 629, 650 (1867); State v. Frest, 4 Harr. 558 (Del. 1845); Smith v. Croom, 7 Fla. 81 (1857); Cooper v. Beers, 143 Ill. 25, 33 N. E. 61 (1892); Pettit v. Lexington, 193 Ky. 679, 237 S. W. 391 (1922); Alter v. Waddill, 20 La. Ann. 246 (1868); Steer's Succession, 47 La. Ann. 1551, 18 So. 503 (1895); Harrison v. Harrison, 117 Md. 607, 84 Atl. 57 (1912); Ward v. Oxford, 8 Pick. 476 (Mass. 1829); Thorndike v. Boston, 1 Met. 242 (Mass. 1840); Wood v. Roeder, 45 Neb. 311, 63 N. W. 853 (1895); Merritt v. Merritt, 40 Nev. 385, 164 Pac. 644 (1917); Hart v. Lindsey, 17 N. H. 235 (1845); Tracy v. Tracy, 62 N. J. Eq. 807, 46 Atl. 657, 48 Atl. 533 (1901); Cadwalader v. Howell, 3 Harr. 138 (Del. 1840); Elbers v. United Ins. Co., 16 Johns. 128 (N. Y. 1819); Kennedy v. Ryall, 67 N. Y. 379 (1876); Crawford v. Wilson, 4 Barb. 504 (N. Y. 1848); Vischer v. Vischer, 12 Barb. 640 (N. Y. 1851); Sherwood v. Judd, 3 Bradf. 267 (N. Y. 1855); Webster v. M. W. Kellogg Co., 168 App. Div. 443, 153 N. Y. Supp. 800 (1915); Matter of Hyde, 169 App. Div. 568, 155 N. Y. Supp. 496 (1915); Matter of Grant, 83 Misc. Rep. 257, 144 N. Y. Supp. 567 (1913); *In re* Green's Estate, 167 N. Y. Supp. 1084 (1917); Guier v. O'Daniel, 1 Binn. 349 (Pa. 1808); Hood's Estate, 21 Pa. 106 (1853); Carey's Appeal, 75 Pa. 201 (1874); Hindman's Appeal, 85 Pa. 466 (1877); Reed v. Reed, 59 Pa. Super. 178 (1915); Bradley v. Lowry, Speer, Eq. 1 (S. C. 1842); Mills v. Alexander, 21 Tex. 154 (1858); Shelton v. Tiffin, 6 How. 163 (U. S. 1848); Ennis v. Smith, 14 How. 400 (U. S. 1852); Anderson v. Watt, 138 U. S. 694 (1891); Gilbert v. David, 235 U. S. 561 (1915); Eisele v. Oddie, 128 Fed. 941 (C. C. 1904); Bruce v. Bruce, 2 B. & P. 229 (Eng. 1790); *Re* Scilo Estate (1918) 1 West. W. R. (Sask.) 441; Sells v. Rhodes, 26 New Zeal. L. R. 87 (1907).

[71] Hartford v. Champion, 58 Conn. 268, 20 Atl. 471 (1890); Cobb v. Rice, 130 Mass. 231 (1881); White v. Stowell, 229 Mass. 594, 119 N. E. 121 (1918);

Evidence which proves the temporary purpose of residence deprives it of all evidential value, and in that case it may fairly be said that actual residence is not even *prima facie* evidence of domicil.[72]

Evidence of removal from a place subsequently to the time when domicil is to be determined has been held not even to tend to disprove a domicil at that place.[73]

The inference of intention from actual residence grows stronger the longer the residence is continued; and where residence lasts for many years the inference of intention to make the place a home is almost controlling.[74] Where, however, the residence is shown to be of a temporary character, it does not become any more convincing evidence of intention by lapse of time.[75]

The purchase of a dwelling house at the new residence in which the purchaser intends to live is evidence of his acquisition of a domicil at that place;[76] and even negotiations for the purchase of such a dwelling house have evidential value.[77] It is

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Hutchins v. Brown, 147 N. E. 899 (Mass. 1925); Ayer v. Weeks, 65 N. H. 248, 18 Atl. 1108 (1889); Dupuy v. Wurtz, 53 N. Y. 556 (1873); Tucker v. Field, 5 Redf. 139 (N. Y. 1881); Kellar v. Baird, 5 Heisk. 39 (Tenn. 1871); Talley v. Com., 127 Va. 516, 103 S. E. 612 (1920); Hodgson v. De Beauchesne, 12 Moore P. C. 285 (Eng. 1858); Moorhouse v. Lord, 10 H. L. Cas. 285 (Eng. 1863).

[73] Semple v. Com., 181 Ky. 675, 205 S. W. 789 (1918); Hall v. Schoenecke, 128 Mo. 661, 31 S. W. 97 (1895); Matter of Martin, 173 App. Div. 1, 158 N. Y. Supp. 915 (1916); In the Goods of Millar, 1 New Zeal. Jur. (N. S.) S. C. 70 (1875).

[74] Whise v. Whise, 36 Nev. 16, 131 Pac. 967 (1913).

[75] Easterly v. Goodwin, 35 Conn. 273 (1868); Hairston v. Hairston, 27 Miss. 704 (1854); Weston v. Weston, 14 Johns. 428 (N. Y. 1817); Elbers v. United Ins. Co., 16 Johns. 128 (N. Y. 1819); Williamson v. Parisien, 1 Johns. Ch. 389 (N. Y. 1815); Matter of Hawley, 1 Daly 531 (N. Y. 1866); Hulett v. Hulett, 37 Vt. 581 (1865); The Ann Green, 1 Gall. 274, Fed. Cas. No. 414 (1812); White v. Brown, Fed. Cas. No. 17538 (1848); Rogers v. Amado, Fed. Cas. No. 12005 (1847); Bremer v. Freeman, 10 Moore, P. C. 306 (Eng. 1857); *In re* Tyson, 10 Queensl. L. J. Rep. 151 (1900).

[76] Easterly v. Goodwin, 35 Conn. 279 (1868); Munt v. Findlay, 25 New Zeal. L. R. 488 (1906).

[77] Hairston v. Hairston, 27 Miss. 704 (1854); *In re* Baylis' Estate, N. J. Ch., 121 Atl. 787 (1923); Hegeman v. Fox, 31 Barb. 475, 1 Redf. Sur. 297 (N. Y. 1860); Ames v. Duryea, 6 Lans. 155 (affd. 61 N. Y. 609) (N. Y. 1871); Smith v. Smith, 122 Va. 341, 94 S. E. 777 (1918); Shelton v. Tiffin, 6 How. 163 (U. S. 1848); Gilbert v. David, 235 U. S. 561 (1915); McConnell v. McConnell, 18 Ont. 36 (1890); Cells v. Rhodes, 26 New Zeal. L. R. 87 (1907).

[78] High, Appellant, 2 Doug. 515 (Mich. 1847).

obvious that such evidence is not conclusive;[78] indeed though the purchaser or hirer of a dwelling house moves his furniture into it this fact is not conclusive of the establishment of a new domicil there from that moment.[79] Purchase of a house for investment is certainly not distinctively probative of intention to make the place a home.[80] Leasing a dwelling house is not important evidence.[81]

When one leaves an old residence and moves to a new one, his retaining his former dwelling house and declining to dispose of it is some evidence of an intention to return to his former home and tends therefore to disprove a change of domicil.[82] Even the retention of one's furniture in his former domicil, however, is not conclusive against the existence of a new domicil.[83]

Selling a former dwelling house is some evidence of change of domicil,[84] and so even it has been held is the sale of other land at a former place of residence.[85] Leasing a former dwelling house, however, is not very persuasive evidence of a change of domicil.[86]

Moving all one's furniture to the house of a near relative is some evidence of a purpose to make a home there.[87]

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[78] Matter of Blumenthal, 101 Misc. Rep. 83, 167 N. Y. Supp. 252 (1917); *In re* Barclay, 259 Pa. 401, 103 Atl. 274 (1918); Cooper's Admr. v. Com., 121 Va. 338, 93 S. E. 680 (1917).

[79] Carter v. Putnam, 141 Ill. 133, 30 N. E. 681 (1892); Matter of Blumenthal, 101 Misc. Rep. 83, 167 N. Y. Supp. 252 (1917).

[80] Hayes v. Hayes, 74 Ill. 312 (1874).

[81] Seifert v. Seifert, 32 Ont. L. R. 433 (1914).

[82] Miller v. Brinton, 294 Ill. 177, 128 N. E. 370 (1920); Oakey v. Eastin, 4 La. 69 (1832); Sears v. Boston, 1 Met. 250 (Mass. 1840); Tax Collector v. Hanchett, 240 Mass. 557, 134 N. E. 355 (1922); Isham v. Gibbons, 1 Bradf. 69 (N. Y. 1849); *In re* Paris, 107 Misc. Rep. 463, 176 N. Y. Supp. 879 (1919); White v. White, 3 Head. 404 (Tenn. 1859); Dunn v. Trefry, 260 Fed. 147 (C. C. A. 1919).

[83] Behrensmeyer v. Freitz, 135 Ill. 591, 26 N. E. 704 (1891).

[84] *In re* Baylis' Estate, 121 Atl. 787 (N. J. Ch. 1923); Hegeman v. Fox, 31 Barb. 475, 1 Redf. Sur. 297 (N. Y. 1860); Barton v. Irasburgh, 33 Vt. 159 (1860); Gilbert v. David, 235 U. S. 561 (1915). The fact that the old residence was not sold has been mentioned as an element in the decision. State v. Red Oak T. & S. Bank, 167 Ark. 234, 267 S. W. 566 (1925).

[85] Hindman's Appeal, 85 Pa. 466 (1877).

[86] Dupuy v. Wurtz, 53 N. Y. 556 (1873); See Figi v. Figi, 181 Wis. 136, 194 N. W. 41 (1923).

[87] Staiar's Admr. v. Com., 194 Ky. 316, 239 S. W. 40 (1922).

Residence in order to be probative of intention to acquire a domicil must be under circumstances which would tend to prove the dwelling house a settled home. Where a man bought a plantation consisting mostly of wild land and having no dwelling house on it, and the purchaser while clearing the wild land lived in a cabin intended for field hands; such residence was held not to be any evidence of the acquisition of domicil upon the plantation.[88]

In *In re Hardman*,[89] it was said that lengthened residence in a foreign country does not lead to the inference of a domicil there; but residence in a colony does lead to the inference. The very act of emigration indicates a change of domicil in the ordinary case. Where, however, a man who has an ancestral estate in England, or high social rank or standing, goes to a colony to make his fortune, the fact does not lead to the inference of a change of domicil. On the last point the court cited *Jopp v. Wood*.[90] This decision seems inapplicable to the facts of life in this country.

In *Matter of Martin*,[91] the decedent, had purchased a house in the place where it was claimed he had fixed his domicil. He was a great traveler and collector; and it appeared that he had bought the house to shelter his collection. The court said: "Taking into consideration Mr. Martin's wealth and habits of life, the purchase of a private residence in a city where he was accustomed to spend a considerable portion of his time does not have the significance that would attach to a like action by a person of a less cosmospolitan character."

The fact that a man's family dwells in a place is important evidence that the head of the family has a domicil at that place,[92] though it is of course not conclusive evidence, and may be explained by circumstances.[93] So where a husband, leaving his

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[88] White v. White, 3 Head 404 (Tenn. 1859).

[89] *In re* Hardman, Macassey, 984 (New Zeal. 1869).

[90] Jopp v. Wood, 34 L. J. Ch. 212 (Eng. 1865).

[91] Matter of Martin, 173 App. Div. 1, 158 N. Y. Supp. 915 (1916).

[92] Jones v. Reser, 61 Okla. 46, 160 Pac. 58 (1916); Marsden v. Troy, 189 S. W. 960 (Tex. Civ. App. 1916).

[93] Johnson v. Turner, 29 Ark. 280 (1874); Nolley v. Nolley, 122 Ark. 440, 183 S. W. 954 (1916); Smith v. Croom, 7 Fla. 81 (1857); Cunningham v. Maund, 2 Ga. 171 (1847); Daniel v. Sullivan, 46 Ga. 277 (1872); Brandt v. Buckley, 147 Ga. 389, 94 S. E. 233 (1917); Brieto v. Duncan, 22 Ill. 26 (1859);

family at the old dwelling house, goes to another place, the continued occupancy of the old dwelling by his family is evidence that his domicil remains unchanged,[94] though he may be shown by other evidence to have changed his domicil.[95]

Conversely, the removal of the family to a new home is evidence that the domicil of the head of the family has changed;[96] though this may be controlled by evidence which proves the removal to be only temporary.[97]

State v. Groome, 10 Iowa 308 (1860); Nugent v. Bates, 51 Iowa 77, 50 N. W. 76 (1879); Knox v. Waldoborough, 3 Greenl. 455 (Me. 1825); Brewer v. Linnaeus, 36 Me. 428 (1853); Topsham v. Lewiston, 74 Me. 236 (1882); Missouri K. & T. Trust Co. v. Norris, 61 Minn. 256, 63 N. W. 634 (1895); Lovin v. Hicks, 116 Minn. 179, 133 N. W. 575 (1911); McHenry v. State, 119 Miss. 289, 80 So. 763 (1919); McDowell v. Friedman B. S. Co., 135 Mo. App. 276, 115 S. W. 1028 (1909); Carwile v. Jones, 38 Mont. 590, 101 Pac. 153 (1909); Berry v. Hull, 6 N. M. 643, 30 Pac. 936 (1892); Chaine v. Wilson, 1 Bosw. 673, 8 Abb. Pr. 78 (N. Y. 1858); Sherwood v. Judd, 3 Bradf. 267 (N. Y. 1855); Matter of Scott, 1 Daly 534 (N. Y. 1848); Lee v. Stanley, 9 How. Pr. 272 (N. Y. 1854); Barfield v. Coker, 73 S. C. 181, 53 S. E. 170 (1905); Pearce v. State, 1 Sneed. 63 (Tenn. 1853); Brown v. Boulden, 18 Tex. 431 (1857); Grant v. Lawrence, 37 Vt. 450, 108 Pac. 931 (1910); Plat v. Attorney-General, 3 App. Cas. 336 (Eng. 1878).

[94] Coffey v. Mann, 200 Ill. App. 143 (1916); Yonkey v. State, 27 Ind. 236 (1866); Penley v. Waterhouse, 1 Iowa 498 (1855); Nugent v. Bates, 51 Iowa 77, 50 N. W. 76 (1879); Keith v. Stetter, 25 Kan. 100 (1881); Jennison v. Hapgood, 10 Pick. 77 (Mass. 1830); Shattuck v. Maynard, 3 N. H. 123 (1824); Brundred v. Del Hoyo, Spencer (20 N. J. L.) 328 (1844); Fisk v. Chicago R. I. & P. R. R., 53 Barb. 472, 3 Abb. Pr. (N. S.) 453 (N. Y. 1868); Roberti and Wife v. Methodist Book Concern, 1 Daly 3 (N. Y. 1859); Matter of Green, 167 N. Y. Supp. 1084 (1917); Matter of Frankland, 171 N. Y. Supp. 763 (1918); Plummer v. Brandon, 5 Ired. (40 N. C.) Eq. 190 (1848); Dauphin County v. Banks, 1 Pears. 40 (Pa. 1854); Burch v. Taylor, 1 Phila. 224 (Pa. 1851); Colburn v. Holland, 14 Rich. Eq. 176 (S. C. 1868); Brown v. Boulden, 18 Tex. 431 (1857); Hylton v. Brown, Fed. Cas. No. 6981 (1806); Butler v. Hopper, Fed. Cas. No. 2241 (1806).

[95] Wells v. People, 44 Ill. 40 (1867); Greene v. Windham, 13 Me. 225 (1836); Parsons v. Bangor, 61 Me. 457 (1873); Cambridge v. Charlestown, 13 Mass. 501 (1816); Hairston v. Hairston, 27 Miss. 704 (1854); Exchange Bank v. Cooper, 40 Mo. 169 (1867); Swancy v. Hutchins, 13 Neb. 266, 13 N. W. 282 (1882); McPherson v. Housel, 2 Beas. (13 N. J. Eq.) 35 (1860); Matter of Bye, 2 Daly 525 (N. Y. 1869); Weston v. Weston, 14 Johns. 428 (N. Y. 1817); Reed v. Ketch, 1 Phila. 105 (Pa. 1850); Russell v. Randolph, 11 Tex. 460 (1854); Blair v. Western Female Seminary, Fed. Cas. No. 1486 (1864); Burnham v. Rangely, Fed. Cas. No. 2176 (1845).

[96] Riggs v. Andrews & Co., 8 Ala. 628 (1845); Cass v. Gunnison, 68 Mich. 147, 36 N. W. 45 (1887); Ames v. Duryea, 6 Lans. 155 (N. Y. 1871); (affd. 61 N. Y. 609).

[97] Scholes v. Murray Iron Works Co., 44 Iowa 190 (1876); Sanderson v. Ralston, 20 La. Ann. 312, 319 (1868); Penfield v. Chesapeake, O. & S. W. R. R., 29 Fed. 494 (C. C. 1885) (affd. 134 U. S. 351).

Not infrequently a man changes his residence for some purpose leaving his wife and family behind at his old residence. In some such cases it is held that his domicil remains at the old residence. In *Hayes v. Hayes,*[98] it appeared that Hayes, then domiciled in Illinois, had a disagreement with his wife and left her, going to Iowa to supply a pulpit for a year while she went to visit her relatives and their house in Illinois was rented, furnished. Hayes supplied various pulpits in Iowa for three years, bought a house and slept in it, taking his meals at hotels.[a] At the end of three years he returned to Illinois, made certain repairs on his old home and then stayed for a few weeks with his wife. There was no further evidence of intention. The court held that he had never lost his domicil in Illinois.[99]

On the other hand, where there is clear evidence of an intention to change the residence the domicil shifts, although the man's wife and family do not go with him to the new home.[100] In *Hairston v. Hairston,*[101] Hairston, who was then domiciled in Virginia, bought a plantation in Mississippi and removed a large number of his slaves there. He did not remove his family from Virginia, but after a quarrel with his wife, left them there, visited Europe and then went to Mississippi where he remained until his death. built a house and showed his intention to live there. It was held that his domicil was in Mississippi.[102]

The transaction of business at a certain place is some slight evidence of domicil [103] though not in itself without the corroborations of other circumstances enough to prove domicil at that

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[98] Hayes v. Hayes, 74 Ill. 312 (1874).

[99] See to the same effect Cass v. Gunnison, 68 Mich. 147, 36 N. W. 45 (1888).

[100] Johnson v. Turner, 29 Ark. 280 (1874); Swaney v. Hutchins, 13 Neb. 266 (1882).

[101] Hairston v. Hairston, 27 Miss. 704 (1854).

[102] Acc. Behrensmeyer v. Kreitz, 135 Ill. 591, 26 N. E. 704 (1891), reversing 125 Ill. 141, 17 N. E. 232 (1888); Petty v. Petty, 42 Ind. App. 443, 85 N. E. 995 (1908); Schlawig v. De Peyster, 83 Iowa 323, 49 N. W. 843 (1891); Estopinal v. Michel, 121 La. 879, 46 So. 907 (1908); Estopinal v. Vogt, 121 La. 883, 46 So. 908 (1908).

[103] Miller v. Brinton, 294 Ill. 177, 128 N. E. 370 (1920); Tuttle v. Wood, 115 Iowa 507, 88 N. W. 1056 (1902); Tax Collector v. Hanchett, 240 Mass. 557, 134 N. E. 355 (1922); Matter of Blumenthal, 101 Misc. Rep. 83, 167 N. Y. Supp. 252 (1917).

place.[104] So the fact that a man makes investments in a place may be mentioned along with other evidence of his domicil there,[105] but such evidence is of exceedingly little weight, and easily controlled by other evidence.[106]

The payment of personal taxes assessed in a certain place is evidence of the domicil of the person paying whether against his contrary contention,[107] or in favor of it [108] or in a case where he is not interested in the issue.[109] In all cases it is regularly mentioned as one of the circumstances bearing on the question of domicil.[110]

The omission to pay taxes is not of such weight to disprove domicil in a place where there is nothing to show that taxes were

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[104] State v. Frest, 4 Harr. 558 (Del. 1845); Covington v. Shinkle, 175 Ky. 364, 194 S. W. 766 (1917).

[105] Matter of Usatorres, 112 Misc. Rep. 437, 183 N. Y. Supp. 142 (1920); *In re* Barclay, 259 Pa. 401, 103 Atl. 274 (1918); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899).

[106] Semple v. Com., 181 Ky. 675, 205 S. W. 789 (1918); Hood's Estate, 21 Pa. 106 (1853); Dalrymple's Estate, 215 Pa. 367, 64 Atl. 554 (1906); Graveley v. Graveley, 25 S. C. 1 (1884); Denny v. Sumner County, 134 Tenn. 468, 184 S. W. 14 (1915); Cooper v. Com., 121 Va. 338, 93 S. E. 680 (1917).

[107] Ashland v. Catlettsburg, 172 Ky. 364, 189 S. W. 454 (1916); Babcock v. Slater, 212 Mass. 434, 99 N. E. 173 (1912); Tax Collector v. Hanchett, 240 Mass. 557, 134 N. E. 355 (1922); Guggenheim v. Long Branch, 80 N. J. L. 246, 76 Atl. 338 (1912); *In re* Paullin, 109 Atl. 13 (1919), 92 N. J. Eq. 419, 113 Atl. 240 (1921); Matter of Green, 167 N. Y. Supp. 1084 (1917); Matter of Lydig, 191 App. Div. 117, 180 N. Y. Supp. 843 (1920); *In re* Gates's Estate, 117 Misc. Rep. 800, 191 N. Y. Supp. 757 (1921); Bowen v. Com., 126 Va. 182, 101 S. E. 232 (1919); Dunn v. Trefry, 260 Fed. 147 (C. C. A. 1919).

[108] Lyman v. Fiske, 17 Pick. 231 (Mass. 1835); Weld v. Boston, 125 Mass. 166 (1879); Hulett v. Hulett, 37 Vt. 581 (1865).

[109] Dresser v. Edison Illuminating Co., 49 Fed. 257 (C. C. 1892); Harvard College v. Gore, 5 Pick. 370 (Mass. 1829); Chase v. Chase, 66 N. H. 588, 29 Atl. 553 (1891).

[110] Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Yonkey v. State, 27 Ind. 236 (1866); Hurst v. Flemingsburg, 172 Ky. 127, 188 S. W. 1085 (1916); Covington v. Shinkle, 175 Ky. 530, 194 S. W. 766 (1917); State v. Steele, 33 La. Ann. 910 (1881); Caufield v. Cravens, 138 La. 283, 70 So. 226 (1915); Pickering v. Cambridge, 144 Mass. 244, 10 N. E. 827 (1887); *In re* White's Estate, 116 App. Div. 183, 101 N. Y. Supp. 551 (1906); New York v. Beers, 163 App. Div. 495, 148 N. Y. Supp. 438 (1917); Matter of Green, 167 N. Y. Supp. 1084 (1917); Matter of Barbour, 185 Misc. Rep. 445, 173 N. Y. Supp. 276 (1918); Matter of Henry C. Frick, 116 Misc. Rep. 488, 190 N. Y. Supp. 262 (1921); Carey's Appeal, 75 Pa. 201 (1874); Dalrymple's Estate, 215 Pa. 367, 64 Atl. 554 (1906); Denny v. Sumner County, 134 Tenn. 468, 184 S. W. 14 (1915); Mitchell v. United States, 21 Wall. 350 (U. S. 1874).

paid elsewhere.[111] The failure to pay has, however, been mentioned as a circumstance for consideration,[112] at least against a person who claims a domicil in the place where he is proved not to have paid taxes.[113]

The mere assessment of a tax is held to be no evidence of domicil against the town in which the assessment is made on the ground that the assessors being public officers are not under the control of the town.[114] The assessment of a tax is, however, generally admissible in evidence,[115] but it is no admission on the part of the person assessed if he did not pay the tax or did so under protest.[116] A return of personal property for taxation in a certain place is evidence of domicil there.[117]

The taxation of a person as a non-resident is some evidence that he was not domiciled in the place.[118]

> In order that the payment of taxes should have any bearing on the question of domicil, it must be such a tax as is levied only upon one domiciled in the place. Where, for instance, a so-called road tax was assessed upon actual residents without regard to their domicil, the payment of it had no bearing on the question of domicil.[119] So of course the payment of a tax on real estate is no evidence of domicil.[120] Evidence of mistake of law may also control the otherwise prohibitive effect of a payment of the tax. So where a person not there domiciled paid for many years a tax on tangible chattels situated outside his domicil under the

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[111] McKowen v. McGuire, 15 La. Ann. 637 (1860); Hallett v. Bassett, 100 Mass. 167 (1868); *In re* Lankford Estate, 272 Mo. 1, 197 S. W. 147 (1917); Jones v. St. John, 30 Can. 122 (1899).

[112] Valentine v. Valentine, 61 N. J. Eq. 400, 48 Atl. 593 (1901).

[113] Mooar v. Harvey, 128 Mass. 219 (1880); *In re* Lankford Estate, 272 Mo. 1, 197 S. W. 147 (1917).

[114] Rockland v. Union, 100 Me. 67, 60 Atl. 705 (1905).

[115] Ginn v. Cannon, 119 Ga. 475, 46 S. E. 631 (1903); Rockland v. Deer Isle, 105 Me. 155, 73 Atl. 885 (1909).

[116] Rockland v. Union, 100 Me. 67, 60 Atl. 705 (1905); Isham v. Gibbons, 1 Bradf. 69 (N. Y. 1849).

[117] Harvey's Estate, 67 Pitts. L. J. 467 (Pa. 1919).

[118] Matter of John Lyon, 117 Misc. Rep. 189, 191 N. Y. Supp. 260, 192 N. Y. Supp. 936 (1921).

[119] Dale v. Irwin, 78 Ill. 170 (1875).

[120] Chase v. Chase, 66 N. H. 586, 29 Atl. 553 (1891).

erroneous belief that such chattels were taxable at their *situs*, the payment of the tax under the circumstances was not evidence of domicil.[121] In *Ellsworth v. Gouldsboro* [122] a tax had been assessed against a pauper by the town of Gouldsboro for many years and had been paid by him under the erroneous belief that his dwelling house lay within the town of Gouldsboro. Upon the town boundary being surveyed it was found that the pauper's dwelling house was situated outside the town. It was held that the assessment and payment of this tax under the circumstances was no evidence of a domicil in the town of Gouldsboro.

The fact that one has registered and votes in a place is evidence that he has become or has remained domiciled there.[123] It

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[121] Northern v. McCaw, 189 Mo. App. 362, 175 S. W. 315 (1915).

[122] Ellsworth v. Guildsboro, 55 Me. 94 (1867).

[123] McHaney v. Cunningham, 4 Fed. (2d) 725 (D. C. 1925); State v. Red Oak T. & S. Bank, 167 Ark. 234, 267 S. W. 566 (1925); Enfield v. Ellington, 67 Conn. 459, 34 Atl. 818 (1896); Dorus v. Lyon, 92 Conn. 55, 101 Atl. 490 (1917); Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Moffett v. Hill, 131 Ill. 239, 22 N. E. 821 (1889); Yonkey v. State, 27 Ind. 236 (1866); State v. Groome, 10 Iowa 308 (1860); London v. Boyd, 25 Ky. L. Rep. 1337, 77 S. W. 931 (1904); Hurst v. Flemingsburg, 172 Ky. 127, 188 S. W. 1085 (1916); Ashland v. Catlettsburg, 172 Ky. 364, 189 S. W. 454 (1916); Covington v. Shinkle, 175 Ky. 530, 194 S. W. 766 (1917); Pettit v. Lexington, 193 Ky. 679, 237 S. W. 391 (1922); Hill v. Spangenburg, 4 La. Ann. 553 (1849); State v. Steele, 33 La. Ann. 910 (1881); Steers' Succession, 47 La. Ann. 1551, 18 So. 503 (1895); Caufield v. Cravens, 138 La. 283, 70 So. 226 (1915); Texana O. & R. Co. v. Belchic, 150 La. 88, 90 So. 522 (1922); Harrison v. Harrison, 117 Md. 607, 84 Atl. 57 (1912); Cabot v. Boston, 12 Cush. 52 (Mass. 1853); Weld v. Boston, 126 Mass. 166 (1879); Gardiner v. Brookline, 181 Mass. 162, 63 N. E. 397 (1902); Beecher v. Detroit, 114 Mich. 228, 72 N. W. 206 (1897); Loeser v. Jergensen, 137 Mich. 220, 100 N. W. 450 (1904); Lovin v. Hicks, 116 Minn. 179, 133 N. W. 575 (1911); McHenry v. State, 119 Miss. 289, 80 So. 763 (1919); Northern v. McCaw, 189 Mo. App. 362, 175 S. W. 317 (1915); Richmond v. Richmond, 225 S. W. 126 (Mo. App. 1920); State v. Ross, 3 Zab. (N. J. L.) 517 (1852); *In re* Paullin, 109 Atl. 13 (1919), 92 N. J. Eq. 419, 113 Atl. 240 (1921); *In re* Baylis (N. J. Eq.), 121 Atl. 787 (1923); Fisk v. Chicago, R. I. & P. R. R., 53 Barb. 472 (N. Y. 1868); Mackenzie v. Mackenzie, 3 Misc. Rep. 200, 23 N. Y. Supp. 270 (1893); United States Trust Co. v. Hart, 150 App. Div. 413, 135 N. Y. Supp. 81 (1912); New York v. Beers, 163 App. Div. 495, 148 N. Y. Supp. 438 (1917); *In re* Kane's Estate, 93 Misc. Rep. 406, 156 N. Y. Supp. 1004 (1916); Matter of Green, 167 N. Y. Supp. 1084 (1917); Matter of Henry C. Frick, 116 Misc. Rep. 488, 190 N. Y. Supp. 262 (1921); Matter of John Lyon, 117 Misc. Rep. 189, 191 N. Y. Supp. 260, 192 N. Y. Supp. 936 (1921); Matter of Hyde, 169 App. Div. 568, 155 N. Y. Supp. 438 (1917); Matter of Barbour, 185 Misc. Rep. 445, 173 N. Y. Supp. 276 (1918); Carey's Appeal, 75 Pa. 201 (1874); Follweiler v. Lutz, 112 Pa. 107 (1886); Dalrymple's Estate, 215 Pa. 367, 64 Atl. 554 (1906); Dauphin County v. Banks, 1 Pears. 40 (Pa. 1854); Commonwealth v. Emerson, 1 Pears. 204 (Pa. 1861); Reed v. Reed, 59 Pa. Super. 178 (1915); Harvey's Estate, 67 Pitts. L. J. 467 (Pa.

is, however, not conclusive evidence of domicil,[124] at least in states where the law allows non-domiciled residents to vote,[125] but in states where a domicil is a necessary qualification for voting, it is very strong evidence.[126]

Voting, however, in a certain place under the mistaken belief that one's dwelling house lies within the town lines is no evidence of domicil in the town.[127]

> The ideas of different courts have no doubt differed as to the weight to be given to evidence of voting. The Louisiana court has given it only very slight weight.[128] On the other hand, the Supreme Court of the United States in the case of *Shelton v. Tiffin*,[129] spoke of the evidence as conclusive. In Illinois cases it has been called "almost irresistible," "almost conclusive," [130] "very potent." [131] The fact derives its strength from the consideration that the per-

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1919); State v. Aldrich, 14 R. I. 171 (1883); McClellan v. Carroll (Tenn. Ch. App.), 42 S. W. 185 (1897); Denny v. Sumner County, 134 Tenn. 468, 184 S. W. 14 (1915); Hulett v. Hulett, 37 Vt. 581 (1865); Fulham v. Howe, 60 Vt. 351, 14 Atl. 652 (1882); Kellogg v. Oshkosh, 14 Wis. 623 (1861); Frame v. Thormann, 102 Wis. 653, 79 N. W. 39 (1899) [affd. 176 U. S. 350 (1900)]; Mitchell v. United States, 21 Wall. 350 (U. S. 1874); Blair v. Western Female Seminary, Fed. Cas. No. 1486 (1864); United States v. Thorpe, Fed. Cas. No. 16494 (1870); Dresser v. Edison Illuminating Co., 49 Fed. 257 (C. C. 1892); *In re* Sedgwick, 223 Fed. 655 (D. C. 1915); Dunn v. Trefry, 260 Fed. 147 (C. C. 1919); Drevon v. Drevon, 34 L. J. Ch. 129 (Eng. 1865).

[124] Quinn v. Nevills, 7 Cal. App. 231, 93 Pac. 1055 (1908); Bradley v. Davis, 156 Cal. 267, 104 Pac. 302 (1909); Chambers v. Hathaway, 187 Cal. 104, 200 Pac. 931 (1921); Estate of Samuel, Myr. 228 (Cal. 1879); Easterly v. Goodwin, 35 Conn. 273, 279 (1868); Enfield v. Ellington, 67 Conn. 459, 34 Atl. 818 (1896); Smith v. Croom, 7 Fla. 81 (1857); Mandeville v. Huston, 15 La. Ann. 281 (1860); Folger v. Slaughter, 19 La. Ann. 323 (1867); Hewes v. Baxter, 48 La. Ann. 1303, 20 So. 701 (1896); East Livermore v. Farmington, 74 Me. 154 (1882); Harrison v. Harrison, 117 Md. 607, 84 Atl. 57 (1912); Rourke v. Hanchett, 134 N. E. 355 (Mass. 1922); Spaulding v. Steele, 129 Mich. 237, 88 N. W. 627 (1902); *In re* Crane's Estate, 205 Mich. 673, 172 N. E. 584 (1919); Mallard v. North Platte First Nat. Bank, 40 Neb. 784, 59 N. W. 511 (1894); Matter of Lydig, 191 App. Div. 117, 180 N. Y. Supp. 843 (1920); Hascall v. Hafford. 107 Tenn. 355, 65 S. W. 423 (1901); Clark v. Territory, 1 Wash. T. 68 (1859); *In re* Sedgwick, 223 Fed. 655 (D. C. 1915).

[125] Hayes v. Hayes, 74 Ill. 312 (1874); Lincoln v. Hapgood, 11 Mass. 350 (1814).

[126] Moffett v. Hill, 131 Ill. 239, 22 N. E. 821 (1889); Kellogg v. Oshkosh, 14 Wis. 623 (1861); Cooper's Admr. v. Com., 121 Va. 338, 93 S. E. 680 (1917).

[127] Ellsworth v. Gouldsboro, 55 Me. 94 (1867).

[128] Sanderson v. Ralston, 20 La. Ann. 312 (1868).

[129] Shelton v. Tiffin, 6 How. 163 (U. S. 1848).

[130] Cobb v. Smith, 88 Ill. 199 (1878).

[131] Kreitz v. Behrensmeyer, 125 Ill. 141, 195, 17 N. E. 232 (1888).

son voting is guilty of perjury or at least of a very serious infraction of the election law if he votes at a place where he is not domiciled.

The fact that one's name is kept on a voting list without proof that he voted is not evidence of domicil.[132] Refusal to be registered and vote is some evidence against domicil at the place, but mere omission to vote is not of much importance where it is shown that the party never voted elsewhere,[133] but it is evidence of slight value against one who claims a domicil there.[134]

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[132] Rumford v. Opton, 113 Me. 543, 95 Atl. 226 (1915); Sewall v. Sewall, 122 Mass. 156 (1877); Hindman's Appeal, 85 Pa. 466 (1877).

[133] New Orleans v. Sheppard, 10 La. Ann. 268 (1855); Hallett v. Bassett, 100 Mass. 167 (1868); Valentine v. Valentine, 61 N. J. Eq. 400, 48 Atl. 593 (1901).

[134] Mooar v. Harvey, 128 Mass. 219 (1880).