

(1979) 03 MAD CK 0037
In the Madras High Court
Case No : Tax Case No. 111 of 1975

Controller of Estate Duty

APPELLANT

Vs

Dr. Ida Bella Soscuddar

RESPONDENT

Date of Decision : 29-03-1979

Acts Referred:

Constitution of India, 1950 — Article 173
Estate Duty Act, 1953 — Section 11, 13, 14, 15, 21
Succession Act, 1925 — Section 10, 11, 12, 13, 14

Citation : (1980) 3 TAXMAN 460

Hon'ble Judges : Sethuraman, J; Balasubramaniyan, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; M. Raghavan, for the Respondent

Final Decision : Allowed

Judgement

Sethuraman, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953, at the instance of the Controller Madras, the following questions have been referred: 1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the deceased had retained her domicile of origin of the United States of America and that her foreign assets cannot be included in the estate duty assessment?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the department had not discharged the onus of proving that the deceased had abandoned her domicile of origin in favour of Indian domicile?

This reference arose out of the estate duty proceedings consequent on the death of Dr. Ida Bella Soscuddar. She was born in North Arcot District on the 19-12-1870. She comes from a family of medical men. Dr. John Soscuddar, her grandfather, was a successful New York Doctor. But in 1819, a pamphlet entitled "The claims of Six Hundred Millions" fired his imagination. Closing his shop

almost overnight and packing his belongings, he sailed east towards Ceylon with his family and then set foot on this soil, i.e., in this part of the country. He was the first American medical missionary to go to a foreign country. He had 8 sons and 2 daughters and 3 of his issues founded the Arcot Mission, which as its name shows functions in the South Arcot and North Arcot Districts. Dr. Ida Soscuddar's father was working for sometime in Tindivanam after his return to India as a qualified medical practitioner in or about 1861 to join the Arcot Mission there, and thereafter went over to Vellore working in the same mission. The family was thereafter residing in Vellore and continued its connection with the mission.

2. Dr. Ida Soscuddar went away to the United States in or about 1878 as a child of eight for her education, and after graduating from there, she returned to India, at a time when her parents were at Tindivanam, in or about 1890. Dr. Ida Soscuddar was there after assisting her parents for a few years. During this period, she found that there was great need for women doctors in India, as the Indian women did not take kindly to being treated by male doctors, especially at the time of their delivery.

3. In 1894 she returned to the United States for studying medicine and joined the Medical College in the States. After graduating in medicine, she returned to India on the New Year's day in 1900. While in the United States, she learned that her denomination of the Mission had decided that there should be a hospital for women in Vellore, and she was commissioned to raise about \$8,000 for it. On one lucky day, an elderly person, by the name of Mr. Schall, gave her a cheque for \$10,000 and wanted a hospital worthy of his wife's memory to be established in India. It is with this amount that she embarked upon a scheme for founding a hospital in Vellore which has now flowered into a famous one.

4. Initially, she opened a dispensary at her house in a small room, and on 7-9-1901, the cornerstone for the new Hospital was laid and a 24-bed Mary Taber Schall Hospital for women was opened on 16-9-1902. In 1909, she opened a nursing school and in 1912, it was felt that there was need for a medical college for women in South India. A 200 acre site, four miles south of the heart of Vellore, was considered to be the proper place for opening such a college. On 12-8-1918, with 17 girls in attendance, the LMP course was started. She then developed the idea of affiliating her institution to a University by starting the MBBS course. Provisional affiliation was given by the Madras University in the year 1941 and permanent affiliation was granted thereafter. In the campus, there is now a medical college, a nursing college and a 1100-bed hospital with specialists of repute in all branches of medicine. During the period of her stay and service in India, she had acquired a 10 acre plot at Kodaikanal and retired to it on 19-8-1946. The place is known as Hill Top. She used to make periodical visits to Vellore, even after retirement, till she died on 24-5-1960.

5. Though some of these facts do not appear from the orders, during the course of the hearing of the reference, Mr. M. Raghavan, learned counsel appearing for the accountable person, placed before us a souvenir published at the time of her

100th birthday in the year 1970 and also a biography of hers by DC. Wilson called "Dr. Ida Passing on the Torch of life". It is these that have been referred to and contain the facts set out above on which there can be no dispute. There is also an article on Dr. Ida published in Madras Magazine called "Aside" in its issue of January 1979. There was also a feature about her in the Readers' Digest.

6. The hospital that she has established is one of the most famous in India and the facilities it commands are to be found rarely elsewhere in this country. She visited the United States a number of times. But most of the visits were responsible for attracting the badly needed resources for running this institution, it is now called the Christian Medical College and Hospital.

7. The family to which she belonged came from Nebraska in the United States. She had movable property in the United States and held shares in the EID Parrys, then a sterling company. The principal value of her estate came to Rs. 2,01,316, out of which foreign movables came to Rs. 58,854. Section 21 of the Estate Duty Act provides that there shall not be included in the property passing on the death of the deceased immovable property situated outside India at the time of the death, unless the deceased was domiciled in India at the time of his or her death. Thus, the question arose in the estate duty proceedings as to whether she was domiciled in India at the time of her death. The Assistant Controller considered that she was domiciled in India and brought to tax the sum of Rs. 58,854 representing the value of her foreign movable assets.

8. The accountable person, who is the executrix to her estate under a Will left by her, appealed and the Appellate Controller confirmed the assessment. The accountable person thereafter appealed to the Tribunal. The Tribunal held that the deceased had not discarded her domicile of origin and had not acquired a domicile of choice in India and that, therefore, the foreign movables were not assessable to tax u/s 21 of the Act. The Controller aggrieved by the order of the Tribunal, has got the reference of the question already extracted.

9. The question that has to be considered is whether she had an Indian or foreign domicile. If she had not an Indian domicile then the Tribunal's order would be correct.

10. The Indian Succession Act contains provisions relating to domicile. Section 5 of the said Act provides that succession to immovable property in India, of a deceased person, shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death, and that succession to the movable property shall be regulated by the law of the country in which such person had his domicile at the time of his death. "Domicile" is classified under three heads : (1) by birth, (2) by choice, and (3) by operation of law. The law relating to "domicile of origin" is set out in sections 7 and 8 of the Indian Succession Act. "Domicile of choice" is regulated by sections 10 to 13 and the "domicile by operation of law" is contained in sections 14 to 18.

11. A person can have only one domicile for; the purpose of the succession to his

movable; property [see section 6]. The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled at the time of his father's death [see section 7]. The domicile of origin prevails until a new domicile has been acquired [see section 9]. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. A person is not to be deemed to have taken up his fixed habitation in India merely by reason of his residing there in the civil, military, naval or air force service of Government, or in the exercise of any profession or calling [see section 10]. There is a special mode of acquiring domicile in India, as provided by section 11 and that is by making and depositing in some office in India, appointed in this behalf by the State Government, a declaration, in writing under his hand, of his desire to acquire such domicile. But, before such declaration is made, he should have been resident in India for one year immediately preceding the declaration. A new domicile continues until the former domicile has been resumed or another has been acquired [see section 13]. Sections 14 and 15 provide for the minor's domicile and the domicile of a woman on marriage. The domicile of a minor follows that of his parents and of a married woman follows that of her husband. It is unnecessary to refer to the other provisions of the Indian Succession Act.

12. It is necessary to bear in mind the distinction between three kinds of status, viz., citizenship, residence and domicile. "Citizenship" has reference to the political status of a person. "Residence" has reference to the physical connection of a person with a particular territory. "Domicile" has reference to his civil rights. When a person is having domicile of or in a particular country, he is governed by the law of that country. The domicile has thus reference to the system of law by which a person is governed. The domicile may have reference to part of country as in the case of Great Britain where a person having Scotch domicile has a different system of law applicable to him while if he were to have an English domicile another system of law applies to him.

13. A person is domiciled in that country in which he either has or is deemed by law have his permanent home. The relationship of domicile is between a person and a country [see Halsbury's Laws of England, volume 8, paragraph 421].

14. It is a settled principle that nobody shall be without a domicile and in order to make this effective, the law assigns what is called a domicile of origin to every person at his birth, namely, to a legitimate child, the domicile of the father, to any illegitimate child, the domicile of the mother and so on. The domicile can be acquired by choice, and we are concerned here in this case with the domicile of origin of Dr. Ida Soscuddar and with the domicile of choice if her domicile of origin was different from Indian.

15. There has been an assumption, so to say, in the orders of the estate duty authorities and of the Tribunal that the domicile of origin of Dr. Ida Soscuddar was American, as her parents were taken to have had an American domicile.

However, from the information available in the literature about her, as seen already, it is clear that her grandfather him self had come over to India. Though it is not very clear, it is probable that her father was born in India as she herself was. How ever, it is unnecessary to go into this aspect, as we would proceed on the basis that the domicile of origin was American since there was no dispute on this point so far.

16. It is pointed out in Cheshire's Private International Law, ninth edition, at page 169, as follows:

This much is clear, however, that a person's residence in a country is prima facie evidence that he is domiciled there. There is a presumption in favour of domicile which grows in strength with the length of the residence. Indeed, a residence may be so long and so continuous that, despite declarations of a contrary intention, it will raise a presumption that is rebuttable only by actual removal to a new place. A man cannot gainsay the natural consequences of permanent residence in a country by, for example, declaring in his Will that he does not intend to relinquish his former domicile in another country.

In *Re. Liddell-Grainger's Will Trusts, Dormer v. Liddell-Grainger* [1936] 3 All. ELR 173, the question of domicile had to be decided on the following facts : A testator who died in 1935, declared by his Will, which was in English form : "I have not relinquished and do not intend to relinquish my English domicile." His domicile of origin was in England where he was born. But in 1897, he moved with his parents to Scotland where his father had bought a property. His father continued to live in Scotland till his death in 1905, when by his Will in English form the property in Scotland as well as in India passed to the testator. With the exception of brief visits to England and an occasional trip abroad, the testator lived in Scotland from 1897 until his death in 1935. He had a great love for his property in Scotland and was anxious that after his death it should remain in his family and not be sold At his own request, the testator was buried in Scotland. The executors of the Will took out summons to determine, inter alia, whether the testator was at the time of his death domiciled in Scotland. It was held that all the evidence showed that the testator's residence was in Scotland, and that he intended that such residence should be permanent. He was, therefore, held to have been domiciled in Scotland at the time of his death.

17. This case is relevant to show that even a declaration in a Will has no conclusive value and that the matter has to be determined on the basis of the place of permanent residence. Intention accompanied by conduct or as disclosed by it would decide the issue. It is some times stated that residence must answer a qualitative as well as a quantitative test. In *Bowie or Ramsay v. Liverpool Royal Infirmary* [1930] AC 588 (HL), at page 598, Lord Macmillan observed as follows:

The real question in the case is whether this prolonged residence in England was accompanied by an intention on the part of the deceased to choose England as his permanent home in preference to the country of his birth (Scotland). The law

requires evidence of volition to change. Prolonged actual residence is an important item of evidence of such volition, but it must be supplemented by other facts and circumstances indicative of intention. The residence must answer a qualitative as well as quantitative test.

Cheshire's Private International Law, ninth edition, at page 171, points out as follows:

The traditional statement that there must be a present intention of permanent residence merely means that so far as the mind of the *de cuius* at the relevant time was concerned, he possessed the requisite intention. The relevant time varies with the nature of the inquiry. It may be past or present. If, for example, the inquiry relates to the domicile of a deceased person, it must be ascertained whether at some period in his life he had formed and retained a fixed and settled intention of residence in a given country. Once this is established, evidence of his subsequent fluctuations of opinion as to whether he would or would not move elsewhere will be ignored.

Again, in the same page, in another passage it is stated as follows:

It is impossible to lay down any positive rule with respect to the evidence necessary to prove intention. All that can be said is that every conceivable event and incident in a man's life is a relevant and an admissible indication of the state of mind. It may be necessary to examine the history of his life with the most scrupulous care, and to resort even to hearsay evidence where the question concerns the domicile that a person, now deceased, possessed in his lifetime. Nothing must be overlooked that might possibly show the place which he regarded as his permanent home at the relevant time.

18. In a comparatively recent decision in *Estate of Fuld Deceased* (No. 3) *Hartley v. Fuld* [1968] PD 675, the law was summarised by Scarman, J. as follows : "In the light of these cases, the law, so far US relevant to my task, may be stated as follows:

(1) The domicile of origin adheres unless displaced by and continuance of a domicile of choice.

(2) A domicile of choice is acquired only if it be affirmatively shown that the *propositus* is resident within a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking, but if he has in mind only a vague possibility such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn, the ultimate decision in each case is one of fact, of the weight to be attached to the various factors and future contingencies in the contemplation of the *propositus*,

their importance to him, and the probability, in his assessment, of the contingencies he has in contemplation being transferred into actualities.

The assistance to be taken from the decided cases is indicated in the following words at page 685:

Danger lies in wait for those who would deduce legal principle from descriptive language. The powerful phrases of the cases are, in my opinion, a warning against reaching too facile a conclusion upon a too superficial investigation or assessment of the facts of a particular case. They emphasise as much the nature and quality of the intention that has to be proved as the standard of proof required. What has to be proved is no more inclination arising from a passing fancy or thrust upon a man by an external but temporary pressure but an intention freely formed to reside in a certain territory indefinitely.

This decision has been referred to with the approval and in fact applied by the Court of Appeal in *Buswell v. CIR* 49 TC 334.

19. The standard of proof appropriate to criminal proceedings is not required and what is necessary is the standard of proof based on the balance of probabilities. Thus, the adhesive nature of domicile of origin and the nature of quality of the domicile of origin would be weakened or lost by the evidence of intention to be gathered from what the person concerned did or expressed during his or her lifetime.

20. We have so far referred to the law as enunciated in the decision of British Courts and summarised in reputed text books, the position in India is the same and the same principles were applied in the decision of the Supreme Court in *Kedar Pandey Vs. Narain Bikram Sah*, . That case arose in the context of article 173 of the Constitution. Under the provision, a person would not be duly qualified for election if he was not a citizen of India. For determining this dispute, the question of his domicile was relevant. The question was whether Kedar Pandey, whose parents and grandparents were all born in Nepal, had an Indian domicile and had become an Indian citizen. At pages 798, and 799 it was laid down as follows:

The law attributed to every person at birth a domicile which is called a domicile of origin. This domicile may be changed, and a new domicile, which is called a domicile of choice, acquired; but the two kinds of domicile differ in one respect. The domicile of origin is received by operation of law at birth, the domicile of choice is acquired later by the actual removal of an individual to another country accompanied by his *animus manendi*. The domicile of origin is determined by the domicile, at the time of the child's birth, of that person upon whom he is legally dependent. A legitimate child born in a wedlock to living father receives the domicile of the father at the time of the birth, a posthumous legitimate child receives that of the mother at that time. As regards change of domicile, any person not under disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other

than that of his domicile of origin with the intention of continuing to reside there indefinitely. For this purpose residence is a mere physical fact, and means no more than personal presence in a locality apart from any of the circumstances attending it. If this physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or animus manendi, which is required, demands that the person whose domicile is the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home in the country of residence, or, in effect, he should have formed a deliberate intention to settle there. It is also/well established that the onus of proving that a domicile has been chosen in substitution for the domicile of origin lies upon those who assert that the domicile of origin has been lost. The domicile of origin continues unless a fixed and settled intention of abandoning the first domicile and acquiring another as the sole domicile is clearly shown (see *Winans v. Attorney-General* [1904] AC 287).

At page 801 a passage from the decision of the Court of Appeal in *Doucet v. Geoghegan* ([1878] 9 Chd 44) is extracted. In that passage there is a reference to the making of a Will in a particular country as being relevant to show the place of domicile. After referring to the facts in that case, it was held by the Supreme Court that Kedar Pandey had become a citizen of India.

21. Even where a person resides in more than one place, the place which the person concerned considers as the principle place of residence is the one that determines the domicile. In *Seethalakshmi Animal v. Ponnuswamy Nadar* (1966) ILR 2 Mad. 373, the husband was resident in two places, one called Kannakulam, a place within Madras State and another called Kanimadam which was then part of Kanyakumari Pakuthy of the erstwhile Travancore State. It was held that there was abundant evidence to show that the husband considered Kanimadam in the Travancore State as the principal place of residence and that was his place of domicile. In *Dicey & Morris on the Conflict of Laws*, ninth edition at page 89 it is stated as follows:

If a person has two homes in different countries, he is in the absence of a contrary intention domiciled in that country in which he has his principal home.

It is this principle which comes for application in *Seethalakshmi Ammal v. Ponnuswamy Nadar* (supra).

22. It is in the light of the above principles that we have to examine the facts in the pre sent case. The first reason given by the Tribunal in support of its conclusion that Dr. Ida Soscuddar had a foreign domicile was that the domicile of origin must prevail. This is only a rule of presumption. The onus of proof is on the person propounding the theory that the domicile of origin has been displaced by the domicile of choice. Until the domicile of choice is established, the domicile of origin would continue. The facts of this case have to be examined to see if the domicile of origin continues or is displaced.

23. The parents of Dr. Ida Soscuddar lived at least for four decades in India and died here. Even the grandparents lived here. Dr. Ida Soscuddar herself, except during the period of her education, had spent the whole of her life in India, only occasionally sojourning in the United States, by and large, for the purpose of obtaining the necessary help for the missionary activities in India. Even proceeding on the basis that she visited relatives and friends and that not all of her visits were concerned with the obtaining of financial help for the institution which she established and fostered, still the fact remains that she spent almost the whole of her long life in India. She had her home in India and no other home elsewhere. As seen already, she retired in August 1946, and settled down in Kodaikanal. If really she wanted to go back to the country of her origin, she would have done so then, and would not have continued in India for another 14 or 15 years thereafter. From the literature about her activities, it is clear that she continued to supervise the institution even after her retirement. This is but natural as she had spent all her life, energy and resources in founding and building up this institution. She had no other interest in life. There is absolutely nothing by way of any material to show that she considered India to be only a temporary place of stay for point of out a livelihood or completing a fixed project, and that she wanted to go back to United States at some point of time or other, and live in comfort and die there. She carried on her mission of mercy for the whole of her life, and fostered this institution with zeal worthy of an epic. It would be indeed a great disservice to her revered memory if we were to accept the contention that she wanted to leave this institution from which she was inseparable and go away to the United States. There could have been no sentimental attachment to one like her, who dedicated herself to the missionary activities, to go to a country with which her connections were only tenuous. Originally she appeared to have an idea of marrying and quietly settling down in life. But that was abandoned at a very early age when, after her studies, she came over to India, and found a crying need for women doctors and a well equipped hospital. Her Will also was executed in India. The facts here are eloquent to show that she could not have had any idea of going back to the United States, and that she literally lived in the country of her adoption and died in it. The goal set by her for herself, on the example of her parents and grandparents, was to be of service to the distressed and the afflicted in India. There could have been no attraction for one like her to a land of affluence and plenty like the United States. The facts are thus clear to show that the presumption in favour of the domicile of origin is displaced, and that her domicile of choice was India where she had her home and which was the centre of her activities.

24. The second reason given by the Tribunal in support of its conclusion is based on a passage in the Will which is erroneously referred to by it as codicil. The Will is dated 16-1-1960, just a few months before her death. The opening portion of the Will runs as follow:

Regardless of where my residence or domicile may be at the time of my death

and although I am not now, never have been and have no present intention of ever becoming a resident of or domiciled in the State of New York. I hereby request and suggest, but do not direct that the "original" of "primary" probate of this my last Will and testament be had in the Surrogates' Court or the country of New York State of New York....

It is indeed unfortunate that the entire Will had not been made an annexure to the statement of the case. The other passages in the Will have not even been referred to. We are thus at a disadvantage, as we do not know if any other passage in the Will is likely to be of help in the solution of this problem. This passage, however, cannot be taken to mean that she affirmed the domicile of origin. The whole idea behind the above passage appears to be to show that she was interested in obtaining the probate from the Court in New York. Otherwise the probate would have to be obtained in India where the Will was executed and where she died. Thus, only ancillary probate could be obtained in the United States, if the Will was probated in India. The estate was not very large. Apparently, she did not want to have expensive probate proceedings in India as well as abroad. She, therefore, expressed a preference for probate being obtained in New York. There was no need or necessity for her to declare in the Will that she was domiciled in this country because if she had done so, then it may be that the primary probate may not be issued there. Notwithstanding her residence or domicile being elsewhere, and not in New York she expressed a preference for the primary probate being obtained in New York. The Will was thus drafted with the purpose of getting probate of the Will in New York, and it rules out domicile in New York. In order to vest the State of New York, which was not her State of domicile, with the jurisdiction to entertain the probate proceedings, she expressed her desire that the original probate should be obtained in that court. At any rate the passage cannot be understood as affirming her domicile of origin, i.e., USA or denying her domicile of choice, i.e., India. The passage in the Will has at best a neutral effect.

In *Dormer v. Liddell-Grainger* (supra), the declaration in the Will was found to be of no consequence. The passage cannot also be taken to mean that she retained the domicile of origin or that she was particular that the domicile of origin should continue. The Tribunal is thus wrong in resting its conclusion on this unhelpful passage in the Will especially in the context of all the facts which suggest a contrary view.

25. The third reason given by the Tribunal can be stated in its own words:

In the instant case, the mere fact that the deceased was having residence in India even though such residence was for long and continuous period is not sufficient to establish that she has elected India as her permanent and abiding home. She had taken up and continued her residence in India for a special purpose, viz., for setting up and running the Christian Medical College and Hospital at Vellore. The deceased's residence in India for a specific purpose cannot import an intention of having India as her abiding and permanent home.

The Tribunal is clearly in error in belittling the significance of the long stay. This is contrary to the well accepted legal position set out in Cheshire's Private International Law, ninth edition, page 169 already extracted. That she came to India only for a special purpose, viz., for setting up and running the Christian Medical College and Hospital at Vellore is also an erroneous assumption. The events in her life which are described in detail in the biographies and literature about her would go to show that the establishment of the hospital was not the purpose for which she came to India. She came to India to meet her parents initially, after she was away from them for her educational purposes, for a fairly long period of not less than 8 years. She did not have any idea of taking up medical education and was only assisting her parents for period of nearly four years until she found that there was a great need for women doctors. The social conditions in this part of the country required her to take up this mission as part of her aim in life. After qualifying herself for practising medicine, she found that her denominational mission was examining the feasibility of establishing a hospital. With the monetary help obtained from the philanthropist in the United States, the project, which was estimated to cost only \$ 8,000, was enthusiastically taken up, especially when the donation exceeded the target. If really the establishment of the hospital alone was her ambition in her life, she could have returned to the United States many years ago, at any rate soon after the Second World War by which time she had achieved all her ambitions. The hospital itself had grown into a big one, much beyond what she had conceived or could have imagined. If she stayed in India thereafter when she was in her seventies, that could lead to only one inference, and that is that she did not want to go out of the home of her choice. Throughout her life, she appears to have felt that her services were required to foster the institution, or at least she should have desired to derive the mental satisfaction of seeing her brain child growing and flourishing. Living in a tropical country for one like her would not have been any great attraction, but for the fact that she had dedicated her life for the cause of suffering humanity by running the hospital and the college in India. She continued to look after the institution by often running about from Kodaikanal to Vellore. Having regard to all these facts, which appear from the publication about her and which were spared by counsel for the accountable person, it would indeed be an error to draw an inference that she came to India with a special purpose of only founding the institution, and that she continued in India without any intention of making it her permanent home. Thus, all the three reasons given by the Tribunal are erroneous and do not support the conclusion drawn, viz., that the domicile of origin continued.

26. During the course of the arguments reference was made to a decision in *Steiner v. CIR* 49 TC 13. In that case the question of domicile was relevant in the context of an income tax assessment. If a person was domiciled abroad, then he would not be assessable to tax on the income from the foreign possession. The Commissioners of Inland Revenue taking into account the facts of that particular case, had come to the conclusion that the assessee, there had acquired an

English domicile of choice and had not lost it. When the matter came before the Court of Appeal, the contention urged was that the question of domicile was a question of fact. The Court of Appeal applied the decision of the House of Lords in *Edwards v. Bairstow* 36 TC 207. It was pointed out in that case that when a case stated came before the court, the duty of the court was to examine the decision having regard to its knowledge of the relevant law. If the case contained anything *ex facie* bad in law, then the determination would be erroneous in point of law. Even without such misconception about law appearing on the face of the order, it may be that the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination. In those circumstances also, the court should interfere, and the court has no option, but to assume that there has been some misconception of law and that this has been responsible for the determination in that particular manner. Thus, where there is no evidence to support the determination or where the evidence is inconsistent and conclusion contradicts the determination, the court has jurisdiction to interfere even with the findings on the facts. It is this principle that was applied.

27. We are not persuaded to hold that the question of domicile is a pure question of fact. If this were so, the large number of cases that went before the House of Lords would not have been allowed to proceed that far. The determination calls for application of legal principles or tests and the question would be a mixed question of law and fact. Even otherwise, on the facts here, we find that a Tribunal properly informed about the relevant principles applicable to the determination of the question of domicile, could not have come to the conclusion to which it has arrived. We do not, therefore, find any ground to sustain the objection that this being a pure question of fact cannot be the subject of consideration by us. Of the two questions, the first question raises the point as to whether the deceased had retained the domicile of origin, and the second question raises the point of onus. The question of onus is really not material where all the facts are before the body, which has to determine the problem. Even assuming that the question of onus is relevant on the facts herein, we are satisfied that the department has discharged the onus by relying on the facts of the life of the deceased. The two questions are, therefore, to be answered in the negative and against the accountable person. There will be no order as to costs.