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IN RE M. (1).

Ch. D.
 1936.

Dec. 7.

*Legitimation—Domicile—Person who had lived in that part of
 Ireland now Northern Ireland—Whether domiciled in Northern
 Ireland—Legitimacy Act (Northern Ireland), 1928 (18 & 19
 Geo. 5, c. 5), section 1 (1).*

Section 1 (1) of the Legitimacy Act (Northern Ireland), 1928, provides that "subject to the provisions of this section, where the "parents of an illegitimate person marry or have married one "another, whether before or after the commencement of this Act, "the marriage shall, if the father of the illegitimate person was or is "at the date of the marriage domiciled in Northern Ireland, render "that person, if living, legitimate from the commencement of this "Act, or from the date of the marriage, whichever last happens."

Plaintiff was born on 23rd March, 1890. Subsequently, on 14th March, 1907, her parents married one another. Plaintiff's father who had been born and had lived all his life in the County of Antrim, died on 26th February, 1915.

M., who was a sister of plaintiff's father, died on 17th February, 1936, intestate and unmarried. The said M.'s next-of-kin consisted of the children of brothers and sisters who had predeceased her.

Held, that the words "domiciled in Northern Ireland" in the said section should be interpreted as "domiciled in that portion of "Ireland which is now Northern Ireland," and consequently that the plaintiff was entitled to take an interest in the estate of M.

ORIGINATING SUMMONS for a declaration that the plaintiff was entitled to take an interest in the estate of M., who died intestate, as if the said plaintiff had been legitimate.

M. died on 17th February, 1936, intestate, without having been married. On 22nd May, 1936, letters of administration to her estate were granted to the defendant. The next-of-kin of the said M. were the descendants of her predeceased brothers and sisters. Plaintiff was the daughter of S. M., a brother of M., who had predeceased S. M., having died on 26th February, 1915. The plaintiff was born on 23rd March, 1890. The parents of the plaintiff subsequently married on 14th March, 1907. The said S. M.

(1) In the Chancery Division before Megaw, J.

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was born and had lived all his life in the County of Antrim.

IN RE M.

Murphy, K.C., and *Chambers* for the plaintiff:—

Section 1 (1) of the Legitimacy Act (Northern Ireland), 1928, provides that: "Subject to the provisions of this section where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was, or is, at the date of the marriage, domiciled in Northern Ireland, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens."

An illegitimate person whose father was at the date of marriage domiciled in Northern Ireland comes within the provisions of this section which is obviously intended to be retrospective.

"Domiciled in Northern Ireland" in the section should be read as domiciled in that part of Ireland which is now Northern Ireland.

Sheil for the administratrix:—

Domicile is based on intention. It could not have been the intention of plaintiff's father to be domiciled in Northern Ireland as he died before Northern Ireland as such was established. In *In re Egan* (1) Moore, L.C.J., said at page 161: "Previous to the separation of Ireland into two parts the petitioner's domicile was Ireland, and not a particular part of it."

No reference is made in any section of the Act which indicates that the legislature contemplated a person being legitimated by virtue of its provisions before the establishment of Northern Ireland as such.

Murphy, K.C. (in reply):—

The judgment of Moore, L.C.J., in *In re Egan* (1) is consistent with and supports the contention that a

(1) [1928] N.I. 159, 161.

person who had resided in Northern Ireland is now Northern Ireland.

MEGAW, J.: This cannot consider it as passing remedial legislation. I regretted that the intention expressed in language that as the present open

I am not at all sure prepared for the establishment in Ireland under the provision was not at domicile question, but forthcoming.

So far as the question of domicile becomes relevant to the area of jurisdiction under the above measure has clearly power to determine the jurisdiction in the present case.

There can be little doubt of the legislature of the Legitimacy Act made retrospective. case like the present one

The Government of Ireland by the Acts of 1922, capture where there has been each an independent jurisdiction in the Ireland that was part of the United Kingdom. The Courts in Northern Ireland without interruption.

Mr. Sheil has relied for one short period of time merged in the Irish jurisdiction. December, 1922, the jurisdiction. In my opinion the jurisdiction is on the subject expressed. Even if no address has

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for the plaintiff:—

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person who had resided in that part of Ireland which
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IN RE M.

MEGAW, J.: This is a very interesting case. I
cannot consider it as entirely free from difficulty. In
passing remedial legislation of this nature it is to be
regretted that the intention of the Act was not ex-
pressed in language that should leave such a question
as the present open to controversy.

MEGAW, J.

I am not at all sure that when Orders in Council were
prepared for the establishment of two constitutions
in Ireland under the Act of 1920 and the Acts of 1922,
provision was not attempted for the settling of the
domicile question, but no such order seems to be
forthcoming.

So far as the question in this case is concerned
domicile becomes relevant in its aspects in regard to
the area of jurisdiction of the courts of law established
under the above mentioned Acts. Each legislature
has clearly power to legislate on a subject of this
nature in the portion of Ireland within their
jurisdiction.

There can be little doubt, I think, as to the intention
of the legislature of Northern Ireland in enacting
of the Legitimacy Act of 1928 which has been expressly
made retrospective. It would be a *casus omissus* if a
case like the present did not come within its provisions.

The Government of Ireland Act, 1920, as amended
by the Acts of 1922, constituted two Courts of Judi-
cature where there had been one before. These have
each an independent jurisdiction over defined areas of
the Ireland that was previously under one jurisdiction.
The Courts in Northern Ireland have functioned
without interruption since 1st October, 1921.

Mr. Sheil has relied on an ingenious argument that
for one short period of a day Northern Ireland became
merged in the Irish Free State and that on the 6th
December, 1922, there was only one Irish domicile.
In my opinion the various constitutional enactments
on the subject expressly refute such a state of affairs.
Even if no address had been presented to His Majesty

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IN RE M.
MEGAW, J.

under Clause 12 of the second Schedule to the Irish Free State Constitution Act, 1922, the Supreme Court of Judicature of Northern Ireland, as established by the Government of Ireland Act, 1920, would have continued to function, and consequently a separate domicile would have been attached to its jurisdiction.

The separation of the courts having created new domiciles it cannot be the result that the citizens of each of the newly organised communities should be without domicile. Domicile, as Mr. Sheil has stated, is based on intention where there is any ambiguity as regards residence. Continuous residence is a vital factor in determining domicile. In the present case the party concerned never resided anywhere outside the County of Antrim. No doubt during his lifetime he had an Irish domicile, but it was derived from a residence which would to-day have given him a domicile in Northern Ireland.

Section 1 (1) of the Act reads as follows:—

“ Subject to the provisions of this section, where
“ the parents of an illegitimate person marry or
“ have married one another, whether before or after
“ the commencement of this Act, the marriage shall,
“ if the father of the illegitimate person was, or is,
“ at the date of the marriage domiciled in Northern
“ Ireland, render that person, if living, legitimate
“ from the commencement of this Act, or from the
“ date of the marriage, whichever last happens.”

The words “ date of the marriage ” are important as throwing some light on the interpretation of the section.

If Mr. Sheil's contention were correct these words would limit the operation of the Act to a marriage taking place after 1921 as there could be no Northern Ireland domicile before that date. Here the date of the marriage was 14th March, 1907, and the date of the death was 17th February, 1936.

On the whole I have come to the conclusion that “ domiciled in Northern Ireland ” in the section should be interpreted as domiciled in that portion of Ireland which is now Northern Ireland.

This, in my opinion, is the result of the judgment of the Supreme Court. In that case the parties were considered on a basis which afterwards became the law of Northern Ireland. He could elect between the two courts. As elected to be domiciled in Northern Ireland follows, I think, that he must reside for his lifetime in an area of Northern Ireland the ordinary law of which is continuous residence in that area. When a division of jurisdiction is made he must be domiciled in the divided territory.

Solicitor for the plaintiff
Solicitors for the defendant

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MEGAW, J.

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This, in my opinion, is consistent with and supported by the judgment of Moore, L.C.J., in *Egan v. Egan* (1). In that case the person whose domicile was under consideration had been born in the part of Ireland which afterwards became the Irish Free State and then came to Northern Ireland. His Lordship held that he could elect between the two domiciles and had elected to be domiciled in Northern Ireland. It follows, I think, that when a person has lived all his lifetime in an area which is now part of Northern Ireland the ordinary presumption of law arising from continuous residence should be applicable, and that when a division of domicile was effected by the legislature he must be held to be domiciled in the part of the divided territory in which he had so resided.

Solicitor for the plaintiff: *James L. Russell.*
Solicitors for the defendant: *Wm. Harper & Co.*

J. R.

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