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ROBERT GAINES-COOPER

v

THE COMMISSIONERS FOR HM REVENUE & CUSTOMS

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High Court of Justice (Chancery Division)
Mr Justice Lewison

Neutral citation: [2007] EWHC 2617 (Ch)

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Hearing: 16-18 October 2007
Judgment: 13 November 2007

Domicile of origin in England; domicile of choice in Seychelles; residence; chief or principal residence; intention; scope of an appeal; question of fact or of law

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Robert Gaines-Cooper (GC) had a domicile of origin in England and Wales. After visiting the Seychelles he acquired a house there and, in order to obtain a residence permit, established a plastics factory in 1975. He was granted this in 1976, and claimed to have acquired a domicile of choice in the Seychelles. However, at all material times he retained, through the medium of companies based in the Isle of Man, a house and farmland in England as well as his British citizenship. He had business interests elsewhere, notably in Italy, Canada and California. In 1979 he married, for the first time, a Dutch/Indonesian citizen and had his matrimonial home in California. That marriage failed and was dissolved in 1986. He remarried, this time to a Seychellois citizen, in 1993 and his wife applied for naturalisation as a British subject in 1994. Their son was born in England in 1998 and went to school in England until 2005.

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HMRC assessed GC to tax for the years 1992/93 to 2003/04 on the basis that his domicile of origin remained that of England and Wales. The Special Commissioners found for HMRC, concluding that a domicile of choice was acquired by a combination of residence (or, in a case where a person has a residence in more than one jurisdiction, which of them was chief or principal residence) and an intention of permanent or indefinite residence. In reaching that decision, they concluded that it was necessary to look at the totality of the evidence, including events which occurred after the alleged acquisition of the domicile of choice and, as regards the intention of permanent or indefinite residence, a determination to make the alleged domicile of choice his home with the intention of establishing himself and his family there and ending his days in that country.

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R appealed on the ground that, whilst it was possible to look at evidence after the relevant date when considering the question of intention, it was impermissible to look at such evidence for the purpose of determining whether the propositus had the necessary residence and, so far as concerned the intentions necessary to support the acquisition of a domicile of choice, it was irrelevant to consider what these were as regards his family if, as a matter of fact, he had no family at the relevant time. Further, whilst it was agreed

that the acquisition of a domicile of choice was a question of fact and the appeal must fail unless it could be said either that the Special Commissioners' self direction was legally flawed or that there was no evidence to support one or more of the findings of fact, it was argued for GC that they would have committed an error of law if their conclusion was not the only true and reasonable conclusion on the basis of the facts found and the unchallenged evidence.

Held (dismissing the appeal)

1. There was no authority to support the submission that it was impermissible to look at evidence subsequent to the relevant date for the purpose of determining whether the propositus had the necessary residence, as distinct from intention, for the acquisition of a domicile of choice. Whatever may be the case where the propositus had only one residence at any given time, in a case where he had two or more the fact-finding tribunal was not confined to a snapshot and could look at evidence after the alleged acquisition of the domicile of choice in order to determine which was his chief or principal residence at that time. For this purpose, it should not be assumed that everyone must have a chief residence at any given time but, where there was one, it does not cease to be the propositus's chief or principal residence merely because it happens to be let to a third party. As regards the relevance of intention towards his family, the quality of intention that was necessary to support the acquisition of a domicile of choice was the same whether the propositus was single or married. A young bachelor who set off with a rucksack on his back and settled in a new territory could acquire a domicile of choice there if he had the necessary intention, and it was no misuse of language to say that the quality of intention was that he must have the intention of establishing himself and his family (if he requires one) in the new territory. In determining whether, at any given time, the propositus did have that quality of intention, it was legitimate to examine what in fact happened when he did acquire a wife and family (para [47]).

Obiter

On the question of evaluating evidence it was probable, as a matter of common sense, that the further one gets from the point at which a domicile of choice is alleged to have been acquired, the less cogent will be any inference that one can draw from conduct (para [43]).

2. The Special Commissioners were entitled to conclude that GC's evidence as a witness should be approached with caution. Their findings of fact should not be supplemented by such of his evidence which they did not expressly reject. Similarly, the criticisms of the Special Commissioners' findings as regards his marriages and the evidence of the Seychellois witnesses and other matters were all questions of fact; not errors of law (para [25]). This was one of those cases in which the 'penumbra of imprecision' (as per Lord Hoffmann in *Biogen Inc v Medeva plc* [1997] RPC 1) was important. In the light of the Special Commissioners' findings of fact, it was impossible to say that the only true and reasonable conclusion was that GC had

A acquired a domicile of choice in the Seychelles in 1976. Whether there might have been an error of fact was beside the point; there was no error of law in their conclusion (para [27]).

Cases referred to

- B *Agulian & anr v Cyganik* [2006] WTLR 565
Barclays Mercantile Business Finance Ltd v Mawson [2003] STC 66 (CA); [2005] STC 1 (HL)
Bell v Kennedy (1868) LR 1 HL Sc 311
Biogen Inc v Medeva plc [1997] RPC 1
Bremer v Freeman (1857) 3 Moo PC 306
Edwards v Bairstow [1956] AC 14
- C *Georgiou v Commissioners of Customs and Excise* [1996] STC 463
Re Grove (1888) 40 Ch D 216
IRC v Bullock [1976] STC 409
IRC v Duchess of Portland [1982] STC 149
Plummer v IRC [1987] STC 698
- D *R v Turnbull* [1977] QB 224
Udny v Udny (1869) LR 1 HL 441,
Winans v A-G [1904] AC 287

JUDGMENT

E MR JUSTICE LEWISON:

Introduction

F [1] Given that many people move about the world from one country to another, it is essential to have a means of establishing under which system of law and within the jurisdiction of which country's courts questions relating to their civil status (such as marriage, divorce and legitimacy) and some aspects of their property (such as the devolution of moveable property on their intestacy) fall to be determined. It is to accomplish that purpose that the concept of domicile has been developed. It is a neutral rule of law for determining that system of personal law with which an individual has the appropriate connection, so that it will govern his personal status and questions relating to him and his affairs. Its essential feature is that it attempts to connect a person so far as it is possible with the country in which he has his permanent home or in which he lives indefinitely. But in addition to the principal objective of the law of domicile, it also has knock-on effects, such as a person's liability to pay tax. That is what this appeal is about.

G [2] The Special Commissioners (Dr Nuala Brice and Mr Charles Hellier) decided that Mr Gaines-Cooper was domiciled in England and Wales during the tax years from 1992/93 to 2003/04. Mr Gaines-Cooper, being dissatisfied with that decision in point of law, appeals against it. His appeal is restricted to questions of law only.

The contest before the Special Commissioners

H [3] It is common ground that Mr Gaines-Cooper's domicile of origin was England and Wales. The contest before the Special Commissioners was between the

continuation of Mr Gaines-Cooper's domicile of origin (as alleged by HMRC) and the acquisition by him of a domicile of choice in the Seychelles in 1976 (as alleged by Mr Gaines-Cooper). HMRC did not allege that if Mr Gaines-Cooper had acquired a domicile of choice in the Seychelles in 1976 he had subsequently abandoned it. Nor did Mr Gaines-Cooper allege that if he had not acquired a domicile of choice in the Seychelles in 1976 he had subsequently done so.

[4] The Special Commissioners correctly described the legal issue before them (para 4) as:

'... whether the Appellant was domiciled in England during the tax years from 1992/93 to 2003/04.'

[5] They correctly recorded Mr Gaines-Cooper's factual case on that issue (para 111) as follows:

'It was the Appellant's case that he abandoned his domicile of origin in England and acquired a domicile of choice in the Seychelles in 1976 and that that domicile of choice had subsisted at all times since then.'

[6] In addition to the issue of domicile during the relevant tax years, the Special Commissioners were also required to decide whether Mr Gaines-Cooper was 'resident' or 'ordinarily resident' in the United Kingdom during those years. They dealt with these issues in a separate section of their decision. But Mr Flesch QC, who appears for Mr Gaines-Cooper, says that they made errors of law in formulating the legal test that they purported to apply in deciding the question of domicile. He says that in two respects the Special Commissioners' self-direction was wrong. He also says that on the facts found and the unchallenged evidence, the only true and reasonable conclusion is that Mr Gaines-Cooper acquired a domicile of choice in the Seychelles in 1976 or thereabouts. Since the Special Commissioners reached a contrary conclusion, it must be inferred that they made an error of law. There are, therefore, two potential points of law, one 'pure' and one 'applied'.

The decision

[7] I will have to deal with some of the Special Commissioners' findings of fact in due course; but simply to put their conclusions in context I give the bare bones of the story now. Mr Gaines-Cooper had a domicile of origin in England and Wales. In the 1970s he began to visit the Seychelles and in 1975 he bought a house there known as Bois Noir. Also in 1975, in order to obtain a residence permit, he constructed and thereafter operated a plastics factory in the Seychelles. He also retained, through the medium of an offshore company, a house and farmland in England. He was granted a residency permit for the Seychelles in 1976. In 1979 Mr Gaines-Cooper married Ms Dilon Lantang in Amsterdam. He bought a house in California which was to be the matrimonial home. However, the marriage deteriorated after a very short time, and a divorce followed. In 1993 Mr Gaines-Cooper remarried. He had met his second

A wife Jane in the Seychelles in 1975. She is a Seychellois but had come to study and then work in England. The marriage took place in England in 1993. In the following year Mrs Gaines-Cooper applied for naturalisation as a British subject. Their son James was born in England in 1998 and went to school in England until 2005. Substantial works were carried out to Mr Gaines-Cooper's English house in the early 1990s and to Bois Noir in 1996. The Special Commissioners also made findings about the number of days that Mr Gaines-Cooper spent in the Seychelles and the UK respectively.

B [8] Having set out the evidence and their findings at considerable length, the Special Commissioners turned to the law. No criticism is made of the summary in paras 114-118 of the decision. In para 119 they said:

C 'It is clear that, in considering the requirements of residence and of intention, it is necessary to look at all the evidence.'

D [9] In para 120 they said:

'The totality of the evidence can include conduct after the date of the alleged acquisition of a domicile of choice.'

E [10] Having stated the principle, they then considered the twin requirements of residence and intention. So far as the question of residence is concerned, they decided that the relevant inquiry, in a case where a person has a residence in more than one jurisdiction, is which of them is his chief or principal residence. They summarised what they considered to be the correct legal principles (which amounted to their self-direction) as follows (para 132):

F 'From the authorities we conclude that a domicile of choice is acquired by the combination of residence and the intention of permanent or indefinite residence and in reaching a decision it is necessary to look at the totality of the evidence, *including events which occurred after the claimed acquisition of a domicile of choice*. Residence for the purposes of the law of domicile means physical presence as an inhabitant but where a person resides in two countries it is necessary to look at all the facts in the light of the principle 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 new country is his chief residence. There must also be the intention of permanent and indefinite residence: a determination to make the alleged domicile of choice his home with the intention of establishing himself *and his family* there and ending his days in that country.'

H [11] I have italicised the two parts of that self-direction that Mr Flesch criticises. So far as the first is concerned, Mr Flesch says that while it is possible to look at evidence subsequent to the relevant date in considering the question whether the

propositus had the necessary intention for the acquisition of a domicile of choice, it is impermissible to look at such evidence for the purpose of determining whether he had the necessary residence. So far as the second passage is concerned, Mr Flesch says that if the propositus has no family (in the sense of a nuclear family or a wife and children) at the time that he says he has acquired a domicile of choice, then his intentions as regards his family are irrelevant to the question whether he has the intention necessary to support the acquisition of a domicile of choice.

[12] The Special Commissioners then applied their self-direction to the facts they had found. Their conclusions are detailed, and it is necessary to set them out fully. They first considered whether Mr Gaines-Cooper's 'chief residence' was in the Seychelles. They concluded:

'[138] In favour of the Appellant is the fact that the Appellant has had a residence in the Seychelles for more than 30 years. The Appellant purchased Bois Noir as a furnished house in 1976 and after the renovations which were completed in 1998 that residence now has a certain quality. The Appellant wishes his ashes to be scattered there. He met his future wife in the Seychelles. His papers are, since 2004, kept there. In his 1977 will he declared that he was domiciled in the Seychelles. He has social, religious and charitable associations with the Seychelles. He likes living in a warm climate. He planted a coco-de-mer plant there in February 1976.

[139] However, the fact is that the Appellant has always retained a house in the United Kingdom and that is where his family lived in the period relevant to this appeal. In reaching a decision we have to look at the totality of the evidence. Residence for the purposes of the law of domicile means physical presence as an inhabitant and in our view the evidence supports the conclusion that the Appellant has, and has always had, a physical presence both in England and the Seychelles. His domicile of origin was England and he retained at all times a presence here which had the quality of residence. He can only acquire a domicile of choice in the Seychelles if the residence established in that new country is his chief residence.

[140] We regard as significant the fact that nearly all of the Appellant's connections with the United Kingdom were located in a comparatively small area of the contiguous counties of Berkshire and Oxfordshire. In that small area the Appellant was born and went to school and his mother lived there until her death in 2004. Also in that same small area the Appellant married (twice); purchased two houses (Grove House and later Old Place); invested in at least two farms (the Goose Willow Estate and Tanners Farm); had business offices (first at Cedar Court and later at Northfield House for which companies associated with the Appellant paid £1.5m); had a number of old friends; attended Royal Ascot; and attended shooting events. Mrs Jane Gaines-Cooper also had very many connections in the same locality. She attended Padworth College, Berkshire and was then employed in Reading, Berkshire. Before her marriage to the Appellant she lived locally

A and after her marriage lived at Old Place. James went to school in Henley-on-Thames, Oxfordshire.

B [141] We also regard the 1999 will (which is the Appellant's present will) to be of some significance. It was prepared by English solicitors; it is to be construed and take effect according to English law; and the persons appointed to be the guardians of James live in the United Kingdom. Similarly, the agreement of 23 November 1988 to exploit the invention of the laryngeal mask created a trust for the benefit of beneficiaries named in a will of the Appellant admitted to probate in England. Also, of course, the Appellant has always retained his British citizenship and did not apply for citizenship in the Seychelles. Mrs Jane Gaines-Cooper applied for British citizenship.

C [142] We accept that subjectively the Appellant regards Plantation Bois Noir as his chief residence but we adopt the words of Scarman J in *Fuld* at 692B that "a wealthy man cannot, by his interested declarations, alter the facts of his life". Objectively the facts do not support the conclusion that the Seychelles or Bois Noir was the Appellant's chief residence. He occupies a substantial house with land in England and his wife (and his son since his birth in 1998) lived here until 2005. England remained the centre of gravity of his life and his interests. His chief residence was in England. We do not agree with the argument of the Appellant that his chief residence had to be in the Seychelles from 1976 because there was no home in the United Kingdom available for his use because in 1976 Grove House was rented out. At almost the same time that Grove House was rented out (1976 to 1980) Bois Noir was rented out also (1976 to 1979) and the reason for both rentals was because the Appellant was in Canada pursuing the Canadian venture and later because he had another house and a wife in California. The evidence did not, even in this period, when the Appellant spent materially more time in the Seychelles than in England, persuade us that the Seychelles rather than Canada, California or England was his chief residence.

G [13] They then considered his intention. They concluded:

H '[143] There must also be the intention of permanent and indefinite residence and a determination to make the alleged domicile of choice his home with the intention of establishing himself and his family there and ending his days in that country. But one thing that the Appellant has not done is to establish his family principally in the Seychelles. We regard as significant that Mrs Jane Gaines-Cooper, although a Seychellois by birth, has chosen to live in England since 1977. The Appellant admitted that one reason why Grove House was sold and Old Place was purchased was because he hoped to persuade Mrs Jane Gaines-Cooper to marry him. There was no evidence before us that Mrs Jane Gaines-Cooper intended for the foreseeable future to make her chief residence in the Seychelles. Mrs Jane Gaines-Cooper's

intentions do not determine the Appellant's intentions as they are independent people. But the Appellant is much attached to his wife and we believe he had the intention to spend time with her. Her possible ambivalence made it harder to conclude that he intended indefinitely to reside in the Seychelles (and that the Seychelles was his chief residence). Finally, the fact that in aggregate since 1975 the Appellant has spent most of his time at places other than the Seychelles (although not all in the United Kingdom) is not indicative of the residence of the Appellant in the Seychelles as being permanent and indefinite.

[144] We also do not agree that the building of the plastics factory in the Seychelles proved an intention to change domicile. The factory was built in order to obtain a residence permit and, compared with other successful ventures of the Appellant, was never very successful until about 1996 when it started to assemble laryngeal masks. The effort put by the Appellant into maintaining his Seychelles venture, latterly rebuilding the factory and locating some laryngeal mask assembly there, is evidence of some considerable attachment to the Seychelles but it did not make the Seychelles the centre of his business operations or of his life which centre, in the relevant period, was in England. The pursuit of the Seychelles factory, despite its limited success, is evidence of a wish of the Appellant to retain his connection with the Seychelles but not conclusive of an indefinite intention to remain there. His successful businesses were in Canada, California, Italy and England. We also do not agree that the Appellant spent more time in the Seychelles than in England. On the facts we have found he in fact spent more time in England than in the Seychelles at least during the years under appeal.

[145] We accept that from 1976 to about 1980 the days spent by the Appellant in the Seychelles were more numerous than the days spent by him in England but in deciding whether he abandoned his domicile of origin in 1976 we are entitled to look at all the facts including events after that date. There may have been a change in the pattern in 1976 but there have been many changes since all of which lead us to conclude that the Appellant did not abandon his domicile of origin. Overall we believe that the Appellant at all relevant times intended to retain a presence in England for an indefinite period. He may also have intended to maintain a physical presence in the Seychelles for the indefinite future, but his chief residence was in England.

[146] We adapt the words of Scarman J in *Fuld* at 692E and find that in fact the Appellant never did wholly reject England nor, indeed, that small part of it located in Berkshire and Oxfordshire where he had so many ties and connections; on the contrary he felt its pull upon his affections and interests all his days. We also adapt the words of Hoffmann J in *Plummer* at 707f and accept that the Appellant likes, nay loves, the Seychelles and enjoys all the amenities of the island of Mahé when he is there, quite apart

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A from enjoying the beautiful house which Bois Noir has become since the renovations which were completed in 1998. We do not underestimate the part which the Seychelles plays in his thinking. Nevertheless these considerations do not outweigh the substantial and continuing part which presence in England played in his life.'

B **The scope of an appeal**

C [14] Miss Simler QC, appearing for HMRC, submitted that the question whether a person has acquired a domicile of choice is a question of fact. Unless it can be said either that the Special Commissioners' self-direction was legally flawed, or that there was no evidence to support one or more of their crucial findings of fact, the appeal must fail. Mr Flesch agreed with this as far as it went. But he submitted that the Special Commissioners would have committed an error of law if their conclusion was not the only true and reasonable conclusion on the basis of the facts found and the unchallenged evidence.

D [15] Mr Flesch relied on the well-known statement of principle in *Edwards v Bairstow* [1956] AC 14 in which Lord Radcliffe said:

E 'If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three, since I think that it is rather misleading to speak of there being no evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves, and only to take their colour from the combination of circumstances in which they are found to occur.'

H [16] Lord Radcliffe deals both with a case in which there is no evidence to support the determination; and also a case in which the evidence is inconsistent with and contradictory of the determination. He treats them both as facets of the same principle; namely that it must be inferred that the fact-finding tribunal made an error of law. However, in speaking of a case in which the evidence is contradictory of the determination, he must plainly have been confining himself to evidence that the fact-finding tribunal accepted as true.

[17] In *Georgiou v Commissioners of Customs and Excise* [1996] STC 463 Evans LJ said:

‘There is a well-recognised need for caution in permitting challenges to findings of fact on the ground that they raise this kind of question of law. That is well seen in arbitration cases and in many others. It is all too easy for a so-called question of law to become no more than a disguised attack on findings of fact which must be accepted by the courts. As this case demonstrates, it is all too easy for the appeals procedure to the High Court to be misused in this way. Secondly, the nature of the factual inquiry which an appellate court can and does undertake in a proper case is essentially different from the decision-making process which is undertaken by the tribunal of fact. The question is not, has the party upon whom rests the burden of proof established on the balance of probabilities the facts upon which he relies, but, was there evidence before the tribunal which was sufficient to support the finding which it made? In other words, was the finding one which the tribunal was entitled to make? Clearly, if there was no evidence, or the evidence was to the contrary effect, the tribunal was not so entitled.

It follows, in my judgment, that for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and, fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make. What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal’s conclusion was against the weight of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court.’ (Emphasis added.)

[18] Again it seems to me that when Evans LJ spoke of evidence to the contrary effect he must have been referring to evidence that the fact-finding tribunal accepted as true.

[19] As an illustration of the application of these principles, Mr Flesch drew my attention to the decision of the Court of Appeal in *Barclays Mercantile Business Finance Ltd v Mawson* [2003] STC 66. The issue in the case was whether Barclays was entitled to capital allowances in respect of expenditure which it said was expenditure in the acquisition of a gas pipeline for the purposes of its trade. The Revenue contended that the series of agreements under which Barclays acquired an interest in the pipeline was an artificial tax scheme with no commercial justification; whereas Barclays said that it was a standard commercial finance leasing transaction. The Special Commissioners and the judge found in favour of the Revenue, but the Court of Appeal reversed their decisions. Part of the crucial reasoning which underlay the Court’s decision was that the Special Commissioners had made a finding of fact (*viz* that the transactions had no commercial reality) that they were not entitled to make. Peter Gibson LJ pointed out that three distinguished witnesses gave evidence on

A behalf of the taxpayer before the Special Commissioners; but apart from recording that fact 'the Special Commissioners make only brief references to their evidence'. The Revenue called no evidence, but cross-examined the three witnesses. Having summarised the evidence of the three witnesses Peter Gibson LJ said:

B [32] In the light of that evidence from apparently impeccable witnesses whose evidence is not said by the Special Commissioners to be disbelieved, it is not apparent to me on what evidence the findings [that the transactions had no commercial reality] are based. They appear to be an acceptance of the Revenue's assertions...'

C [20] Peter Gibson LJ continued by saying that it was of course open to the Special Commissioners to reject the evidence of a witness but they would have been bound to explain why; and he pointed out that this was not a case in which they were choosing between conflicting evidence, because the Revenue had called none. The ultimate finding of the Special Commissioners was 'simply not supported by any written or oral evidence' (para 34). The decision of the Court of Appeal was upheld by the House of Lords on grounds which do not affect this point: [2005] STC 1. It is true that the Court of Appeal looked at the raw material that had been placed before the Special Commissioners, both in written and oral form. But the conclusion that they reached was that there was no evidence to support the Special Commissioners' finding of fact; in other words classic *Edwards v Birstow* territory.

E [21] It is of course, as Peter Gibson LJ recognised, for the Special Commissioners to evaluate the evidence before them. In the course of a long hearing (and this one took ten days of which more than four days were occupied by Mr Gaines-Cooper's own evidence) it is impossible for them to record all the evidence that has been given. An appeal court must also respect the impression that the witnesses made on the fact-finding tribunal. In the present case the Special Commissioners specifically commented on Mr Gaines-Cooper's evidence as follows:

F [7] Before finding the facts we comment on the evidence of the Appellant. The Appellant gave evidence for four and a half days of the ten day hearing. As many of our findings depend upon his oral evidence we have to say how we found him as a witness. We accept that the Appellant did his best to be truthful and honest but he also readily admitted that he made mistakes. For this reason we looked for corroborating documentary evidence but an unusual feature of this appeal was that much of the oral evidence of the Appellant was digressive and discursive and unsupported by any documents. Some of the evidence related to events as far back as 1971 which is now thirty-five years ago. The Appellant had an impressive memory but was not always certain about dates. We accept that some uncertainty about dates is to be expected after such an interval of time.

H [8] However, the Appellant also sometimes appeared to confuse one of his business ventures with another. The Appellant told us that he had set up

(with other business associates) probably in excess of 100 companies all over the world. The names of very many companies were mentioned in oral evidence but not with great precision and without reference to documents. The same comment applies to trusts. A number of different trusts were mentioned but full supporting documentation was not produced. For the purpose of these preliminary issues absolute accuracy about dates and the names of the Appellant's companies and trusts is not required. Where appropriate, therefore, we have referred to dates as approximate dates and to companies and trusts descriptively rather than by specific names because we are not confident that all the dates and names given in oral evidence were accurate.

[9] For these reasons we approach the oral evidence of the Appellant with some caution. We bear in mind that the burden of proof in these appeals is on the Appellant.'

[22] Mr Flesch fastened on the Special Commissioners' statement that Mr Gaines-Cooper 'did his best to be truthful and honest'. He said that while the Special Commissioners did make criticisms of Mr Gaines-Cooper's evidence, those criticisms were an inadequate foundation for their overall conclusion that they should approach his evidence with caution, especially where his evidence concerned his subjective intentions about which, Mr Flesch said, Mr Gaines-Cooper had not been muddled or mistaken. It is sometimes necessary to distinguish between an honest witness and a truthful one. An honest witness may not be telling the truth, for he may be mistaken. That is the reason why juries are warned against deciding guilt on the basis of identification evidence. The very honesty of the witness may make it all the more necessary to test the accuracy of his honestly given evidence (cf *R v Turnbull* [1977] QB 224). Moreover all fact-finders are aware of honest witnesses who persuade themselves that what actually happened in the past conforms to their current view of how things ought to have happened. This does not impugn the honesty of their evidence, but it may impugn its accuracy or truthfulness. It is, perhaps, difficult to imagine a witness who tries (and fails) to be honest; but there is no difficulty in understanding the notion of a witness who tries (and fails) to be truthful. The Special Commissioners described Mr Gaines-Cooper as a witness who did his best to be truthful and honest. They did not say that he succeeded in being both; and indeed their comments on his tendency to make mistakes shows clearly that he failed in his honest attempt to be truthful. It is true that some of the Special Commissioners' criticism related to dates; but dates were of critical importance in the case. Moreover the comment that much of Mr Gaines-Cooper's evidence was discursive and digressive is a general comment on his evidence. That is not, however, the only point at which the Special Commissioners commented on Mr Gaines-Cooper's evidence. In para 134 they said:

'The evidence of the Appellant was that on moving to the Seychelles in February 1976 he firmly believed and intended that he would live out his days

A in the Seychelles and that was still his wish. He had never had the desire to return to live in England and he believed that he had acquired a domicile of choice in the Seychelles. He regarded Plantation Bois Noir as his principal residence and his home. Although he had to travel extensively on business, the Seychelles became his true home in the mid-1970s and had remained so ever since. It was where he intended to spend the remainder of his days. We have considered this evidence in the light of the totality of the facts we have found.'

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[23] The last sentence makes clear that the Special Commissioners were not necessarily going to accept Mr Gaines-Cooper's evidence about his intention. Having considered the totality of the facts they concluded:

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'Overall we believe that the Appellant at all relevant times intended to retain a presence in England for an indefinite period. He may also have intended to maintain a physical presence in the Seychelles for the indefinite future, but his chief residence was in England.'

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[24] Clearly they did not accept his evidence, especially that part of his evidence in which he said that he had never had the desire to return to live in England. Whether they were right or wrong in reaching that conclusion is irrelevant to an appeal limited to a question of law.

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[25] In my judgement the Special Commissioners' evaluation of Mr Gaines-Cooper as a witness demonstrates no error of law. They were entitled to conclude that his evidence should be approached with caution. Accordingly, I reject the submission that the Special Commissioners' findings of fact can be supplemented by evidence that Mr Gaines-Cooper gave but which the Special Commissioners did not expressly reject.

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[26] There are, however, some specific findings that Mr Flesch vigorously criticised to which I will return in due course. It is convenient to recall, at this stage, the general approach of an appeal court to findings of fact made by a lower court. As Lord Hoffmann put it in *Biogen Inc v Medeva plc* [1997] RPC 1:

G

'The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la vérité est dans une nuance*), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'

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[27] This, of course, was said in the context of an appeal where the appeal court has, at least in principle, the power to reverse a judge's evaluation of the facts. In the

present case, by contrast, I have no such power. I must be satisfied, not that the Special Commissioners' evaluation of the facts was wrong, but that they made an error of law. All the more need, then, for caution.

A

Domicile: the legal test

[28] The classic statement of the nature of a domicile is that of Lord Chelmsford in *Udny v Udny* (1869) LR 1 HL 441, at 458:

B

'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.'

C

[29] It is important to remember that a person must always have a domicile; and, conversely, he may only have one domicile at a time. It follows, therefore, that there will (at least in theory) be a particular moment in time at which his domicile changes if he acquires a domicile of choice which replaces his domicile of origin. Before that moment, his domicile will have been his domicile of origin. After that moment it will be his domicile of choice. Locating the moment may be a difficult question of fact. It is also necessary to recall (as Ms Simler submitted) that a person's domicile of origin is particularly 'adhesive'.

D

Residence and chief residence

[30] As I have said, Mr Flesch's submission is that while it is possible to look at evidence subsequent to the relevant date in the question whether the propositus had the necessary intention for the acquisition of a domicile of choice, it is impermissible to look at such evidence for the purpose of determining whether he had the necessary residence. There is no authority which supports this stark distinction.

E

[31] In *Bremer v Freeman* (1857) 3 Moo PC 306 the issue was whether Fanny Allegri died domiciled in France, where she had lived from 1842 until her death in 1853. Lord Wensleydale, giving the advice of the Privy Council, said:

F

'Whatever question may have arisen, if the deceased had died in 1842, her subsequent residence for eleven years gave a character to her prior residence, and proved that domicile had commenced at that time.'

G

[32] Thus conduct which took place after the date of the alleged acquisition of a domicile of choice was relevant to determining the character of a person's residence. The question whether a person's residence in a particular territory is his chief residence is, as it seems to me, a question of the character of his residence in that territory.

H

[33] In *Re Grove* (1888) 40 Ch D 216 Lopes LJ said that the law was that 'in order to determine a person's intention at a given time, you may regard not only conduct and acts before and at the time, but also conduct and acts after the time, assigning to such conduct and acts their relative and proper weight and cogency'. However, the

A fact that Lopes LJ's observations are directed to intention does not mean that either expressly or impliedly he was saying that you cannot look at subsequent conduct for the purpose of determining someone's residence.

[34] In addition in the present case it is necessary to give some further consideration to the concept of 'chief residence'. In *IRC v Bullock* [1976] STC 409 Buckley LJ said:

B 'A man may have homes in more than one country at one time. In such a case, for the purpose of determining his domicile, a further enquiry may have to be made to decide which, if any, should be regarded as his principal home.'

C [35] Since this postulates two homes, it is clear that the Lord Justice was considering more than just physical presence in two or more territories.

D [36] In *IRC v Duchess of Portland* [1982] STC 149 Nourse J considered the case of a taxpayer who had homes in both England and Quebec. He said that residence for the purposes of the law of domicile is 'physical presence in [a] country as an inhabitant of it'. While residence of short duration may be enough to support the acquisition of a domicile where a person abandons one country for another, Nourse J went on to say:

E '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 such a case it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.'

F [37] In the Duchess of Portland's case the factual question was whether the Duchess had acquired a domicile of choice in Quebec on her annual visit in 1974. In order to decide that question Nourse J reviewed the pattern of her life between 1948 (when she married and came to England) and 1978 (which was the last year of assessment concerned in that case). He did not distinguish between looking at 'all the facts' for the purpose of deciding the question of residence on the one hand, and the question of the necessary intention on the other.

G [38] In the Duchess of Portland's case Nourse J glossed the requirement of 'residence' as 'physical presence... as an inhabitant'. Mr Flesch did not suggest that this gloss was wrong. This gloss does not seem to me to maintain the rigid separation between residence on the one hand, and intention to stay on the other, for which Mr Flesch argued. Once the quality of physical presence comes into the picture, that quality can (only) be evaluated by an examination of the conduct of the propositus over a more prolonged period.

H [39] In *Plummer v IRC* [1987] STC 698 Hoffmann J held 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 formulation of the applicable test in *Udny* requires both a chief residence and also an intention to

continue to reside indefinitely. Thus the question whether a person's residence is his chief residence is part of the first limb of the test rather than the second. The test is predicated on the fact that a person has a residence in each of the competing territories. Plainly, therefore, residence alone is not enough to satisfy the first limb of the test where a person has two or more residences. If a person has two or more residences in different territories, which is his chief one? In *Plummer* itself the taxpayer's complaint was that the Special Commissioners had paid attention only to the 'day count' and had ignored the quality of her presence in each country. Hoffmann J said that that was not a fair reading of their decision; but it seems to me that he did not reject the submission that both the day count and the quality of presence were of importance in determining which of two or more residences is a person's chief residence. Again, it seems to me that if the fact-finder is required to determine which of two residences is a person's chief residence, then the tribunal must look at the evidence over a more prolonged period than might otherwise be the case.

[40] In *Agulian & anr v Cyganik* [2006] WTLR 565 the question was whether Mr Andreas Nathanael (Andreas) had acquired a domicile in England at the date of his death. He had in fact been resident in England for some 43 years before his death in 2003, although he also owned two flats in Cyprus, which was his domicile of origin. The factual contention was that he had acquired a domicile of choice in England between 1995 and 1999. Mummery LJ (with whom the other members of the court agreed) said (para 27):

'As the deputy judge found that Andreas abandoned his domicile of origin in Cyprus and acquired a domicile of choice in England between 1995 and 1999, it is necessary to examine in detail the facts found about Andreas's English connection, focusing on his life events in that period, but viewed, of course, in the context of his life as a whole.'

[41] He also said (para 46):

'First, the question under the 1975 Act is whether Andreas was domiciled in England and Wales at the date of his death. Although it is helpful to trace Andreas's life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. Positioned at the date of death in February 2003 the court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death. Søren Kierkegaard's aphorism that "life must be lived forwards, but can only be understood backwards" resonates in the biographical data of domicile disputes.'

[42] It is true that the latter quotation is more overtly concerned with intention than with residence, but Mummery LJ did not limit his observations to intention; nor

A did he in the first of the two quotations. Mr Flesch said that it was because the legal
issue was whether Andreas was domiciled in England at the date of his death, that
Mummery LJ said that the court must position itself at the date of death and look
backwards. Mr Flesch said that Mr Gaines-Cooper's case was 'the complete
B opposite' because it was his case that he had acquired a domicile of choice during
the critical period. In my judgement this is a false contrast. The legal issue before the
Special Commissioners was whether Mr Gaines-Cooper was domiciled in England
during the years of assessment under appeal. That is the comparator with the legal
issue in *Agulian & anr v Cyganik*. The factual issue was whether Mr Gaines-Cooper
C acquired a domicile of choice in the critical period. But in *Agulian & anr v Cyganik*
the factual issue was whether Andreas had acquired a domicile of choice between 1995
and 1999, some four years before his death. In my judgement *Agulian & anr v Cyganik*
cannot be distinguished on this ground.

[43] In addition, Mr Flesch's submission carried the seeds of its own destruction. The
case for Mr Gaines-Cooper was that he acquired a domicile of choice in the Seychelles
in 1976. But Mr Flesch said that in considering the question whether Mr Gaines-
D Cooper's chief residence was in the Seychelles, the Special Commissioners were wrong
in law in looking at evidence outside what Mr Flesch described as 'the critical period'
(ie 1976 to 1980). Although the reason for the selection of the start of the critical period
was clear (Mr Gaines-Cooper's acquisition of a residence permit) the reason for the
selection of the end of the critical period was justified by no more than pragmatism. If
E Mr Flesch's submission on the law is correct, what justification can there be for having
a 'critical period' at all? The very fact that a critical period is relied on demonstrates that
one cannot determine a person's chief residence merely by taking a snapshot at a
particular moment in time. It seems probable, as a matter of common sense, that the
further one gets from the point at which a domicile of choice is alleged to have been
F acquired, the less cogent will be any inference that one can draw from conduct. But that
is a question of evaluating the evidence, rather than saying that it is irrelevant.

[44] Whatever may be the case where the propositus has only one residence at any
given time, in the case where he has two or more I reject the submission that the fact-
finding tribunal is confined to a snapshot. In my judgement the Special
G Commissioners made no legal error in looking at evidence outside 'the critical period'
in order to help them decide which was Mr Gaines-Cooper's chief residence in 1976.

[45] Mr Flesch had a subsidiary submission on the question of 'chief residence'. He
said that the competing residences must be available residences, in the sense that the
propositus has an unfettered and immediate ability to live in the residence in question.
If, therefore, one of the competing residences is let, it cannot be a chief residence for as
H long as the letting endures. Mr Flesch submitted that since Mr Gaines-Cooper's English
property was let between 1976 and 1980 it could not have been Mr Gaines-Cooper's
chief residence during that period. Since the only competitor for the title of chief
residence was Bois Noir, it follows, by a process of elimination that Bois Noir must have
been Mr Gaines-Cooper's chief residence during the critical period. There are two
reasons why I reject this submission. First, it assumes that everyone must have a chief
residence at any given time. I do not see why that should be so. Although everyone

must have a domicile at any given time, the domicile of origin will endure or revive, even if the propositus does not have a chief residence in his territory of origin, or indeed anywhere. The question for the Special Commissioners was not which of England and the Seychelles was Mr Gaines-Cooper's chief residence; but whether his chief residence was in the Seychelles. That, in my judgement, is a subtly different question. Secondly, I do not accept that a residence ceases to be a person's chief residence simply because it is let out. If a person domiciled in England takes a foreign posting for, say, three months and lets out his English home in the meantime, it is no misuse of language to say that his English home remains his chief residence during that three-month period. I might also add that, as the Special Commissioners found, Bois Noir was let out at almost the same time as the English property. So if the English property does not qualify as Mr Gaines-Cooper's chief residence, nor does Bois Noir.

Wife and children

[46] The only other part of the Special Commissioners' self-direction that Mr Flesch criticised was their summary of the necessary intention as 'a determination to make the alleged domicile of choice his home with the intention of establishing himself and his family there and ending his days in that country'. Mr Flesch's point was that at the date when Mr Gaines-Cooper claims to have acquired a domicile of choice in the Seychelles, he had no family in the sense of a wife and children. I agree with Mr Flesch that if the Special Commissioners were using the word 'family' to refer to the parents or siblings of the propositus, then they would have been in error. But I do not think that that is what they meant at all. They attached weight to what happened when Mr Gaines-Cooper married (twice). The quotation from the Special Commissioners' decision is one which they themselves took from the judgment of Buckley LJ in *Bullock*. Buckley LJ in his turn took it from the speech of Lord Macnaghten in *Winans v A-G* [1904] AC 287, at 291; and Lord Macnaghten himself took it from the speech of Lord Cairns in *Bell v Kennedy* (1868) LR 1 HL Sc 311. If the Special Commissioners were wrong, they were in very distinguished company.

[47] In my judgement the quality of intention that is necessary to support the acquisition of a domicile of choice is the same quality whether the propositus is single or married. The young bachelor who sets off with his rucksack on his back and settles in a new territory can acquire a domicile of choice there if he has the necessary intention. Of course it is necessary to describe the quality of that intention in words. And even in the case of a young bachelor, it is no misuse of language to say that the quality of intention is that he must have the intention of establishing himself and his family (if he acquires one) in the new territory. In determining whether at any given time the propositus did have that quality of intention, it is in my judgement legitimate to examine what in fact happened when the propositus did acquire a wife and family.

Mr Gaines-Cooper's marriages

Dilona Lantang

[48] The Special Commissioners said of Mr Gaines-Cooper's first marriage (para 32):

A 'In 1979 the Appellant married, for the first time, Ms Dilona Lantang who was a citizen of both the Netherlands and Indonesia. The marriage took place in Amsterdam and later there was a service at St Andrew's Church, Sonning, near Reading. Sir James Mancham was one of the guests. Also in 1979 the Appellant purchased a house in California and both the Appellant and Mrs Dilona Gaines-Cooper lived there. For about a year after the marriage Mrs Dilona Gaines-Cooper used to visit the Seychelles with the Appellant; after that she preferred to be in California. Mrs Dilona Gaines-Cooper only visited the Seychelles occasionally and would then go on to visit Singapore. The marriage was dissolved in 1986.'

C [49] In summarising their conclusion they said (para 53):

'From 1979 to 1986 the Appellant was married to Mrs Dilona Gaines-Cooper and lived with her at a house in California.'

D [50] Mr Flesch was very critical of this finding; and said that it did not do justice to the real state of affairs. He said that the unchallenged evidence was that Mr Gaines-Cooper's first marriage broke down after about a year. To put it another way, what he was saying was that there was no evidence to support the Special Commissioners' finding that Mr Gaines-Cooper and his first wife lived together in California after about 1980. There is, I think, some force in Mr Flesch's criticism, but it does not take him far. Reverting to what Mr Flesch called 'the critical period' (*viz* 1976 to 1980) there was ample material, even on Mr Gaines-Cooper's own evidence, to justify a finding that Mr Gaines-Cooper's matrimonial home was in California from the date of his marriage in 1979 to the end of the critical period.

F [51] The other side of the coin is that the Special Commissioners also found that Bois Noir in the Seychelles was let between 1976 and 1979. Mr Flesch had some criticisms of the way in which the Special Commissioners compared the periods of letting of Bois Noir on the one hand, and Mr Gaines-Cooper's English property on the other. But these were criticisms at the margin and do not affect the Special Commissioners' central finding of fact about the letting of Bois Noir. The period in which the home in California was the matrimonial home included, even on Mr Gaines-Cooper's evidence, a period after the letting of Bois Noir had come to an end.

G [52] In short, therefore, on the facts found by the Special Commissioners (and even accepting Mr Flesch's point about Mr Gaines-Cooper's first marriage) Mr Gaines-Cooper's house in the Seychelles was let between 1976 and 1979; and for at least the following year he lived in California.

H *Jane Laye-Sion*

[53] The Special Commissioners recorded that Mr Gaines-Cooper and Miss Laye-Sion first met in the Seychelles in 1975. They became friendly, although there was a considerable disparity in age between them. In 1977 Miss Laye-Sion left the Seychelles and came to the United Kingdom to complete her education. She was a

boarder at Padworth College near Reading, to which Mr Gaines-Cooper had introduced her. They found as a fact that in 1979 'Miss Laye-Sion took her final A-level examination and decided to stay in the United Kingdom' (para 57). Also in 1979 adverse political pressure led to Miss Laye-Sion's family (her mother, father, sister and two brothers) selling their house in the Seychelles and setting up home in the United Kingdom (para 58). Mr Gaines-Cooper and Miss Laye-Sion married in Henley in 1993. In their summary the Special Commissioners said that: 'We regard as significant that Mrs Jane Gaines-Cooper, although a Seychellois by birth, has chosen to live in England since 1977.' Mr Flesch criticised that findings on two grounds: first that in 1977 Miss Laye-Sion was sent to England to complete her education, and hence it was not her choice; and secondly, that her decision to remain in England was in part motivated by the political pressure (in fact a coup d'état in the Seychelles) to which the Special Commissioners referred. Neither of these criticisms can, in my judgement, be categorised as revealing an error of law. The fact remains that, for whatever reason, Miss Laye-Sion lived in England from 1977 onwards; that Mr Gaines-Cooper, as the Special Commissioners found, bought a house in England in 1988 in the hope that he could persuade Miss Laye-Sion to marry him; and that when they did marry, they married in England.

[54] Mr Flesch said that when, in 1976, Mr Gaines-Cooper claimed to have formed the intention to settle indefinitely in the Seychelles, he could not have foreseen how much time he and Miss Laye-Sion would spend in England. Thus, he said, the Special Commissioners should have accepted Mr Gaines-Cooper's evidence about his intention in 1976. That, as it seems to me, is a pure question of fact. That the Special Commissioners did not accept Mr Gaines-Cooper's evidence on that point reveals no error of law.

The Seychellois witnesses

[55] Mr Gaines-Cooper called a number of independent witnesses in support of his case, many of whom knew him in the Seychelles. Mr Flesch's criticism of the Special Commissioners was that 'in one short paragraph they utterly fail to do justice' to their evidence. Whether the Special Commissioners did or did not do justice to the evidence of these witnesses is, in my judgement, a pure question of fact. It was for the Special Commissioners to decide, as part of their fact-finding exercise, whether the evidence of these witnesses helped them to decide the questions they had to consider. It is here, in particular, that even the most meticulous of fact-finding tribunals cannot be expected to set out all the evidence that they heard. Moreover, in my judgement, Mr Flesch's criticisms understated the extent to which the Special Commissioners did indeed find and take into account facts which they found as a result of this evidence.

[56] The paragraph that Mr Flesch fastened on was para 136 in which the Special Commissioners said:

"The evidence of Mr Guy Morel was that the Appellant was "definitely settled" in the Seychelles and that "his heart was there". The evidence of Sir

A James Mancham was that he thought of the Appellant as being domiciled in the Seychelles: "he belongs here and is regarded by all as Seychellois." The evidence of Mrs Geva René was that the Appellant "was considered a Seychellois" by the people there; it was her opinion that the Appellant had made his home in the Seychelles and had told her that he wanted to end his days there. Mr Pugh told us that the Appellant "always regarded the Seychelles as his home; although he travelled extensively on business, he was always anxious to get back home to the Seychelles". We bear in mind that Mr Pugh only lived in the Seychelles between 1976 and 1980. Bishop French stated that his conversations with the Appellant over the years left him in no doubt that the Seychelles was where he considered his home to be. We bear in mind that the Appellant first met Bishop French in 1993. Mr Curtis-Bennett told us that the Appellant considered the Seychelles to be his home and was of the view that the Appellant would never leave the Seychelles. Mr Victor Loh said that he did not believe that the Appellant would ever stop living in the Seychelles; it was his home and he had too many roots there. Mr Landon expressed the opinion that the Appellant was at home in the Seychelles which he always referred to as home; in his view the Appellant would die in the Seychelles. All the witnesses spoke very highly of the help given by the Appellant to charities and good causes in the Seychelles.'

E [57] In commenting on this evidence the Special Commissioners said (para 137):

F 'However, in considering this evidence we bear in mind that the witnesses admitted that they knew very little of the Appellant's life outside the Seychelles and, as will be clear from the facts we have found, the Appellant also retained substantial ties with England as well as interests in Canada, the United States and many other countries. We regard the evidence of these witnesses, therefore, as of relevance to the Appellant's attachment to the Seychelles rather than establishing the place of his principal attachment.'

G [58] Mr Flesch said that the Special Commissioners had understated the extent to which these witnesses gave evidence about Mr Gaines-Cooper's life outside the Seychelles. First, this is a submission on a pure question of fact. Secondly, this submission does not detract from the Special Commissioners' finding that the witnesses admitted that they knew little of Mr Gaines-Cooper's life outside the Seychelles. Thirdly, the Special Commissioners did make findings about these witnesses' visits to Mr Gaines-Cooper in England. I have already quoted the finding that Sir James Mancham was a guest at Mr Gaines-Cooper's first marriage, which took place in Amsterdam and England. They also found (para 35) that if Mr Gaines-Cooper:

H '... had friends from the Seychelles who were visiting the United Kingdom he would, on occasion, invite them to stay at Grove House. Sometime in the

1980s Mr Morel visited Grove House and saw three Rolls-Royce Phantom cars, a Bentley and one other motor car. Sir James Mancham also visited the Appellant at Grove House.'

A

[59] It is clear that in reaching their conclusion the Special Commissioners took into account the facts that they had found.

B

Other factual criticisms

The plastics factory

[60] The Special Commissioners found (para 20) that in order to acquire a residence permit in the Seychelles Mr Gaines-Cooper arranged for the incorporation of a company and the construction of a plastics factory which opened in February 1977. It manufactured water bottles and plastic bags but was not very profitable (para 21). Because the plastics factory was not very successful Mr Gaines-Cooper developed other businesses in California in mid-1977 (paras 30-31). In 1987 the plastics factory began to manufacture laryngeal masks (para 42); but the government confiscated the factory in 1989, and manufacturing was transferred to the USA (para 43) and some time later to England (para 45). The government returned the factory (together with substantial compensation) in 1994, since when it has been rebuilt (para 75). The new factory manufactures laryngeal masks and has done since 2001 (para 76).

C

D

[61] Mr Flesch submits that the plastics factory is the only constant and enduring factor in Mr Gaines-Cooper's business life in the period from 1976 to date (apart from the five years when it was confiscated). However, the Special Commissioners were well aware of the facts they had found in relation to the plastics factory. They dealt with it in para 144, which I have already quoted. Whether they were right or wrong in their treatment of the plastics factory is a pure question of fact. It certainly cannot be said that they overlooked it.

E

F

The coup d'état

[62] Mr Flesch placed reliance on the suggestion that unlike most expatriates Mr Gaines-Cooper remained in the Seychelles after the coup d'état in 1977. In fact, according to his witness statement he was in Canada at the time, and Bois Noir remained let for nearly two years afterwards. Whether the effect of the coup d'état was of significance in determining Mr Gaines-Cooper's domicile was a matter of fact for the Special Commissioners. If they did not find it of significance, they had no need to discuss it. This is one of those cases in which the 'penumbra of imprecision' is important.

G

H

Bois Noir

[63] Mr Flesch also said that the Special Commissioners understated the magnificence of Bois Noir as a residence. He pointed to the fact that it was good enough for the residence of the British High Commissioner in 1976. This too is a pure question of fact. The Special Commissioners' assessment of Bois Noir reveals no error of law.

A Connections with England

[64] Finally, it is worth summarising the Special Commissioners' findings about Mr Gaines-Cooper's continuing connections with England:

(i) Mr Gaines-Cooper was born in Reading on 27 September 1937 (para 11).

B

(ii) He retained his British citizenship and did not apply for citizenship in the Seychelles (paras 11 and 141).

C

(iii) In 1964 Mr Gaines-Cooper purchased a property known as Old Grove House in Emmer Green. It was a five-gabled house with four bedrooms, built of brick and flint in about the 14th century and was a listed building. The garden extended to about 0.6 acres. In the grounds was a 250-year-old tithe barn of about 2,500 sq ft. The buildings were in a bad state of repair. Mr Gaines-Cooper restored the house and moved into it in 1966 (para 13).

D

(iv) Until 1976 Mr Gaines-Cooper used Old Grove House as his residence and kept paintings, vintage motor cars and guns there for his use (para 15).

E

(v) In or about 1971 the Isle of Man companies to which he had transferred all his UK assets purchased a smallholding called Views Farm in Steventon, Berkshire with about 100 acres. The companies later purchased contiguous pieces of land until by 1974 they owned 700 acres and also rented 200 acres of adjacent land. Mr Gaines-Cooper then built a substantial dairy for 350 cows. The name of Views Farm was changed to Willow Brook Farm and the whole estate was called Goose Willow Estate (para 16).

F

(vi) The estate employed a secretary who also acted as personal assistant to Mr Gaines-Cooper when he was in the United Kingdom (para 16).

G

(vii) Mr Gaines-Cooper liked to visit the estate when he was in the United Kingdom; he liked making hay and he liked the three shire horses which were kept there (para 16).

H

(viii) Mr Gaines-Cooper did not sell Old Grove House in 1976. A schedule of assets dated 30 November 1977 showed that by that time the Isle of Man companies owned Old Grove House and its contents, including four paintings, a collection of five vintage motor cars, some fine wine and some valuable guns. They also owned other real property in the United Kingdom, namely, North Park Farm, part of East Stafford Farm, Tanners Farm and Goose Willow Estate (para 29).

(ix) On 20 July 1977 Mr Gaines-Cooper executed a will. Although he declared in that will that he was domiciled in the Seychelles, the will dealt only with his

- United Kingdom assets; he did not at that time make any other will dealing with his assets in the Seychelles (para 28). A
- (x) In 1977 Miss Laye-Sion came to the United Kingdom to complete her education at Padworth College near Reading following an introduction made by Mr Gaines-Cooper (para 57). B
- (xi) Whilst at the college, Miss Laye-Sion met Mr Gaines-Cooper from time to time and on occasion went to Old Grove House (para 57).
- (xii) In 1979 Miss Laye-Sion completed her A-levels and decided to stay in the United Kingdom. She started working for a business associate of Mr Gaines-Cooper in Reading and her family left the Seychelles in 1979 and came to England to set up home (paras 58-59). C
- (xiii) In 1979 Mr Gaines-Cooper married for the first time. Although the marriage took place in Amsterdam (his wife was a Dutch citizen) there was also a service at St Andrew's Church, Sonning, near Reading (para 32). D
- (xiv) Later in 1979 when exchange control was abolished, Mr Gaines-Cooper sold Goose Willow Estate but retained others assets in England including Old Grove House and its contents, including the paintings, the wine, the vintage cars and the guns (para 33). E
- (xv) In 1981 various planning applications were made in respect of Old Grove House on Mr Gaines-Cooper's behalf. One letter in 1981 stated Mr Gaines-Cooper 'liked the property and the surroundings and was looking forward to living at Grove House again on a permanent basis in due course'. Also in 1981, in a notice of appeal against a refusal of permission, a statement was made by an agent that 'Mr Gaines-Cooper would naturally prefer to secure a tenant known personally to him to occupy his private residence during his absences abroad' (para 34). F
- (xvi) Some time after 1980 Old Grove House was occupied by a Mr Barber who used one of the four bedrooms and paid some rent. During this time Mr Gaines-Cooper stayed at Old Grove House when he visited the United Kingdom. Also if he had friends who were visiting the United Kingdom he would, on occasion, invite them to stay at Old Grove House (para 35). G
- (xvii) Correspondence addressed to Mr Gaines-Cooper was sent to Old Grove House and he collected it when he was in the United Kingdom (para 35).
- (xviii) Sometime in the mid-1980s there was a separate letting of the tithe barn at Grove House to a Mr Ashley-Carter who ran a Rolls-Royce servicing H

- A company there. From this period on Old Grove House itself was not let (para 36).
- (xix) In 1984 Miss Laye-Sion became a director of a company connected with Mr Gaines-Cooper (para 59).
- B
- (xx) For some few years prior to her marriage in 1993 Miss Laye-Sion was in a 'good and stable' relationship with Mr Gaines-Cooper (para 61).
- (xxi) On 23 November 1988 Mr Gaines-Cooper entered into an agreement to exploit the invention of the laryngeal mask. His address is recorded in the agreement as Old Grove House (para 44).
- C
- (xxii) At the beginning of 1989 Old Grove House was sold and at the end of 1988 Old Place had been purchased 'in its stead' (para 53). One of Mr Gaines-Cooper's reasons for selling Old Grove House and purchasing Old Place was because he hoped to persuade Miss Laye-Sion to marry him (para 61).
- D
- (xxiii) The furniture in Old Place came from Old Grove House. Mr Gaines-Cooper moved his vintage cars, paintings and valuable guns from Old Grove House to Old Place as well as his clothes for use in Europe (para 49).
- E

Result

[65] In the light of these findings of fact it is, in my judgement, impossible to say that the only true and reasonable conclusion was that Mr Gaines-Cooper acquired a domicile of choice in the Seychelles in 1976. That, no doubt, was a possible conclusion but, having heard all the evidence, it was not one to which the Special Commissioners came. I have already quoted the lengthy and meticulous way in which the Special Commissioners evaluated the evidence in order to come to their conclusions. I can see no error of law in their conclusions, and whether I think that there might have been an error of fact is beside the point.

[66] Valiantly though Mr Flesch pressed Mr Gaines-Cooper's case, he was in effect presenting 'a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong'. That is not permissible in an appeal restricted to questions of law. I dismiss the appeal.

Counsel

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