

Plummer v Inland Revenue Commissioners
CHANCERY DIVISION
[1988] 1 All ER 97, [1988] 1 WLR 292, [1987] STC 698, 60 Tax Cas 452

HEARING-DATES: 22 AND 23 OCTOBER 1987
23 October 1987

CATCHWORDS:

Domicile -- Acquisition of domicile of choice -- Intention to make a permanent home -- Taxpayer having domicile of origin in England -- Taxpayer dividing her residence between England and Guernsey -- Taxpayer intending to work and live in Guernsey -- Whether taxpayer had acquired a domicile of choice in Guernsey.

HEADNOTE:

The taxpayer was born in London of English parents. In 1979 her grandmother bought a house in Guernsey and in 1980 when the taxpayer was 15, her mother and younger sister moved to take up residence in Guernsey with her grandmother. The taxpayer remained at a day school in London during the week with her father and went with him to Guernsey at weekends and holidays. In 1981 she went to a boarding school in the country where she took her 'A' levels. In 1983 she took a secretarial course in London. In 1984 she joined the London University to read for a degree in communications studies at Goldsmiths' College. She spent weekends and some, but not all, of her holidays in Guernsey. In 1983--84 she spent 245 days in England and 106 days in Guernsey and in 1984--85 she spent 247 days in England and 83 days in Guernsey (the remaining days were spent on holiday abroad). At a hearing before the Special Commissioners the taxpayer gave evidence of her attachment to Guernsey and her intention to live and work there. They accepted her evidence, but found that she had not become an 'inhabitant' of Guernsey during the years in question and therefore could not be said to have acquired a domicile of choice in Guernsey. The taxpayer appealed contending that a person whose presence in a new country was sufficient to amount to residence might, notwithstanding that his chief residence remained in his domicile of origin, acquire a domicile of choice in the new country by evincing an intention to continue to reside permanently there.

Held -- A person who kept a residence in his domicile of origin could only acquire a domicile of choice in a new country if the residence established in that country was his chief residence. On the facts, the commissioners were entitled to come to the conclusion that the taxpayer had not yet settled in Guernsey. It followed therefore that the taxpayer had not acquired a domicile of choice in Guernsey. The appeal accordingly would be dismissed *Udny v Udny* (1869) LR 1 Sc & Div 441 applied. *v Duchess of Portland* [1982] STC 149 considered.

NOTES:

For the acquisition of domicile of choice, see Simons **Taxes** E6.30.

CASES-REF-TO:

IRC v Duchess of Portland [1982] STC 149, [1982] Ch 314.
Udny v Udny (1869) LR 1 Sc & Div 441, HL.

INTRODUCTION:

1. On 29 and 30 September and 2 October 1986 the Commissioners for the Special Purposes of the Income **Tax** Acts heard appeals by Elizabeth Anne Plummer ('the taxpayer') against the refusal of her claim to have been domiciled outside the United Kingdom for the years 1983--84 and 1984--85.

2. [Paragraph 2 set out the witnesses who gave evidence and the documents put in before the commissioners.]

3. At the close of the hearing the commissioners reserved their decision and gave it in writing, refusing the appeal, on 11 November 1986.

4. The taxpayer immediately after the determination of the appeal declared her dissatisfaction therewith as being erroneous in point of law and on 21 November 1986 required the commissioners to state a case for the opinion of the High Court pursuant to s 56 of the **Taxes** Management Act 1970.

5. The question of law for the opinion of the court was whether, on the facts set out in the commissioners' decision, the commissioners were entitled to find that the taxpayer had not established a domicile of choice in Guernsey for or in the year 1983--84 or the year 1984--85.

DECISION

The taxpayer, Elizabeth Anne Plummer, appeals against the refusal of her claim that she was domiciled outside the United Kingdom in the **tax** years 1983--84 and 1984--85. That claim was made to the Revenue under s 122(2)(a) of the Income and Corporation **Taxes** Act 1970 and was refused on 14 January 1986.

It is agreed that the taxpayer's domicile of origin was English she does not contend that she acquired any other domicile by dependency while she was under the age of sixteen and incapable in law of having an independent domicile. The question for determination is whether, on or after her sixteenth birthday (which she celebrated on 26 March 1981) but before the end of the two years under review, she acquired an independent domicile of choice in Guernsey in the Channel Islands.

The facts

The taxpayer was born in England at the Edgware Hospital in Middlesex on 26 March 1965, the first child of English parents Ronald Plummer, an accountant by profession, and his wife Jean. The family then lived in North Harrow, moving to Northwood in 1971 and to a house in West London, 27 Radnor Place, W2, in 1975. That house was sold in 1978 to Lamond Ltd, a company as to the beneficial ownership of which we had no evidence, and the Plummer family remained in occupation until 1980 as licensees of that company.

In April 1980 Mrs Plummer and the younger daughter, Helen, moved to Guernsey. They went to live at Les Terres House in St Peter Port, a large property owned since 1979 by Mr Plummer's mother, who was also living there. Mrs Jean Plummer, the taxpayer's mother, has lived ever since then at Les Terres House, making only occasional visits to England to shop, meet friends or see doctors. Helen, who was aged 13 at the time of the move, continued her schooling in Guernsey. She has now left school and will go to an English University in 1987.

Mr Plummer has continued to spend most of the working week in London, joining his wife at Les Terres House at weekends, whenever possible, and for holidays. In London he stayed on at 27 Radnor Place as caretaker for Lamond Ltd, until February 1981, when the house was sold. He then stayed with friends for a short time before moving into a flat at 12 York Street, W1, under an arrangement with Gardenville SA, a company of which we know only that it has an address in Jersey. Mr Plummer also has, or has the use of, an apartment in Florida, in the United States of America, where the whole family has regularly spent holidays.

The taxpayer was attending a private school, Queen's College in Harley Street, in 1980 and she stayed on to take her 'O' level examinations in the summer of 1981. In the autumn of that year she went to Millfield, a boarding school in Somerset, where she was able to take an 'A' level course in communication studies, a subject which was available at no school in Guernsey and not many in the United Kingdom. She was already attracted to a career in radio or television. She left Millfield in the summer of 1983 with three 'A' level passes, including a grade B in communication studies.

While at Queen's College the taxpayer lived at a hostel in London during the week, going to Guernsey at weekends and in the school holidays. At Millfield she had 3 'excats' per term, of which one was usually spent in Guernsey and again she went to Guernsey in the school holidays. But she did not, either from

Queen's College or Millfield, spend the whole of each school holiday in Guernsey. In April 1981, for example, she spent 13 days in Florida with the family; in the summer of that year she went to Canada for 3 weeks: there was another holiday in Florida in April 1982 and a 20-day cruise in the summer. After leaving Millfield she spent two separate weeks in England with friends, 14 days in Florida and the rest of the 1983 summer holidays, 43 days in all, in Guernsey.

With a year to fill in before going to London University to read for a degree in communication studies/sociology at Goldsmiths' College the taxpayer took a secretarial course, starting on 14 September 1983 at St Godric's College in Hampstead. She left on 27 July 1984 with a diploma in business studies, which included a course in advertising and public relations. For the first two terms of that year she lived in the college's accommodation, moving to Highgate for the final term to share a house with friends. During this year she spent occasional weekends at 12 York Street with her father, usually when her mother and sister were visiting London. During the 1984 Easter holidays she spent 8 days in Italy and 9 days in Guernsey. In the summer of 1984 after leaving St Godric's she was on holiday in Florida for 19 days and spent two separate periods, of 15 and 22 days respectively, in Guernsey. During one of those periods she did temporary work for Radio Guernsey and was paid £10. She had previously done some voluntary work in Guernsey for underprivileged children during holidays from Millfield.

From 6 April 1984 onwards the taxpayer had the right to occupy the flat at 12 York Street on terms set out in a letter to her from a director of Gardenville SA dated 28 March 1984. She was to pay rates, water charges, service charge, electricity and telephone bills. No rent was charged and she could be given seven days' notice to leave. No other person was to spend more than 14 consecutive nights there without the company's prior permission.

Although she had the benefit of that agreement and paid the expenses of the flat, the taxpayer lived in a college hostel at Greenwich during her first year at Goldsmiths' College, from 1 October 1984 to July 1985. For her second year she intended to share a rented house in Sydenham with college friends, but she left that house after three days and moved into the York Street flat, where her father was also living. She lived in that flat throughout the 1985--86 academic year but she was given notice to quit by 31 October 1986. Her third and final year will be spent in a flat at St John's Wood which her mother has bought for her and, in due course, Helen's use.

Since she started at Goldsmiths' College the taxpayer has rarely been able to spend weekends in Guernsey, but she has been there for part of her vacations. A series of schedules, showing her movements between the United Kingdom, Guernsey and other places with approximate dates taken from her mother's diaries, was put in evidence. We accept those schedules as showing the pattern of the taxpayer's life with sufficient accuracy for the purposes of this appeal. We further record that the taxpayer's longest period of continuous residence in Guernsey was six weeks. She was there for 42 consecutive days in 1980, 41 in 1981 and 41 in 1982, during the summer holidays on each occasion.

We find the following additional facts from the evidence put before us:

(1) In a will concerning her personal estate, executed in Guernsey on 31 May 1983, the taxpayer declared that she was domiciled in Guernsey where she intended to reside for the rest of her life. The legal concept of domicile was explained to her before she executed the will, which had been drafted and typed on her father's instructions.

(2) Ownership of Les Terres House passed to the taxpayer and her sister in equal shares under the will of their paternal grandmother who died on 25 June 1985. The will was made in 1979 and the sisters knew of their expectancy for some time before they inherited the property. Mr and Mrs Plummer now live there by leave of their daughters, rent-free, on three months' notice, paying all the outgoings other than insurance of the structure which is paid by the daughters.

(3) In January 1984, on the expiry of her previous British passport, the taxpayer obtained a new passport in Guernsey issued by the Lieutenant Governor of the Island on behalf of Her Britannic Majesty.

(4) The taxpayer has three driving licences, issued in the UK, Guernsey and Florida respectively. She bought a car in London in November 1984 and kept it there for the first 12 months, taking it to Guernsey for holidays. Since then it has been kept mostly in Guernsey, where repairs and maintenance have been carried out by a local garage. Parking is difficult in the area around York Street.

(5) She was on the electoral roll in St Peter Port from March 1984 to February 1985, having applied in September 1983 at her father's suggestion: but she failed to reapply for the following electoral year and her name was removed. She is not interested in politics and has not voted, but she has recently applied to be put back on the register.

(6) She has been registered as a patient of a Guernsey medical practice since 1983 and had previously visited a doctor in that practice. Before 1980 she was a patient of a London doctor and she would still go to him, if occasion arose, while living in London.

(7) She has had an account with Douglas Bank Ltd in the Isle of Man since December 1981 and regards it as a source of unlimited funds on which she can draw cheques for substantial amounts with no fear that they will not be honoured: but she does not know whence the funds are derived. She has also had a current account with Lloyds Bank plc in Guernsey since 1983. That account is kept in funds by transfers from the Douglas Bank account as required. The Douglas Bank is ultimately owned by Plummer family settlements, as we were told by another witness.

(8) When she came of age the taxpayer asked her father to manage her business and **tax** affairs. He has completed her **tax** returns and composed letters to the Inland Revenue for her to sign: and he put forward the claim to a Guernsey domicile on her behalf. She does not know how much **tax** is involved in the issue of domicile for the two years under review but she thinks that it is not a substantial amount.

ZdEvidence of intention

The taxpayer said in evidence that she has regarded Guernsey as her home since 1980 and she would like to live there permanently. She hoped ultimately to work for Channel Television in Guernsey, where it had a small organisation, although she might have to start at the main office in Jersey. But she had to gain some experience first and she would work for a year in a larger organisation after leaving Goldsmiths' College, possibly in America, Australia or Hong Kong: not in England. If, after that year abroad, she could not get a television job in the Channel Islands she would, in the last resort, give up her chosen career in order to live in Guernsey. She would try something else, such as advertising, and might start her own business in Guernsey. She had no plans to get married and might not do so unless she wanted to have children at some future date. She would not marry a man who was unwilling to live in Guernsey. If her parents were to leave Guernsey, which was unlikely, she would buy a small house there and stay.

Asked in cross-examination to state how she would have expressed her intentions for the future at yearly intervals between March 1981 and March 1984 the taxpayer said that her intentions had not changed significantly over the years. While at Queen's College she had decided on a career in the communications media. She had at first wanted to be a 'cameraperson' but her thoughts had later turned to the production side of television or video work. She had always been confident of finding work in Guernsey, after a period of training which would have to be done abroad, either in the communications industry or in a 'media-related' field such as advertising. The idea of possibly starting her own business went back to Millfield days when she first realised that she would have the money with which to do it.

ZdThe argument

Mr McGregor QC, who with Mr Ashe represented the taxpayer, accepted that the burden of proof was on her to show a change of domicile. The standard of proof was that normally applicable to civil proceedings -- per Scarman J in *Re Fuld* (dec'd) [1968] P 675 at 686, approved by the Court of Appeal in *Buswell v IRC* [1974] 1 WLR 1631 at 1637. The 'judicial conscience' must be satisfied of the change, but that did not mean that the standard of proof required was higher than the civil standard.

Under the test in *Udny v Udny* (1869) LR 1 Sc & Div 441 there were two elements in the acquisition of a domicile of choice. First, there must be physical presence in the new country, not casually or as a traveller but as an inhabitant of it, to adopt a phrase used in an American case, *Re Newcomb* (1908) 192 NY 238, cited in Dicey and Morris on the Conflict of Laws (10th edn, 1980) at p 111. Secondly there must be an intention to make one's home in the new country permanently or indefinitely. Both elements, in his submission, were present in this case.

As to the first, the family home had been in Guernsey since 1980 and the taxpayer had gone there since then, not simply to visit her parents but because she had fallen in love with the Island and had freely and voluntarily adopted it as her home. She had spent more than 90 days there in each year except 1984--85 when her course at Goldsmiths' College made it difficult for her to get away. She was, no doubt, resident in England for tax purposes but that was no bar to her claim to a foreign domicile. Schooling could make a person resident in a country without affecting his domicile: *Miesegaes v IRC* (1957) 37 TC 493. Nor did a return to the place of origin nullify a change of domicile once effected if the return was for a limited purpose only: *White v Tennant* (1888) 31 W Va 790.

As to intention, the taxpayer's evidence was clear and emphatic and should be accepted. She did not want to live permanently anywhere but in Guernsey and she had realistic prospects of making her life and career there when she had finished her education and gained some work experience, which she would seek outside England. That evidence, unless disbelieved, was sufficient, in counsel's submission, to support her claim.

Counsel for the Revenue, emphasised that the taxpayer's claim was to have acquired a domicile of choice in Guernsey: she was not relying on a domicile of dependency there. To satisfy the *Udny v Udny* test, as restated in *Re Fuld*, she had to show either that from her sixteenth birthday Guernsey had been her sole or chief place of residence, where she intended to reside permanently or indefinitely, or that at some point after that date but before the end of the two years in question she had voluntarily fixed Guernsey as her place of sole or chief residence with the intention of continuing to reside there permanently or indefinitely. The facts did not support either of those propositions in the Revenue's submission.

Throughout the relevant period the taxpayer had been resident and ordinarily resident in England, continuing her education here. Admittedly a person who had previously acquired a foreign domicile would not lose it if he came here for a limited period in education, as in *Miesagaes*, but that was a different case. The taxpayer's education had required her to remain in England, where she was at the start of the period under review, and that made it difficult for her to establish a sufficient degree of residence elsewhere. The decision in *IRC v Duchess of Portland* [1982] Ch 314 showed that a person's chief residence was usually the place where he spent most time. The commissioners' decision was reversed in that case because they had attached too much importance to a short visit paid by the Duchess to Canada, the land of her choice. The real question, as Nourse J explained (at 319), was whether Canada or England was the place which she inhabited. The taxpayer in this case inhabited England, whether she wanted to or not. She visited Guernsey, staying in her grandmother's house where her mother and her sister also lived and where her father went at weekends and for holidays. Her longest continuous visit of 42 days could be contrasted with the 10 to 12 weeks spent in Canada each year by the Duchess of Portland, who was nevertheless domiciled in England. It could not be said that the taxpayer had yet made her chief residence in Guernsey, even if she intended to do so in the future.

As to intention, counsel accepted the taxpayer as an honest witness, but the evidence of the propositus and prior declarations of intention always had to be treated with some reserve: *Buswell v IRC* and other cases cited by Dicey and Morris (10th edn, 1980) at p 119. The circumstances were unusual in that the taxpayer knew little about the real point of the appeal, but she knew that it was brought in the course of her father's conduct of the family's financial affairs. It was no criticism of her to suggest that her recollection of her intentions at various times might have been coloured by that knowledge, so that she stated as fixed intentions what had in reality been hopes. Unless the conscience of the court was satisfied by the evidence relating both to foreign residence and to intention the domicile of origin adhered: and that, in the Revenue's submission, was the right conclusion in this case.

Counsel for the taxpayer, in reply, submitted that this was a different case from the Duchess of Portland case. The Duchess had a continuing life in London, where her real home was and she went to Canada as a visitor. The taxpayer was in England for a limited purpose and, ever since 1980, had gone to Guernsey as her home whenever she could. The test of chief residence did not always depend on the amount of time spent in each of two or more places. It was the quality of her physical presence in Guernsey plus her intention to live there indefinitely which entitled her to claim a Guernsey domicile.

Conclusions

The term 'inhabitant' had not appeared in the English authorities before the of Portland 's case but its use in an American case had been referred to with approval in Dicey and Morris as bringing out the difference between casual presence and the kind of presence required to establish a change of domicile. It seems to us to reflect neatly the idea of domicile as explained in the earlier authorities such as *Udny v Udny* (1869) LR 1 Sc & Div 441 at 458 where Lord Westbury said:

'Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time.'

and *Re Fuld* (decd) [1968] P 675 at 684 where Scarman J said:

' . . . the law so far as relevant to my task may be stated as follows: (1) the domicile of origin adheres -- unless displaced by satisfactory evidence of the acquisition 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.'

The issue in the Duchess of Portland 's case was whether the propositus had abandoned her domicile of choice in England and resumed her domicile of origin in Canada whereas the taxpayer in this case claims to have abandoned her English domicile of origin, with its special quality of adherence, in favour of a domicile of choice in Guernsey. The cases are, however, similar in that the propositus in each case divided her time to some extent between the two countries. In the Portland case Nourse J stated (at 318–319) the question for his determination as follows:

'The primary question therefore is whether the taxpayer actually ceased to reside here after January 1, 1974. Residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it. If the necessary intention is also there, an existing domicile of choice can sometimes be abandoned and another domicile acquired or revived by a residence of short duration in a second country. But that state of affairs is inherently improbable in a case where the domiciliary divides his physical presence between two countries at a time. In that kind of case it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.'

Observations of that kind must be treated as descriptive of the circumstances in which a domicile may be acquired or changed: they do not, as Lord Westbury said in *Udny*, constitute a definition of the term. With that caveat, however, we think it right to approach this case on the lines indicated by Nourse J and to consider whether the taxpayer, who was plainly an inhabitant of this country and of no other up to the beginning of 1980, became an inhabitant of Guernsey for the whole or part of the relevant period which started on 6 April 1983 and ended on 5 April 1985, and if so whether she had the intention of continuing to reside there permanently or indefinitely.

On the first, and in this case more difficult, question of residence we have to bear in mind that the taxpayer cannot have become an inhabitant of Guernsey to the extent required for a change of domicile unless she had abandoned her English domicile of origin in fact as well as in intention since she can have only one domicile at any given time. Rule 13(1) in *Dicey and Morris*, cited with approval by Nourse J in the Duchess of Portland, says:

'A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise.'

That statement applies with equal, if not greater, force to the abandonment of a domicile of origin. The question is not whether the taxpayer wanted to leave England and inhabit Guernsey but whether in fact she did.

Throughout the two years under review the taxpayer spent most of her time in England, completing her second year at Millfield, doing a secretarial course in London during the year between school and university and then starting her three-year course at London University. During that time she spent some weekends and part of each vacation in Guernsey, in her grandmother's house, and she went on family holidays to Florida and other places. In the second year she was the licensee of a flat at 12 York Street and responsible for the outgoings, although she did not in fact live in the flat during the relevant period.

Those bare facts are not necessarily incompatible with a claim to a Guernsey domicile. If the taxpayer had previously left England and settled in Guernsey a return to this country to complete her education might not have affected her domicile but that had not happened. She was unable to join her mother and sister in their move to Guernsey in 1980 nor had she joined them subsequently. She told us that she had regarded Les Terres House as her home since 1980 and that is understandable since it was the place to which she normally went, during her school days, when term ended and to which she continues to go to be with her family. We have to consider, however, whether she has made it her chief place of residence.

We accept the taxpayer's evidence that she likes Guernsey and enjoys the amenities of the island when she is there, quite apart from enjoying the company of her family. But circumstances have not yet enabled her to make her life there nor is there any immediate prospect of her doing so since she intends to work elsewhere for a time, though not in England, after leaving university and before starting on her career. It may be that she will one day settle in Guernsey and pursue her career there, although we feel bound to observe that she may not, since the pattern of life does not always conform to youthful plans however emphatically they are stated. It is all in the future.

We do not underestimate the part which Guernsey plays in her thinking but the fact remains that the taxpayer has throughout her life resided in England for the greater part of each year and been principally occupied here. We can see no break in that pattern which would entitle us to find that she had ceased to have her chief residence in England and had become, in the sense in which the term is used in this context, an inhabitant of Guernsey. On the evidence before us our judicial conscience is not satisfied that there had been such a change by the end of the period which we have to consider.

That being so we do not need to assess the evidence of intention. Until she has settled down and begun her life in Guernsey the question whether she intends to continue to reside there will not arise. It would be premature to express any opinion as to the effect of her evidence on that aspect of the claim at this stage.

We refuse the appeal and uphold the Revenue's rejection of the claim for both years.

Harvey McGregor QC and Michael Ash for the taxpayer.

COUNSEL:

Ian B Glick QC for the Crown.

PANEL: HOFFMANN J

JUDGMENTBY-1: HOFFMANN J

JUDGMENT-1:

HOFFMANN J: This is an appeal by way of case stated from the Special Commissioners. The question before the commissioners was the domicile during the **tax** years 1983--84 and 1984--85 of the taxpayer Miss Elizabeth Plummer, who had turned 18 on 26 March 1983. The commissioners found that she was

during the relevant period domiciled in England. The taxpayer appeals and says that they should have found that she was domiciled in Guernsey.

The taxpayer was born in London of English parents. In 1979 her maternal grandmother bought a house in St Peter Port and in April 1980, when the taxpayer was 15, her mother and younger sister moved to Guernsey and took up residence with her grandmother. Her father, who is an accountant, maintained a residence in London but joined his wife and younger daughter in Guernsey when he could at weekends and holidays. It is not suggested that he acquired a Guernsey domicile before the taxpayer's sixteenth birthday on 26 March 1981, and her domicile therefore remained English until that date.

After her mother's removal to Guernsey, the taxpayer remained at a private London day school, staying in a hostel during the week and going to Guernsey at weekends and holidays. In the autumn of 1981 she went to boarding school in Somerset and stayed there until she took her 'A' levels in the summer of 1983. She had a year's break before going to London University in the autumn of 1984, and during this time she attended a course at a secretarial college in Hampstead, living first in college accommodation and then sharing a house with friends in Highgate. During her first year at university she lived in a college hostel in Greenwich and in her second year moved into a flat available to her father in the West End. That takes the story up to the summer of 1986, more than a year after the end of the **tax** years with which this case is concerned.

While studying in London the taxpayer spent many weekends and some, but by no means all, of her holidays in Guernsey. The commissioners have scheduled to the case a table which showed that in the **tax** year 1980--81 the taxpayer spent 173 days in England and 154 in Guernsey, in 1981--82 213 in England and 112 in Guernsey, in 1982--83 229 days in England and 98 in Guernsey, in 1983--84 245 days in England and 106 in Guernsey, and in 1984--85 247 days in England and 83 in Guernsey. The remaining days were spent on holiday abroad. She gave evidence, which the commissioners accepted, of her attachment to Guernsey. She said that she would like to live there and work for Channel Television, although she recognised that she would first have to gain experience elsewhere and proposed to work somewhere abroad for a year after leaving university. Her intention is ultimately to settle in Guernsey whether or not she can get employment in television there. As a last resort, she would start a business of her own. She holds a Guernsey driving licence (as well as UK and Florida licences) and keeps a car in London which she takes to Guernsey for holidays. She was on the Guernsey electoral roll from March 1984 until February 1985 (having applied at her father's suggestion) but failed to re-apply for the following year and was removed. She is the registered patient of a Guernsey doctor as well as a London one, has held a Guernsey passport since January 1984 and has had an account with a Guernsey bank since 1983. This is fed from another account which she has maintained since 1981 in the Isle of Man.

The commissioners began by framing the question for themselves as whether the taxpayer had become an 'inhabitant' of Guernsey for all or part of the relevant period. The term 'inhabitant' as a description of a resident for the purposes of the law of domicile was taken from Dicey and Morris on The Conflict of Laws (11th edn, 1987) at pp 128--9, where it is contrasted with being present in a country casually or as a traveller. It is clear however that the commissioners did not employ the term with this dichotomy in mind, because although they found that the taxpayer had not become an inhabitant of Guernsey they could hardly have said that her presence there for more than three months in each year was casual or as a traveller. In another part of the case they had said that six weeks was her longest period of continuous residence in Guernsey. They were using the term 'inhabitant' rather in the specialised sense in which Nourse J used it in *IRC v Duchess of Portland* [1982] Ch 314, where he said:

'Residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it. If the necessary intention is also there, an existing domicile of choice can sometimes be abandoned and another domicile acquired or revived by a residence of short duration in a second country. But that state of affairs is inherently improbable in a case where the domiciliary divides his physical presence between two countries at a time. In that kind of case it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.'

Speaking for myself, while I find the contrast between an inhabitant and a person casually present useful to describe the minimum quality of residence which must be taken up in a new country before a domicile there

can be acquired, the concept of being an inhabitant seems to me less illuminating in cases of dual or multiple residence such as the present.

Clearer guidance is to be found in a well-known passage in the speech of Lord Westbury in *Udny v Udny*:

'Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time.'

I infer from this sentence, which was quoted by the commissioners, that a person who retains a residence in his domicile of origin can acquire a domicile of choice in a new country only if the residence established in that country is his chief residence. The commissioners therefore asked themselves whether the taxpayer had made her grandmother's house in Guernsey 'her chief place of residence'. They regarded this question, in my judgment rightly, as being the same as whether 'in the sense in which the term is used in this context' the taxpayer had become an inhabitant of Guernsey.

Counsel for the taxpayer submitted that a person whose presence in a new country is sufficient to amount to residence may, notwithstanding that his chief residence remains in his domicile of origin, acquire a domicile of choice by evincing an intention to continue to reside permanently in the new country. I think that this submission is inconsistent with the passage which I have quoted from Lord Westbury and which has always been treated as an authoritative statement of the circumstances in which a domicile of choice may be acquired. On the other hand, I agree with counsel for the taxpayer that Rule 13(1) of *Dacey and Morris*, if read literally, appears to go too far. This says that:

'A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise.'

These words might suggest that a domicile of choice (and presumably a fortiori a domicile of origin) cannot be lost unless the person in question has ceased altogether to reside there. I do not think that the rule was framed with dual residence in mind. At any rate, it seems to me that *Udny v Udny* shows that loss of a domicile of origin or choice is not inconsistent with retention of a place of residence in that country if the chief residence has been established elsewhere. Although the commissioners cited Rule 13(1), I do not think that they applied it literally to the circumstances of this case. Notwithstanding that the taxpayer's continued presence in England amounted, as counsel for the taxpayer conceded, to residence in this country, the commissioners made it clear that they would have found that she had acquired a domicile of choice in Guernsey if they were satisfied that she had established her chief residence there.

On this point, however, the commissioners were not satisfied, and since I have found that there was no error in the way in which they formulated the relevant law the taxpayer must persuade me that no commissioners acting judicially and properly instructed as to the relevant law could have come to that conclusion. Counsel for the taxpayer submitted that the commissioners paid no regard to anything except the relative amounts of time which the taxpayer spent in England and Guernsey during the years in question. They ignored the quality of her presence in each country the fact that she was in England solely for the purpose of education and in Guernsey because it was her family home.

I do not think that this is a fair reading of the commissioners' decision. They set out at length the taxpayer's ties with Guernsey and her reasons for remaining in England. In deciding whether the house in St Peter Port had become her chief residence, they said: 'We accept [the taxpayer's] evidence that she likes Guernsey and enjoys the amenities of the island when she is there, quite apart from enjoying the company of her family' and, 'We do not underestimate the part which Guernsey plays in her thinking . . .'. Nevertheless they said that these considerations did not outweigh the fact that the taxpayer had resided for the greater part of the year in England and that there had been no 'break in the pattern' which would justify a finding that she had ceased to have her chief residence in England. She had not, to use the language of Lord Hatherley in *Udny v Udny*, settled in Guernsey.

I think that this was a conclusion to which the commissioners were on the evidence entitled to come. I go further and say that in my judgment it was the right conclusion. If the taxpayer had in 1980 broken

altogether with England and settled in Guernsey like her mother and sister and then, even after a relatively short interval, returned to England for study, the quality of her presence here might have been such as to prevent a revival of her domicile of origin. But the fact is that she has not yet settled in Guernsey, and the reasons why she has been unable to do so are in my view irrelevant. When there is no competing place of continuing residence, settlement may be established by presence for a very short time even for a single day. But as Nourse J pointed out in the Duchess of Portland case, an inference of settlement from a short stay is difficult to draw when the person in question divides his physical presence between two countries at a time. To treat the house in Guernsey as her chief residence simply because it is the sole residence of her mother and sister would in my view be attributing to her a kind of quasi-dependent domicile for which there is no legal justification. And the fact that the taxpayer may intend to settle in Guernsey after education and training are completed and then to remain permanently is not sufficient to give her a proleptic domicile of choice.

In my judgment the commissioners reached the right answer, and the appeal is therefore dismissed.

DISPOSITION:

Appeal dismissed with costs

SOLICITORS:

Roney's (for the taxpayer); Solicitor of Inland Revenue