RECENT AMERICAN DECISIONS.

Supreme Court of Maine.

ELI F. LITTLEFIELD *vs.* INHABITANTS OF BROOKS.

A domicil once acquired continues till a new one is gained. While in transit the old domicil remains.

An inhabitant of A. on 30th March leaves that place with the intention of residing in C.; on 1st April he arrives at B. and the next day reaches C., where he establishes his residence. It was held, that for the purposes of taxation he was to be deemed an inhabitant of A. on 1st April, and was liable to taxation *there*.

Exception to the ruling of APPLETON, J.

This was *assumpsit* in which the plaintiff claims to recover the amount paid to the collector of the defendant town as taxes—the payment of which he contests, on the ground that he was not an inhabitant thereof.

The only question raised is his liability to taxation as an inhabitant of the defendant town.

It appeared that in March, 1860, the plaintiff was an inhabitant of Brooks; that on the 30th of March he formed the intention of leaving that town as his place of residence; that he accordingly left that day and went to Monroe; that on the 1st April he proceeded to Bangor, where he spent the night, and on the 2d of April reached Oldtown, at which place it was his intention to make his residence when he left Brooks.

On these facts the presiding judge decided that for the purposes of taxation the plaintiff was an inhabitant of Brooks, and was there legally taxed, and thereupon ordered a nonsuit—to which the plaintiff filed exceptions.

G. P. Sewall, for plaintiff.

Blake & Garnsey, for defendants.

APPLETON, C. J.—By R. S. 1857, ch. 6, sec. 1, it is provided that "a poll-tax *shall* be assessed upon *every male inhabitant of this State* above the age of twenty-one years, whether a citizen of

the United States or an alien, in the manner provided by law, unless he is exempted therefrom by the provisions of this chapter."

By sect. 10, "all *personal property*, within or without this State except in the cases enumerated in the following section, shall be assessed to the owner in the town where he is an inhabitant on the first day of April in each year." Neither the plaintiff nor his property are within the exemptions nor the exceptions of the statute.

By these provisions it is unmistakeably apparent that it was the legislative intention that *every* male inhabitant of this State, and that all personal property within the same, with certain exceptions not affecting this case, should be taxed. No person is to be exempt. No one should be. No property is exempt. None should be. The payment of taxes is the price paid for the protection which government gives to person and to property. The State affords security to all persons. It protects all property. The burden of maintaining government should be co-extensive with the benefits conferred.

The statute assumes that every inhabitant of the State is an inhabitant of some place therein. Every inhabitant, by the statutory definition of the word, has an "established residence" somewhere: R. S. 1857, ch. 1, sec. 2. If this be not so, then one might be an inhabitant and not within the exception, and yet not liable to taxation, which would be against the plain and clear language of the statute. Assuming, therefore, that all the male inhabitants of the State, not specially exempted, are to be taxed somewhere, the question arises where was the plaintiff to be taxed?

To determine this, it remains to ascertain where he was an inhabitant—where had he a domicil. Domicil, says Phillimore in his Law of Domicil 13, is "a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." "Every one at birth receives a domicil of origin, which adheres till another is acquired; and so throughout life, each successive domicil can only be lost by the acquisition of a new one:" Westlake, Private International Law 33. While *in transitu* the old one remains. It continues

till a new one is acquired, *facto et animo*. The Roman Law was otherwise. It was *siquis domicilio relicto naviget vel iter faciat, quærens quo se conferat atque ubi constituat, hunc puto sine domicilio esse*. But such is not our law. The old domicil continues till the acquisition of the new one: Story, Conflict of Laws, § 48.

The plaintiff has a domicil somewhere. He is to be deemed an inhabitant of some place. He was *in itinere*. He was not an inhabitant of Oldtown, to which he was going, for the fact of personal presence was wanting. He was not an inhabitant of Bangor, for the intention to be one, which is an indispensable requirement, did not co-exist with the fact of his personal presence. The old domicil was not lost, for the new one was not gained. He was rightly taxed in the defendant town: *Bulkely* vs. *Williamston*, 3 Gray 493. Were it otherwise, one might evade taxation, which would be a meanness, abhorrent to every honorable and honest mind. It would be to enjoy the benefits and shirk the burdens of government.

The counsel for the plaintiff in his very able argument has called our attention to certain decisions of this Court in relation to the settlement of paupers as applicable to the present inquiry.

Before considering and examining the cases to which we have been referred, it may be observed that the purpose and object of the statutes relating to taxes and to paupers, and the language in which they are respectively embodied, are entirely different. When a pauper gains a settlement, it is by having "his *home* in a town five successive years, without receiving, directly or indirectly, supplies as a pauper:" R. S. 1857, ch. 24, sec. 1. One becomes an inhabitant, one acquires a domicil, by the residence of a day, if to this the requisite intention be superadded.

In considering the decisions under the statute relating to paupers, it should be further remembered that neither the word "domicil" nor "inhabitant" is to be found therein, and the opinion of the Court in each case is made to depend upon the peculiar language of the act under consideration. In *Exeter* vs. *Brighton*, 15 Maine 58, WESTON, C. J., says: "If he (the pauper) abandons his former residence with an intention not to return, but

to fix his home elsewhere, while in the transit to his new and it may be distant destination, we are of opinion that whatever may be said of his domicil, his *home* has ceased at his former residence, *within the meaning of the statute for the relief of the poor.*"

In *Jefferson* vs. *Washington*, 19 Maine 293, WHITMAN, C. J., uses the following language: "The counsel for the defendant in error, in his argument, treats the words dwelling-place and home as if synonymous with domicil, and proceeds to argue that one domicil continues till another is gained, and that to have a domicil a man need not have any particular place of dwelling or for his home; and he cites numerous authorities to support his position. But the answer to all is, that domicil, though in familiar language used very properly to signify a man's dwelling-house, has in certain cases arising under international law and in kindred cases thereto, a sort of technical meaning. And the authorities cited all apply to it in this sense. It fixes the character of the individual in reference to certain rights, duties, and obligations; but dwelling-place and home have a more limited, precise, and local application." In *Warren* vs. *Thomaston*, 43 Maine 406, RICE, J., in delivering the opinion of the Court, says: "In the discussions in our books upon the pauper law the term *domicil* is frequently used. The term is not found in the statute, but has been interpolated upon it by the Court. Its introduction has at times, it is feared, tended to confuse and mislead rather than to simplify and aid in the trial of this class of cases. In its ordinary sense, as used by legal writers, it has not the same restricted meaning as the words residence, dwelling-place, and home have in the statute under consideration." The meaning of words and the purport of language must ever have reference to the purposes for which they are used, and the subject-matter to which they refer.

Exceptions overruled.

CUTTING, GOODENOW, DAVIS, KENT, and WALTON, JJ., concurred.

The principles of law upon which the foregoing opinion rests, seem to be very well established, but a difficulty—often not inconsiderable—arises in the application of these familiar principles or maxims to the complicated facts of cases. And this is the more obvious when we remember, as remarked by Chief Justice

SHAW in Thorndike *vs.* City of Boston, 1 Met., that "it may often occur that the evidence of facts tending to establish the domicil in one place would be entirely conclusive were it not for the existence of facts and circumstances of a still more conclusive and decisive character which fix it beyond question in another." The principles or maxims to which reference has been made are, "that every person has a domicil somewhere, and no person can have more than one domicil at the same time for one and the same purpose." And it follows from these maxims that "a man retains his domicil of origin till he changes it by acquiring another; and so each successive domicil continues until changed by acquiring another:" Opinion of the Judges of the Supreme Judicial Court of Massachusetts, 5 Met. 587; Otis *vs.* Boston, 12 Cush. 50. It is equally well settled that in order to change the domicil the fact and intent must concur—neither alone is sufficient—by which it must be intended that there needs to be a change of residence, with an intention to remain in the new place of residence an indefinite time, and without the intention of returning to the former domicil at any particular period or when any particular purpose is accomplished: Hegeman *vs.* Fox, 31 Barb. (N. Y.) 475; Bulkley *vs.* Inhabitants of Williamstown, 3 Gray 495; Holmes *vs.* Greene, 7 Id. 300; Jamaica *vs.* Townshend, 19 Verm. 267; Mann *vs.* Clark, 33 Id. 60; Hairston *vs.* Hairston, 27 Miss. 704; Henrietta *vs.* Oxford, 2 Ohio (N. S.) 32. Doubtless this must be taken with a reasonable limitation as to the time occupied in accomplishing the particular purpose, otherwise a "general residence might grow on the special purpose." See 1 Am. Lead. Cases 750, as to this point, in regard to domicils generally: Mann *vs.* Clark, *supra*. It often happens in cases of divided residence that the circumstances of each are so nearly balanced that the *intention* of the party to consider the one or the other to be his domicil will determine it to be so.

The fact of change of residence being open and notorious, generally and naturally the proof is comparatively easy. The intent or the purpose of the change of residence, not always so distinctly marked by outward acts, may not be so easy of proof. The conduct of the party, what he does in regard to the removal, is often quite sufficient to prove the intent. In addition, the declarations of the party in regard to the purpose of his change of residence, made in connection with any acts of removal, are admissible in his behalf.

In Cole *vs.* Cheshire, 1 Gray 444 THOMAS, J., says: "The plaintiff must prove that he left Cheshire with the intent of abandoning his old domicil and of acquiring a new one. That intent is manifested by what he does, and by what he says when doing, and sometimes as significantly by what he omits to do or to say." See Kilburn *vs.* Brunett, 3 Met. 200.

In Thorndike *vs.* City of Boston, 1 Met. 242, it was held that a letter from plaintiff to his agent, containing instructions as to sale of his mansion-house in Boston, and expressing his intention not to return to Boston, written about a year after he had left Boston, but before he had any knowledge that the tax in question had been assessed on him, was admissible. It was admitted as a part of the *res gestæ*, and the fact was mentioned, that it was written before any controversy existed, or the plaintiff knew that he was taxed. In Salem *vs.* Lynn, 13 Met. 545, DEWEY, J., says in his opinion in which Thorndike *vs.* Boston is cited, after stating the