Wahl v Attorney-General

(1932) 147 LT 382; [1938] All ER 922

Lord Dunedin - I have had the advantage of reading the opinion which will be delivered by Lord Atkin, and as I agree in omnibus with it I do not think it necessary to deliver a full opinion. Were it not for the declaration I do not think that in the light of many cases decided as to domicil anyone would say that the determination exuere patriam was proved. Coming to the declaration I make three remarks. First, naturalisation does not carry with it as an inevitable consequence change of domicil. Second, in signing the declaration it is extremely unlikely that the question of domicil was before his mind. Third, the declaration itself is ambiguous, for residence in the United Kingdom as an intention does not discriminate between English and Scotch domicil, though these are essentially different. It seems to me to put too great a burden on the class of residence in England which has been proved, not only to establish the factum, but to turn the ambiguity of expression as to the animus into a certainty. I think the appeal should be allowed.

Lord Warrington - This appeal arises in a suit instituted by His Majesty's Attorney-General against the appellant under the Crown Suits Act, 1865. In that suit the following issue was ordered to be tried, namely,

> "The administrator of the estate of Charles Frederick Wahl, deceased, affirms, and His Majesty's Attorney-General denies, that the deceased was domiciled in Germany at the date of his death, May 25, 1915."

The issue was tried before Rowlatt J on Dec 12 and 15 1930, who decided the issue in favour of the Crown and found that the deceased was domiciled in England at the date of his death. On March 24, 1931, his decision was affirmed by the Court of appeal (Lord Hanworth M.R. and Lawrence and Seller, L.J.J.). The administrator appeals.

The deceased was a natural-born Germany subject. His parents were Germans domiciled in Germany where he was born in 1852. His domicil of origin was therefore German. Rowlatt J found that, under the circumstances to be mentioned directly, the deceased had in 1884 acquired an English domicil of choice, and that, accordingly, he had only to inquire whether that domicil of choice was ever abandoned. This position was accepted in the Court of Appeal, who also decided that the supposed domicil of choice had not been abandoned.

In my opinion, with all respect to those learned judges, the foundation of their judgments, namely, the adoption in 1884 of an English domicil of choice did not in fact exist, and the real question is whether on the whole of the facts the deceased's domicil of origin was abandoned and an English domicil of choice acquired. It is right to say that in the Court of Appeal at all events the adoption in 1884 of an English domicil of choice was hardly disputed. The learned Master of the Rolls, for instance, stated at the opening of his judgment that the question was whether or not the deceased had reverted to his domicil of origin which was German or whether he had retained his domicil of choice which was English.

The deceased, as I have said was born in Germany of German parents in 1852. His father was the head of a firm of starch and sugar manufacturers, having a factory at Cüstrin, and the deceased, who was his eldest son, was brought up with a view to his eventually succeeding his father, which, in fact, happened on the death of the latter in 1901. In 1877 he married a German woman. Their home was at Cüstrin, where, in 1878, the appellant, their eldest son, was born. In January 1880 a second son was born, also at Cüstrin. Unfortunate differences between husband and wife occurred, and in 1879 the deceased came to England and lived at various places in London and in July 1884 was living at No. 30 Lanhill-Road, Paddington. None of these places however was a permanent home and it appears that he was often in Germany. Some time

in 1881 he brought his two children to this country, having apparently obtained a dissolution of his marriage to their mother. So far there is nothing in his conduct or otherwise to support the conclusion that he had abandoned his domicil of origin for an English domicil of choice.

In July, 1884, however, he applied for an obtained naturalisation as a British subject under the Aliens Act 1870. It is hardly necessary to say that this fact of itself has no bearing on the question of domicil. An alien with a foreign domicil does not by becoming a British subject thereby elect a domicil in this country. The decision of Rowlatt J, accepted, as I have said, in the Court of Appeal, is based on a statement contained in the memorial presented to the Home Secretary. The Act required that an applicant for naturalisation should have resided for five years in the United Kingdom. Accordingly the deceased, in his memorial, which was dated July 10, 1884, stated that during the last eight years he had for five years resided in the United Kingdom at the three several places there mentioned, the longest residence in any one of them being two years three months and twelve days. The memorial, which is on a lithographed form, concludes with the following statements:

> "That your memorialist intends to continue to reside permanently within the United Kingdom of Great Britain and Ireland, and has no intention of permanently leaving the United Kingdom."

This form does not appear to have been issued with any official authority, and it clearly goes beyond the requirements of the statute, which do not include any intention "permanently" to reside in the United Kingdom. Moreover, residence or even "permanent" residence does not of itself import domicil, for a man may have a residence in more countries than one. Moreover, domicil carries with it grave results as to status, succession to property, and so forth, and these results are not the same in all parts of the United Kingdom; they are certainly very different in England and Scotland respectively.

The result is that down to 1884 there is, in my opinion, no evidence to support a finding that the deceased had abandoned his Germany domicil of origin for an English domicil of choice. The onus is therefore on the Attorney-General to establish the adoption of a new domicil of choice.

The onus is therefore on the Attorney-General to establish the adoption of a new domicil of choice subsequently to that date.

From 1884 to 1893 there was no circumstance in the conduct of the deceased pointing even remotely to an intention to abandon his domicil of origin. He paid frequent visits to Germany, and in 1885 he had a flat a Mannheim furnished with material brought from his former home at Cüstrin. He paid visits to England, but had no permanent home there.

In 1893 however he took a long lease of a house at Hampstead where he lived whenever he was in England and where he died in 1915. This is without question an important fact, and if unexplained and unqualified by other facts might have led to a conclusion in favour of the contention of the Attorney-General. But it was not either unexplained or unqualified by other facts.

The explanation is simple and, I think, complete. In 1886 he had married in England a lady who had been the governess of his two sons. For some time, and while in health, she had accompanied him in his visits to Germany, but she had been gradually failing and by 1891 she had become a hopeless invalid. She was paralysed and had become totally blind, and could be moved only in chair. The house was in fact taken for her and in it she lived in care of a nurse until in 1906 she died. It was the residence of the deceased when he was in England but he was frequently absent in Germany on business connected with his father's firm as hereinafter mentioned. On the whole I think the true inference to be drawn from the circumstances under which the house was taken and maintained is that it was an emergency measure dictated by the condition of his wife, and not one which should be held to indicate an intention to establish a family home and thus to adopt a new domicil in this country.

This view is supported by other facts. In 1901 his father who had been the head of the firm at Cüstrin died and was succeeded in the management of the business by the deceased. He paid frequent visits to Germany lasting for considerable periods, in attendance at meetings of the board and so forth. He kept up the old family house adjoin the works, leaving an old servant and a sufficient staff in charge, and made it his residence when at Cüstrin on business. In 1908 his mother died. She had lived at Neuwied in a house apparently her own at all events the deceased succeeded to it at her death. He maintained a staff there also, and used it as a second residence when in Germany. It is true that he continued to occupy the London house until his death in 1915 but we are told by his friend and solicitor that he had endeavoured to dispose of it thought without success.
In my opinion the evidence is wholly insufficient to establish the abandonment by the deceased of his German domicil. His business interests were entirely in Germany; all his income was derived therefrom. He does not seem to have severed a single tie with his native country. The issue should in my judgement have been and should now be decided in the appellant's favour. Accordingly the appeal should be allowed and the orders of Rowlatt J., and the Court of Appeal should be reversed and the appellant should have his costs here and below.

LORD ATKIN - Charles Frederick Wahl, the deceased, die in this country in May 1915. It is undisputed that his domicil of origin was German. Two questions arise. Did he abandon his Germany domicil and acquire an English domicil of choice? If so, did he subsequently abandon his English domicil and re-acquire a German domicil? The onus of proving the first is on the respondent: if he succeeds the onus if proving the second is on the appellant.
I am of opinion that the Attorney-General has not discharged the onus of proof that the deceased over acquired an English domicil. If it were not for the declaration made by the deceased on his application for naturalisation in 1884, the evidence would fall far short of what is necessary to prove such a serious change in a man's status. The deceased was born in 1852; his father had a large interest in a starch and sugar manufacturing business in Germany. The son was brought up in the business; he married a German lady in 1878 and had two sons born in Germany in 1879 and 1880. In 1879 he came to England, where the firm did a large and valuable export business. He resided in this country till 1884 at three different addresses; there is no evidence whether he took tenancies of the house, whether furnished or unfurnished, or whether he was living in lodgings. There is no evidence whether his wife lived with him here; her second son was born in Germany and as far as the evidence goes it would appear that the children did not come here till 1884. At that time the husband had apparently divorced his wife and in that year he brought the two children with a nurse to England and applied for and obtained naturalisation of this country. Under the Naturalization Act 1870, s. 7 he had to satisfy the Secretary of State that he had resided for five years in the United Kingdom and intended when naturalised to reside in the United Kingdom. I will return later to the actual declaration made. Immediately after the naturalisation he returned with the children to Germany and for two years appears to have had no residence at all in England. In 1886 he married in England his second wife who had been governess to the children, a lady of English birth, who had been educated up to the age of seventeen in Germany. Having returned to England in 1886, he lived with his wife and children for two years at Teddington, then for a year at Brighton. He then seems to have returned to Germany for two years - 1890-1891 during which time again he appears to have had no British residence, though the two boys appear to have been left at a school at Teddington. Meantime, soon after the marriage, the wife's health had begun to fail. Eventually she became an invalid, blind and paralysed. In 1890 or 1892 husband and wife returned to England and in 1893 the husband bought a long lease of a house in Hampstead where he established his wife with a nurse, and where he lived during his stay in this country. In 1901 his father died leaving him the

principal share in the family house at Cüstrin where the business premises were situate. He bought the remaining share and for the rest of his life left the house open, keeping servants and a motor care there and maintaining the garden. In 1906 his wife died. He did not give up his Hampstead house but continued as before to live there when in England. In 1908 his mother died and he successes to the home she lived in Neuwied. Throughout the whole of this period his sole business occupation was in the German business. He came frequently to Germany to take part in the management of the business, though apparently he did not stay for more than a month or two at a time. All his income was derived from Germany. His sons for a year 1891-92 were at school at Malvern. Afterwards they went for their education to Cologne, the elder till 1894 the younger till 1897. The elder joined the British Army, the younger joined the Indian Civil Service and went to Balliol. In these circumstances I am quite unable to draw the inference that the deceased ever intended to abandon his Germany domicil or to acquire an English domicil. As one of your lordships has observed, he does not appear to have served a single tie with Germany and I see no proof that he either had the intention or that he carried out an intention to make his principal or only home in this country. The facts, indeed, seem to negative both the animus and the factum, the mind and the deed. The learned trial judge appears to have thought that the declaration made for naturalisation, that the applicant intended to continue to reside permanently within the United Kingdom of Great Britain and Ireland, and had no intention of permanently within the United Kingdom of Great Britain and Ireland, and had no intention of permanently leaving the United Kingdom, coupled with the facts I have mentioned was conclusive proof of the acquisition of a new domicil of choice. It is worth noting that the words occur in print in a printed form which does not appear to have been prescribed by any regulations, and go beyond the requirement of the statute. I am far from saying that the fact that they appear in print absolves the declarant from an obligation to make the full declaration truthfully, but I think they might well be understood by him and his advisers as not intended to go beyond the statutory requirement. It is important to remember that naturalisation is one thing, change of domicil is another; and that it is not the law either that a change of domicil is a condition of naturalisation, or that naturalisation involves necessarily a change of domicil. Indeed, when it is observed, as was pointed out to us by counsel for the appellant, that the residence required for naturalisation by the Act of 1870 is residence in the United Kingdom, the evidence of any intention to change domicil in England, Scotland, or Ireland, the two former at any rate involving very different obligations. The present Act of 1914 (British Nationality and Status of Aliens Act 1914) seems still more clearly to mark the distinction, for the five years' previous residence may now be as to four in the British Dominions, and the future residence may also be intended to be anywhere in the British Dominions. I am far from saying that an application for naturalisation is not a matter to be carefully considered as part of the evidence in a case of domicil but it must be regarded as one of the totality of facts, and it cannot assume the dominant importance attached to it in the judgment of the trial judge. In the Court of Appeal it seems clear that the question of an original change of domicil was not brought prominently before the court by the appellant. It was not suggested for the respondent that the appellant was precluded from raising the point in this House, but comment can hardly be directed against the Court of Appeal if in the circumstances they treated the substantial question as being whether the appellant had reverted to a German domicil. If that had been the sole question, as at present advised, I should have found a difficulty in differing from the decision come to by the Court of Appeal. As it is, I think that the orders of the Court of appeal and Rowlatt J should be set aside and that the issue be decided in favour of the administrator of Charles Frederick Wahl, deceased, that the deceased was domiciled in Germany at the date of his death. The appellant should receive his costs here and in the courts below.

LORD THANKERTON - I concur.

LORD MACMILLAN - Were it not the emphatic opinion to the contrary which your Lordships have just expressed I confess that I should have felt more confidence in the conclusion which I have reached that the deceased acquired an English domicil of choice and retained it until his death. I give, of course, full recognition to the difference between the legal concepts of nationality and domicil, though it is not always appreciated by the lay mind, but at the same time I regard a deliberate change of nationality as a significant fact to be taken into account in determining whether or not a change of domicil has simultaneously been effected. It is, however, to the declaration which the deceased made in applying for British naturalisation, rather than to the fact of his naturalisation, that in common with the trial judge and the Court of appeal I attach special importance. When in 1884 the deceased made his application to the Home Secretary he stated that during the preceding eight years he had for five years resided in the United Kingdom, that he intended to reside permanently in the United Kingdom, and that he had no intention n of permanently leaving the United Kingdom. Whether a statement in those terms was by law required of him is to my mind beside the question, and I certainly demur to the suggestion that its significance is diminished by reason of the fact that it occurs in a printed form. The deceased accompanied his application with a statutory declaration solemnly and sincerely declaring that the statements set forth in his application, including those I have mentioned, were true. It is seldom that in deciding a question of domicil a court has the advantage of so clear and unequivocal an expression of intention as to residence, and for my part I do not give any of the less weight to it because the deceased probably did not have in mind the question of domicil at all, as I am sure he did not have in mind that the different systems his animus, as disclosed in the document that seems to me so significant. And when I couple with this announcement of his intentions the subsequent facts of his life I find it difficult to arrive at any other conclusion than that he died a domiciled Englishman. I select only a few of the outstanding incidents. The deceased in 1886 married, as his second wife, an English lady in a London church; in 1893 he acquired a long lease of a house in Hampstead and furnished it: he retained that house and lived most of the remainder of his life in it, before as well as after his wife's death, finally dying there in 1915; his two sons by his first wife both entered the public service of this country, one joining the army and the other the Indian Civil Service. As against these critical facts there are no doubt to be set the circumstances that the deceased's business interests were entirely in Germany, that he derived his income from a family industry there, that he paid numerous visits to Germany, and that he had a residence in Germany always kept in readiness for his occupation. But in these days it is by no means uncommon for a person to have interests in more than one country, and the question of legal domicil in such cases must always depend on where the person concerned chose to make the real focus of his existence. In my opinion the inference from the facts of the deceased's life is that he deliberately chose England as his physical as well as his spiritual home. As, however, your Lordships have taken a different view, I need not labour the matter further, and I content myself with recording my respectful dissent from the judgement about to be pronounced.

Appeal allowed.