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CONFLICT OF LAWS AS TO DOMICIL: THE RESTATEMENT AND MINNESOTA DECISIONS COMPARED†

By FRANCIS J. PUTMAN*

THE Restatement of the Conflict of Laws includes a chapter on domicile.¹ It is the purpose of this article to compare that chapter of the Restatement with the Minnesota cases and statutes. Discussion is limited to those sections of the Restatement as to which Minnesota material has been found.

A definition of domicile is contained in section 10:

"Domicil is the place with which a person has a settled connection for legal purposes; either because his home is there or because it is assigned to him by the law."

No Minnesota case has been found to contain a definition of domicile in these terms.

The Minnesota courts have followed the principle stated in section 11: "A question of domicile arising in litigation is determined by the law of the forum." For example, it is settled in the state that its courts have the power to ascertain whether the jurisdictional prerequisite of domicile was present when a foreign court pronounced a decree of divorce sought to be introduced in evidence in the courts of Minnesota. In testing for the presence of domicile the courts of Minnesota have applied their own definition of the term. On finding that the domicile, according to their standards, was not in the state which granted the divorce, they have refused to recognize the divorce.²

Justice Brown, of the Minnesota supreme court, in words almost identical to those found in section 12, expressed the opinion that the term "residence" was chameleon-hued, sometimes used as the synonym of domicile and sometimes not. He stated:

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¹American Law Institute, Proposed Final Draft No. 1 of the Conflict of Laws, Chapter 2, (1930).

²State v. Armington, (1878) 25 Minn. 29; Thelen v. Thelen, (1899) 75 Minn. 433, 78 N. W. 108; Sammons v. Pike, (1909) 108 Minn. 291, 120 N. W. 168.

"The word, 'inhabitant' or 'resident' is ordinarily used to indicate a person with a fixed domicile or legal residence. . . . As employed in statutory enactments, its meaning, as interpreted by the courts, varies as the legislative intent appears, and in harmony with the subject-matter, object and purpose of the statute."³

The cases in Minnesota are found to be in accord with Comment (b) of section 12, to the effect that in statutes relating to taxation and voting, and in a statute of limitations, residence means domicile unless the contrary is indicated in the statute. The Minnesota statutory provisions on elections contain eleven criteria for the guidance of boards of registration when they are confronted with the problem of determining the residence of any voter. These criteria are a codification of the rules normally followed by the courts in determining the location of the domicile.⁴

³Bechtel v. Bechtel, (1907) 101 Minn. 511, 514, 112 N. W. 883, 12 L. R. A. (N.S.) 1100.

⁴Mason's 1927 Minn. Stat. sec. 368: "The board of registration, in determining the residence of any voter, shall be governed by the following rules, so far as they are applicable:

(1) The residence of any person shall be held to be in that place in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent he intends to return.

(2) A person shall not be considered to have lost his residence who leaves his home to go into another state, or county in this state, for temporary purposes merely.

(3) A person shall not be considered to have gained a residence in any county into which he has come for temporary purposes merely, without the intention of making such county his home.

(4) If a person go into another state with the intention of making it his residence, he shall be considered to have lost his residence in this state.

(5) If a person remove to another state with the intention of remaining there for an indefinite time as a place of residence, he shall be considered to have lost his residence in this state, notwithstanding he intends to return at some future time.

(6) The place where a man's family resides shall be considered his residence; but if it be a temporary establishment for his family, or for transient purposes, it shall not be so considered.

(7) If a man has his family living in one place and he does business in another, the former shall be considered his residence; but when a man has taken up his abode at any place with the intention of remaining there, and his family refuses to reside with him, then such place shall be considered his residence.

(8) The residence of a single man shall be considered to be where he usually sleeps.

(9) The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention.

(10) No person employed temporarily for the purpose of cutting timber, or in the construction or repair of any railroad, canal, municipal, or other work of public nature, shall acquire a residence in any district into which he came for such purpose; but this provision shall

Perhaps the comprehensive nature of this statute explains the dearth of litigation with respect to residence for the purposes of voting.⁵ The statutes provide for the taxation of all personal property of persons *residing* in the state, except such as is by law exempt from taxation.⁶ The usual rules for the determination of domicile are applied in deciding whether a person resides within the state for the purpose of this statute.⁷ The Minnesota statute of limitations provides that as to a cause of action arising in the state, the statute shall cease to run for such periods as the person against whom the cause exists resides without the state.⁸ Here again the court applies the tests of domicile in determining whether there has been such a residence outside the bounds of the state as to stop the running of the statute. This statute was so construed in *Venable v. Paulling*,⁹ Chief Justice Ripley stating, ". . . such residence out of the state must be not merely temporary and occasional, but of such character, and with such intent, as to constitute a change of domicile. . . . understanding 'domicile' as the Massachusetts court understands it to mean in this connection, the debtor's home or place of abode."

not be held to extend to station agents or sectionmen who permanently reside in such district. In determining the right of any person employed by a railroad company or upon any public work to register or vote, all of the judges shall be satisfied that he is a bona fide resident of the district, and not there for temporary purposes merely; and his unsupported affidavit shall not be held conclusive as to any fact necessary to entitle him to vote.

(11) Any permanent inmate of a soldiers' home shall be considered a resident of the district in which the same is located."

⁵The only case found on the point is *Nelson v. Bullard*, (1923) 155 Minn. 419, 194 N. W. 308 which, in an election contest, held invalid the vote of a school teacher who had voted in the precinct where she was teaching, there being proof that she resided elsewhere with her parents.

⁶Mason's 1927 Minn. Stat., sec. 1974: "All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers is taxable except such as is by law exempt from taxation."

⁷Thus in determining whether certain intangibles had a situs in Minnesota the court held they had a situs at the domicile of the corporation. The corporation having been incorporated in Minnesota was held to be domiciled here. *State v. Great Northern Ry.*, (1918) 139 Minn. 469, 167 N. W. 297.

⁸Mason's 1927 Minn. Stat., sec. 9200: "If, when a cause of action accrues against a person, he is out of the state, an action may be commenced within the times herein limited after his return to the state; and if, after a cause of action accrues, he departs from and resides out of the state, the time of his absence is not part of the time limited for the commencement of the action."

⁹(1873) 19 Minn. 488, (422) 492.

Subsequent cases have followed *Venable v. Paulding*.¹⁰ In other types of statutes, not mentioned in the Comment, the Minnesota court has held residence to be synonymous with domicil. The probate code provides that wills shall be proved and administration upon the estates of decedents shall be granted, (1) if the decedent, at the time of his death, was a resident of this state, in the county of such residence.¹¹ As to this provision the court stated, in *State ex rel. Selover v. Probate Court*.¹²

"Residence and domicil when applied to the abiding place of most persons refers to one and the same thing. But, if a resident decedent's residence and domicil be not one and the same place of abode, the preference in the administration of the estate should be given to the probate court of the county wherein was the domicil. . . ."

Further there is indication that the venue provision in the divorce statute,¹³ providing that actions for divorce shall be commenced by summons and complaint in the county where the plaintiff resides, will be construed as though residence was the synonym of domicil.¹⁴ This is a variation from the principle laid down in the Restatement in Comment (c) to the effect that in statutes relating to competence of a divorce court residence means domicil at which the person in question resides. Amongst the statutes relating to officers there is a provision that every office shall become vacant if the holder ceases to be an inhabitant of the state, or, if the office is local, of the district, county, city, or village for which he was elected or appointed, or within which the duties of his office are required to be discharged.¹⁵ It has been held that a person does not cease to be an inhabitant until

¹⁰*Kerwin v. Sabin*, (1892) 50 Minn. 320, 52 N. W. 642, 36 Am. St. Rep. 645, 17 L. R. A. 225; *Converse v. Glenn*, (1925) 162 Minn. 513, 202 N. W. 732.

¹¹*Mason's* 1927 Minn. Stat., sec. 8695.

¹²(1915) 130 Minn. 269, 271, 153 N. W. 520, 48 Am. St. Rep. 711.

¹³*Mason's* 1927 Minn. Stat., sec. 8588.

¹⁴*Searles v. Searles*, (1918) 140 Minn. 385, 168 N. W. 135; *Dibell, C.*, states at page 386, "The action was brought in Nicollet county. The statute requires an action for divorce to be brought in the county where the plaintiff resides. G. S. 1913, sec. 7114. Defendant contends that the plaintiff did not reside in Nicollet county. The court found that she did. She was born there and her relatives live there. For some time she has been working in Minneapolis, going there from Nicollet county where she was living with her relatives. She says that Nicollet county is her home. The finding of the trial court is sustained. A discussion of the evidence would be profitless." This statement indicates that domicil is sufficient, and that domicil plus residence is not required.

¹⁵*Mason's* 1927 Minn. Stat., sec. 6953.

he has changed his domicile; in other words, the mere fact that one dwells in a locality other than that in which he was elected is not sufficient to make the statute operative.¹⁶ While the rules respecting homesteads are not identical with those respecting domicile, yet in many particulars they are the same; thus the court will decide whether there has been an abandonment by determining if there has been a new domicile established,¹⁷ and will apply the domiciliary principle that changes of residence made under compulsion do not change the domicile and so do not constitute an abandonment of the homestead.¹⁸

Comment (c) of section 12 makes the distinction that in statutes relating to gaining a settlement under the poor law and to competence of a divorce court, residence means a domicile at which the person in question resides. The wording of the Minnesota statute dealing with settlements under the poor law¹⁹ might lead to the conclusion that domicile was not to be considered but rather residence alone. In such case our settlement law would collate with Comment (d) rather than Comment (c). No cases have dealt with the precise point.²⁰

Comment (d) of section 12 points out that in statutes relating

¹⁶State ex rel. Young v. Hays, (1908) 105 Minn. 399, 117 N. W. 615.

¹⁷Williams v. Moody, (1886) 35 Minn. 280, 28 N. W. 510; Kramer v. Lamb, (1901) 84 Minn. 468, 87 N. W. 1024. The general statute regarding homesteads is Mason's 1927 Minn. Stat., sec. 8336.

¹⁸Millett v. Pearson, (1919) 143 Minn. 187, 173 N. W. 411, 5 A. L. R. 256; Beigler v. Chamberlain, (1920) 145 Minn. 104, 176 N. W. 49.

¹⁹Mason's 1927 Minn. Stat., sec. 3161: "Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a settlement therein, if it has the county system; if it has the town system, he shall have a settlement in the town, city or village therein in which he has longest resided within such year. Every person who has resided one year continuously in the state, but not in any one county, shall have a settlement in the county in which he has longest resided within such year, if it has the county system; if it has the town system, his settlement shall be in the town, city, or village therein in which he has longest resided within such year. The time during which a person has been an inmate of a hospital, poorhouse, jail, prison, or other public institution, and each month during which he has received relief from the poor fund of any county or municipality, shall be excluded in determining the time of residence hereunder. Every minor not emancipated and settled in his own right shall have the same settlement as the parent with whom he has resided . . ."

²⁰The indication is that continuous residence for a year establishes a settlement. County of Steele v. County of Waseca, (1926) 166 Minn. 180, 207 N. W. 323. In that case the court stated, "Independently of statutory or other context to the contrary, settlement is a different thing from domicile or residence."

to attachment, residence means a dwelling-place, without regard to domicile unless the contrary is indicated in the statute. The Minnesota cases accord with this view of the attachment statutes. Under Minnesota procedure a plaintiff is allowed the use of attachment upon his making allegation that defendant is foreign corporation, or not a resident of the state.²¹ It has been held that one *residing* in another state, but maintaining a domicile in Minnesota, is a non-resident within the attachment statute, Justice Collins making the affirmation that,

“ . . . it is the actual residence of the debtor and not his domicile, which determines the *status* of the parties in attachment proceedings.”²²

On the other hand, a person only *temporarily* absent from the state, who retains a domicile in the state though he does not maintain a dwelling place therein, is not a non-resident within the purview of the attachment statute.²³

An oft stated principle is found in section 13: “Every person has at all times one domicile, and no person has more than one domicile at a time.” The principle is illusory, for if each state applies its own rules in the determination of the place of domicile, as a practical matter a man may be adjudged to have more than one domicile. The suggestion has been made that a man cannot have more than one domicile in one state at a time. But however that may be, this principle has been recognized in *Fox v. Hicks*,²⁴ the court having under discussion the old rule that the domicile of the child was the same as that of the father even though its parents were divorced and it was in the custody of the mother,

“There could not, from the nature of the case, be two places of domicile; and the courts, without right or authority to recognize a separate legal existence in the wife were compelled to attach the domicile of the child, for legal purposes, to the father. . . .”

Decisions of the Minnesota courts have long shown indication of a tendency to think of domicile in terms of home. Section 14 of the Restatement is to the effect that, with certain specific exceptions, where a person has one home and only one home, his domicile is the place where his home is. In *Venable v. Paulding*²⁵ it is stated,

²¹Mason's 1927 Minn. Stat., sec. 9343.

²²Lawson v. Adlard, (1891) 46 Minn. 243, 48 N. W. 1019.

²³Keller v. Carr, (1889) 40 Minn. 428, 42 N. W. 292; McCleery v. Davidson, (1923) 157 Minn. 283, 195 N. W. 1015.

²⁴(1900) 81 Minn. 197, 207, 83 N. W. 538, 80 L. R. A. 663.

²⁵(1873) 19 Minn. 488, (422) 492.

"No one word is more nearly synonymous with the word domicile, than our word 'home' . . . where a person lives is taken prima facie to be his domicile, unless other facts establish the contrary. . . ."

No case has directly enunciated a rule such as is contained in section 14, for the reason that when the question of determination of the domicile arises, there are usually two places which might warrant the appellation "home." The court is faced with the difficulty of determining which of the two or more places is "the" home for the purpose of domicile.

In section 15 an attempt is made to lay down a number of tests which the courts apply in reaching a decision as to which of a number of abiding places is the home. The section reads,

"A home, as the word is employed in the Restatement of this Subject, is a dwelling-place of the person whose home it is, distinguished from other dwelling-places, not homes, by the relation between the person and the place."

The Comment then proceeds to point out that consideration must be given to a number of elements (1) Its physical characteristics, (2) The time the person spends therein, (3) The things the person does therein, (4) The persons and things therein, (5) The person's mental attitude toward the place, (6) His intention when absent to return to the place, and (7) Elements of other dwelling-places of the person concerned. A number of cases have emphasized the persons and things in a dwelling-place in holding that a particular dwelling-place was the domicile. In *State ex rel. Young v. Hays*,²⁶ it was decided that a dwelling-place in which a man kept stock, farm implements, and furniture was his domicile, as against the contention that a rented room to which he brought only a few blankets was his domicile. The court said as to the former:

"It was his home, the place where he lived and maintained a family. Any group constituting a distinct domestic body is a family."

In addition there was the fact that the person had not stated he intended to change his domicile. In *Venable v. Pauldine*,²⁷ the location of the domicile was held to be a jury question, on it being shown that the person had his wife at one dwelling-place, and that he always returned there, while on the other hand he had always voted at a former dwelling-place where he owned neither

²⁶State ex rel. *Young v. Hays*, (1908) 105 Minn. 399, 117 N. W. 615.

²⁷(1873) 19 Minn. 488, (422).

an establishment nor any real estate. In other words, element (3) tended to make the latter the domicil, while element (4) tended to make the former the domicil. Also the statute on elections makes (4) one of the tests,

"If a man has his family living in one place and he does business in another, the former shall be considered his residence. . . ." ²⁸

The headnote to *Eklund v. Supreme Council of the Royal Arcanum*²⁹ points out "In the eyes of the law a married man's residence is at the place where his wife and children live." A person's mental attitude, (the fifth test given), if strengthened by the presence of some of the other elements, is an important factor. In *State ex rel. Selover v. Probate Court*³⁰ a widow was held to have a domicil at a place she considered her home, and in which she had retained a homestead, real estate, and a family burial place, even though she had dwelled at another place. Mental attitude was a strong factor in locating the domicil in *Seccomb v. Bovey*;³¹ a woman had been a nurse in Washington, D. C. for a time, but thereafter traveled continuously, considering Washington her home. Washington was held to be her domicil as against evidence that in a deed she had given Massachusetts as her domicil (she had been born there), and had executed her will in Massachusetts. Evidence of an intention when absent to return to a place is given weight.³²

In section 17 there is a summary of the rules of governing acquirement of a domicil of choice. The central idea of the section is contained in the third division,

"The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place."

This is the rule given in a dictum in *Keller v. Carr*:³³

"... 'Residence' and 'domicile' are not to be held synonymous. 'Residence' is an act. 'Domicile' is an act coupled with an intent. . . ."

In *Lawson v. Adlard*,³⁴ there is a tacit admission by the court that the fact of dwelling in another state, in absence of an intent to

²⁸Supra note 4.

²⁹(1922) 152 Minn. 20, 187 N. W. 826 (this is not a domicil case).

³⁰(1915) 130 Minn. 269, 271, 153 N. W. 520, 48 Am. St. Rep. 711.

³¹(1917) 135 Minn. 353, 160 N. W. 1018.

³²See statute on elections subdivision (1), supra note 4.

³³*Keller v. Carr*, (1889) 40 Minn. 428, 430. See also *Grimestad v. Lofgren*, (1908) 105 Minn. 286, 117 N. W. 515, 127 Am. St. Rep. 566, 17 L. R. A. (N.S.) 990.

³⁴*Lawson v. Adlard*, (1891) 46 Minn. 243, 48 N. W. 1019.

make that dwelling-place a new domicil of choice, would not affect the old Minnesota domicil.

Grimstad v. Lofgren is in line with section 18, that a person cannot acquire a domicil in a place without being physically present there; but that a home in a particular building is not necessary for the acquisition of a domicil.³⁵

The text of section 20 is that a person cannot change his domicil by removal to a new dwelling-place without an intention to make the new dwelling-place his home. This is supported by *Lawson v. Adlard*³⁶ and *State ex rel. Zimmerman v. Soldiers Bonus Board*.³⁷

A number of Minnesota cases are in accord with section 23, that a person cannot acquire a domicil of choice by any act done under legal or physical compulsion. In *Millett v. Pearson*³⁸ it was held that a person did not change his domicil and thereby abandon his homestead on being committed to prison. The court stated:

"As a general rule of law persons under legal disability or restraint or persons in want of freedom are incapable of losing or gaining a residence by acts performed by them under the control of others. There must be exercise of volition by persons free from restraint and capable of acting for themselves in order to acquire or lose a residence. . . ."

Similarly in *Beigler v. Chamberlain*³⁹ it was held that a person did not change his domicil and thereby abandon his homestead on being committed to an insane asylum. Again in *Bechtel v. Bechtel*⁴⁰ it was held that a wife did not lose her domicil in Minnesota on being forced by her husband to move to Massachusetts, under a threat that he would not support her unless she did so. It will be noted that the point in these cases was whether the old domicil had been lost, but necessarily they are holding for the converse, that a new domicil was not acquired. It is interesting to note that the Minnesota constitution gives recognition to the principle of this section. One subdivision states:

"No soldier, seaman, or marine in the army or navy of the

³⁵Supra note 33. See in general the discussion of section 17.

³⁶*Lawson v. Adlard*, (1891) 46 Minn. 243, 48 N. W. 1019.

³⁷(1923) 156 Minn. 138, 194 N. W. 325.

³⁸(1919) 143 Minn. 187, 173 N. W. 411, 5 A. L. R. 256.

³⁹*Beigler v. Chamberlain*, (1920) 145 Minn. 104, 176 N. W. 49, (the question arose on demurrer).

⁴⁰(1907) 101 Minn. 511, 514, 112 N. W. 883, 12 L. R. A. (N.S.) 1100, (the question was whether the wife was an actual resident of Minnesota, as is required by separation statute).

United States shall be deemed a⁴¹ resident of this state in consequence of being stationed within the same."

Another subdivision deals with loss of domicil:

"For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the U. S.; . . . nor while kept at any almshouse or other asylum; nor while confined in any public prison."⁴²

The Comment to this section points out that acts which ordinarily establish a domicil of choice are insufficient if a person is resident in a place when performing the duties of a public office. This result was reached in *Kerwin v. Sabin*⁴³ where the domicil of a person who had been elected an United States senator was in dispute. He had rented a house in Washington and lived there with his family during congressional sessions. He returned to his Minnesota home during the summer, maintained servants in Minnesota, and voted in Minnesota.

The theme of section 24 is that the motive with which a person acquires a new dwelling-place does not determine the question of establishment of a domicil of choice. But as stated in a Comment thereto, presence merely for the purpose of securing access to the courts will not create a new domicil. This is the only phase of the subject which has been determined in Minnesota. Several cases have held that a temporary stay in a foreign state for the purpose of securing a divorce will not create a domicil there.⁴⁴ And the section continues and points out that motive may, however, be important evidence tending to show whether or not, when a new dwelling-place is acquired, there is an intention to make a home there. The Minnesota constitution contains a provision dealing with the troublesome question which arises when a person takes a new dwelling-place with the intention of pursuing educational studies. It says that for the purpose of voting no person shall be deemed to have lost a residence by reason of his absence while a student of any seminary of learning.⁴⁵

⁴¹Art. VII, sec. 4.

⁴²Art. VII, sec. 3.

⁴³*Kerwin v. Sabin*, (1892) 50 Minn. 320, 52 N. W. 642, 36 Am. St. Rep. 645, 17 L. R. A. 225.

⁴⁴*State v. Armington*, (1878) 25 Minn. 29; *Thelen v. Theleñ*, (1899) 75 Minn. 433, 78 N. W. 108; *Sammons v. Pike*, (1909) 108 Minn. 291, 120 N. W. 168. See *State v. White*, (1929) 176 Minn. 185, 222 N. W. 918 where the defendant was stated to be domiciled in Minnesota even though the purpose in establishing a residence here was to take advantage of the favorable "credits" tax.

There is a dictum in *Missouri, Kansas & Texas Trust Co. v. Norris*⁴⁶ to the same effect as section 25, that a domicile once established continues until it is superseded by another domicile.

Section 28 is a general introduction to the subject of compelled domicile, the more particular examples being covered in the sections which follow.

As a general rule a wife has the same domicile as her husband. This rule is incorporated in section 29. It was early followed in the case of *Williams v. Moody*,⁴⁷ the direct question being whether a homestead had been abandoned. Justice Berry stated:

"As head of the family, it is for the husband to determine and fix the domicile of the family, including that of the wife. His domicile is therefore her domicile"

Therefore, it being shown that the husband had taken a new dwelling-place, with the intention of making it his home and of not returning to the old dwelling-place, the domicile of the whole family was changed. The rule was followed in another homestead case, *Kramer v. Lamb*,⁴⁸ and in a poor settlement case, *City of Willmar v. Village of Spicer*.⁴⁹

In section 30 the moot question as to the circumstances under which a married woman may acquire a separate domicile is treated. The Restatement accepts as the rule the holding that a wife, living apart from her husband without being guilty of desertion, may acquire a separate domicile. No case has arisen in Minnesota to require a delimitation of the power of a wife to acquire a separate domicile. That she may do so is implicit in the case of *Bechtel v. Bechtel*.⁵⁰ In that case the last matrimonial domicile was Minnesota. The husband then compelled his wife to go to Massachusetts, in order that he might rid himself of her. The court considered the facts to determine whether the domicile of the wife was Minnesota or Massachusetts, the wife having brought suit in Minnesota

⁴⁶Art. VII, sec. 3. See *Town of Highland Grove v. County of Clay*, (1907) 101, Minn. 11, 111 N. W. 651 for case involving residence of a roving workman.

⁴⁸(1895) 61 Minn. 256, 63 N. W. 634 (the point involved concerned substituted service at the house of usual abode. The court stated, "The term used in the statute providing for substituted service, 'the house of his usual abode', is not the equivalent of domicile in all particulars, for one's place of abode or home once acquired does not necessarily continue until another one is obtained.").

⁴⁷(1886) 35 Minn. 280, 28 N. W. 510.

⁴⁸(1901) 84 Minn. 468, 87 N. W. 1024.

⁴⁹(1915) 129 Minn. 395, 152 N. W. 767.

⁵⁰(1907) 101 Minn. 511, 514, 112 N. W. 883, 12 L. R. A. (N.S.) 1100.

for a limited divorce. The decision was that the Minnesota domicile had been retained by the wife, but the opinion is pregnant with the admission that the wife could have acquired a separate domicile.

"Upon the termination of the marriage in any way, or upon judicial separation, the wife can acquire a new domicile; until she does so, she retains the domicile which she had at the time of the termination of the marriage relation;"

this is the rule enunciated by section 31. That the divorced wife may acquire a new domicile is the necessary result of the decision in *Fox v. Hicks*.⁵¹ A husband and wife had been divorced in California; the husband came to Minnesota; the wife and child went to Pennsylvania; the child died in Pennsylvania. The domicile of the child came in question in the Minnesota court. It was held that its domicile was the same as the mother's, Pennsylvania. No further holdings relevant to this section have been found.

The next section, number 32, states that in general a minor child has the same domicile as that of its father. There is a dictum to this effect in *Townsend v. Kendall*.⁵²

"The father is the natural guardian of his children, and may control their persons, as to the place of their domicile, the place of their education, the course of their travels for health, pleasure, or instruction, and in all the various aspects in which the exercise of such control may be invoked, depending on the station in life of the parties, and other circumstances of each individual case." The Comment to this section states that if by statute the father and mother are constituted the "joint guardians" of their minor children, then if the father and mother have separate domiciles, a minor child takes the domicile of the parent with whom it lives in fact, and if it lives with neither, its domicile is that of the father. Minnesota has such a statute but no cases have construed its effect upon the domicile of the minor.⁵³ The dictum of *Townsend v. Kendall* must be considered as qualified by this statute.

Minnesota has not had to consider whether an emancipated minor child may acquire a domicile of choice, the rule of section 33. Somewhat in point is the holding of *State ex rel. Scott v. Lowell*⁵⁴ to the effect that the marriage of a minor, even without

⁵¹(1900) 81 Minn. 197, 207, 83 N. W. 538, 80 L. R. A. 663.

⁵²(1860) 4 Minn. 412 (315), 417, 77 Am. Dec. 534.

⁵³Mason's 1927 Minn. Stat., sec. 8933: ". . . But the father and mother are the natural guardians of their minor children, and, being themselves competent to transact their own business and not otherwise unsuitable, they are equally entitled to their custody and the care of their education. If either dies or is disqualified to act, the guardianship devolves upon the other."

the parents' consent, emancipates the child from the custody of the parents. That the child might thereafter acquire a domicile of choice seems an incidental corollary.

*Fox v. Hicks*⁵⁵ supports the first portion of section 34, that in case of divorce or separation of the parents, the minor child's domicile is that of the parent to whose custody it has been legally given. It was determined that the domicile of a minor child whose custody was awarded to the mother on divorce followed that of the mother. A dictum in the same case agrees with the Comment to this section upon the effect of abandonment of a minor child by the father:

"It has also been held that there is a modification of the rule that arbitrarily attaches the domicile of the father to the child, and gives it to the mother, when the father has abandoned it."⁵⁶

While the rule of section 35, that an illegitimate minor has the same domicile as that of its mother, has never been promulgated by the court, a rule somewhat akin was announced in *Opsahl v. Johnson*,⁵⁷ where it was determined that the status (so far as citizenship is concerned) of an illegitimate was that of his mother.

There is strong indication that the Minnesota court has aligned itself contra to section 38 which states:

"If a guardian of the child's person is appointed, he may change the domicile of the child by establishing its home within but not outside the state in which he was appointed."

In *Townsend v. Kendall*⁵⁸ a minor brought a suit for false imprisonment against his guardian. The guardian had been appointed in Ohio. After the appointment the minor's mother brought him to Minnesota. The guardian peaceably returned the ward to Ohio. The supreme court reversed a decision of the lower court sustaining a demurrer to an answer setting up these facts, basing its reversal upon the theory that a guardian can act outside the state of appointment, both as to changing the domicile of the ward and as to performing other duties. The court said:

"As a general rule the power of a guardian over the person of his ward, is the same as that of a father over the person of his child, during the existence of the relationship. . . . It is quite well settled in England and the United States that a guardian may change the residence of his ward from one State or country to

⁵⁴(1899) 78 Minn. 166, 80 N. W. 877, 46 L. R. A. 440, 79 Am. St. Rep. 358.

⁵⁵(1900) 81 Minn. 197, 207, 83 N. W. 538, 80 L. R. A. 663.

⁵⁶(1900) 81 Minn. 197, 208, 83 N. W. 538, 80 L. R. A. 663.

⁵⁷(1917) 138 Minn. 42, 163 N. W. 988.

⁵⁸(1860) 4 Minn. 412 (315) 417, 77 Am. Dec. 534.

another, when that change will be for the benefit of the ward. . . .” The court said that otherwise it would be necessary that a guardian be reappointed in every state or country through which he should pass with his ward in traveling, if an emergency should arise in which it became necessary to exert his authority. The same doctrine was announced in *State ex rel. Raymond v. Lawrence*⁵⁹ where the court approved a decision restraining removal of a ward from the state. The court recognized the right of a guardian to make such a change but stated that the welfare of the ward would be jeopardized by the proposed change. Again the statement was made:

“While there can be no doubt of the right of a guardian to remove his ward temporarily from one state to another, or even to change the ward’s place of residence from one state to another, such change or removal must always be in good faith, and with a view to the benefit of the ward.”

It has been recognized that a corporation is domiciled in the state where it is chartered.⁶⁰ Also that a domestic corporation is domiciled where it has its principal office.⁶¹ Thus the Minnesota cases are in accord with section 42.

⁵⁹(1902) 86 Minn. 310, 90 N. W. 769, 58 L. R. A. 931 (the ward was an incompetent adult.)

⁶⁰*State v. Great Northern Ry.*, (1918) 139 Minn. 469, 167 N. W. 297.

⁶¹*State ex rel. Ballard-Trimble Lumber Co. v. District Court*, (1912) 120 Minn. 99, 139 N. W. 135.