

Financial (1895) Department.

ORDINARY MS.

G.O., No. 390

Dated 15th May 1895

INDEXED,

26/27

[Despatch Abstract.]

SURGEON-MAJOR THOMAS. -

Declining to admit the claim of --- to a non-Indian domicile.

B5

A4

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
198/97							

Through the Surgeon-
the Government of Madras.

Memorial Masulipatam
15th April



To
H. E. The Right Honourable
The Governor of Madras in
Madras.

The humble Memorial of
William Frederick Thom
Surgeon-Major, an officer
The Indian Medical Dep
ment, now residing at Mas
patam in the District
Kistna in the Presidency
of Madras:—

1. That your Memorialist
Submitted a Memorial
the 2nd October 1894, to
the Hon^{ble} The Chief Secy
to Government Setting
his reasons for Claiming
Exchange Compensation
allowance on the ground
that his domicile

not Indian & that your
 Memorialist received the
 the Proceedings No 91st
 dated 30th October 1894.
 The Government of Madras
 declining to sanction the
 payment of Exchange Compen-
 sation allowance to him for
 the reasons therein set forth.

2. That your Memorialist
 would not have re-opened
 the matter but for one reason
 viz that it appears from
 the order passed on his
 Memorial that he has
 unfortunately failed to
 make clear the ground
 on which he claims to have
 a Welsh & not an Indian
 domicile.

3. In the order of Government
 referred to occurs this
 passage. "It is observed
 that his grandfather having
 come out to India in the
 Service of the East India

3 Company acquired under
the ruling in Wanchop
v Wanchop (I.L.R. (4)
Vol: IV p. 106-115) and that he died in
India without having resumed
his English domicile." If
this statement that your
Memorialist's grandfather
had come out to India in
the Hon^{able} East India
Company's Service had been
true then your Memorialist
is quite aware that he would
have had no case whatever.
But as a matter of fact
your Memorialist's grand-
father was never in the
East India Company's
Service, but came out
to India in the King's Service
with his Regiment.

4. The ruling in Wanchop
v Wanchop your Memorialist
is advised does not apply.

4 Officers who came out to
India in the King's Service
and it is clear, therefore,
that your Memorialist's
paternal grand-father
never lost his Welsh do-
micle.

5. As regards your Memorialist's
father his domicile of origin
was clearly the same as
that of your Memorialist's
grand-father, viz. Welsh
and your Memorialist is
advised that as a point
of law a man's domicile
of origin is presumed to be
his domicile all through
his life, wherever he
may reside, unless there is
clear evidence to show that
he changed his domicile.
The burden of proving a
change of the domicile
of origin rests, in fact,
on those who assert that

5 There has been such
change.

6. Your Memorialist
only denies that his father
ever changed his domicile
of origin but is prepared
to submit an affidavit to
his father always expressed
his intention of returning
to his father's Country
Settling there if he could
afford to do so. Even if
there were evidence to show
that in his old age Mem-
orialist's father finally aban-
doned the idea of ever
going to Europe & resolved
to settle in India, your
Memorialist is advised
that this is not a Circum-
stance which could
legally affect the question
of your Memorialist's domicile
because your Memorialist's
domicile of origin is

6 Same as his father's domicile at the time of the plaintiff's birth and is not affected by any subsequent change of his father's domicile. This being so your Memoirs asserts most unhesitatingly that at the time of his (the plaintiff's) birth, when his father was a comparatively young man of only 34 years, he had the intention whatever of abandoning his Welsh domicile of origin & settling in India but fully intended, if he could afford it, to reside and settle in his father's Country.

7. The above Shows Conclusively, your humble Plaintiff submits, that the domicile of origin, of the plaintiff, is the Same as his grandfather's, Welsh & he submits

18 1 10 1874

Your Memorialist having
only gone to England after
he attained the age of 23
cannot in any way affect
the question of his domicile.
His late departure to England
was not a question of choice
with either himself or his father
but a question of means.

Poverty & not any attachment
to the soil of India prevented
him from leaving this Country
until the age of 23 when
Your Memorialist had the
good fortune to win "The
Sir Henry Havelock Scholar-
ship" of London & with the
funds thus obtained together
with such slender assistance
as his father could then give
him he proceeded to England
studied in London in 1876-
79, & qualified himself for
the Commission in 1874.

8. Your humble Memorialist
Submits in Conclusion that
his domicile is one which
would unhesitatingly
be admitted in The Courts
of Law to be Welsh & not
Indian; and as it is
evident that the order
of your Excellency-in-Council
was passed on a misappre-
hension of the facts, your
Memorialist most respect-
fully prays that the order
in question may be modified
so that he may be declared to
be entitled to draw the
Exchange Compensation
allowance as an Eurasian
with a non-Indian domicile
& be allowed to draw
it from 1st October 1874.

9. Your Memorialist, in

9 That the Sole intention
of the Exchange Compensation
allowance was to afford
relief to those whose domestic
necessities made it incum-
brant upon them to send
remittances Home at
rates which have become
ruinous under the operation
of the persistent decline
in Exchange; but the element
of domicile having been
introduced, your Memo-
rialist prays that justice
may be measured out
to him, labouring as he is
under a heavy loss of
having to remit money
Home every month for
his wife & two Children.
Now there is probably
no hazier question in the

jurisprudence than this
one of domicile. The
leading principle as laid
down in Gilbert Hender-
son's Commentary on the
Succession act is that
the domicile of origin is
presumed to be the domi-
cile of the person concerned,
unless there is an
intention to abandon
the old & acquire a
new domicile. It is
expressly laid down
that change of residence,
however long & continued,
is not sufficient evi-
dence of such intention.
The judicial Committee
of the Privy Council have
held that in cases

10
It is to be arrived at
according to "Justice,
Equity, & good Conscience."
Again, "When a domicile
of Choice is acquired the
domicile of origin is in
obeyance, that domi-
cile of origin is neither
Extinguished nor obliterated."
"With regard to intention, acts
are more important than
declarations. Now if any act
can be held to be a decisive
indication of intention, it
is Surely that by which a
man provides for the perma-
nent residence of his family
at Home, whether in due course
he declares his intention
of following them. The
domicile of origin of every
person is the Country in
which, at the time of his

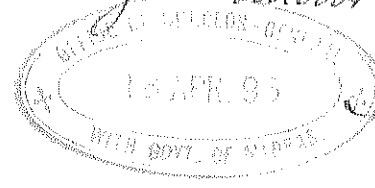
12 domicile.

10. For the Various reasons
Set forth Supra your
Memorialist humbly
prays for a reconsidera-
tion of his Case; and your
Memorialist, as in
duty bound, will ever
pray.

M. J. Thomas, Secy. Major
Agent. Ind. & Saint. Off.
Kistau.

1 Measured out to him, labouring

2 The Proceedings No. 914 dated
3 Through The Surgeon-General with
4 the Government of Madras.



Masulipatam
15th April 1895

Memorial

To
H.E. The Right Honorable
The Governor of Madras-in-Council
Madras

The humble Memorial of William
Frederick Thomas, Surgeon-Major,
an Officer of The Indian Medical
Department, now residing at
Masulipatam in the District
of Krishna in the Presidency of
Madras:—

1. That your Memorialist submitted
20. 9/14 a Memorial on the 2nd October
30. 10 1894 through The Honorable The
Chief Secretary to Government
setting forth his reasons for

Memorial in
S.C. of No 1005
In

1. Measured out to him, labouring

2. The Proceedings No. 914 dated 30th October 1894 from the Government of Madras declining to sanction the payment of Exchange Compensation allowance to him for the reasons therein set forth.

2. That your Memorialist would not have reopened the matter, but for one reason, viz, that it appears from the order passed on his Memorial that he has unfortunately failed to make clear the grounds on which he claims to have a Welsh & not an Indian domicile.

3. In the order of Government referred to occurs this passage, "It is observed that his grandfather having come out to India in the Service of the East India Company,

9. Measured out to him, laboring

3. an Indian domicile & that
he died in India without having
resumed his English domicile.

If this statement that your
Memorialists' grandfather had
come out to India in the

Hon^{able} East India Company's
Service had been true then your

Memorialist is quite aware that
he would have had no case
whatever. But, as a matter

of fact, your Memorialists'
Grandfather was never in the

East India Company's Service,
but came out to India in the

King's Service with his Regiment.

4. The ruling in *Wanchop v*
Wanchop your Memorialist

is advised does not affect
Officers who came out to

India in the King's Service:
and it is clear, therefore,

that your Memorialist

9 Measured out to him, laboring

4 domicile.

5. As regards your Memorialist's father, his domicile of origin was clearly the same as that of your Memorialist's grandfather viz, Welsh, and your Memorialist is advised that as a point of law a man's domicile of origin is presumed to be his domicile all through his life wherever he may reside, unless there is clear evidence to show that he changed his domicile. The burden of proving a change of the domicile of origin rests, in fact, on those who assert that there has been such a change.

6. Your Memorialist not only denies that his father ever changed his domicile of origin but is prepared to

Intention alone
is insufficient

7 Measured out to him, labouring
5 his intention of returning
to his father's Country &
Settling there if he could afford
to do so. Even if there were
evidence to show that in his
old age Memorialists' father
finally abandoned the idea
of ever going to Europe &
resolved to settle in India,
Your Memorialist is advised
that this not a Circumstance
which could legally affect the
question of your Memorialists'
domicile, because your Memo-
rialists' domicile of origin
is the same as his father's
domicile at the time of
Memorialists' birth and is
not affected by any subsequent
change of his father's domicile.

Yes - it is until
he attains his
majority

Memorialists' father (died)
paraphrasing
near Poona
Choice

9 Measured out to him, labouring
8 At the death of his Memorialist
of only 34 years, he had no
intention whatever of
abandoning his Welsh domicile
of origin & Settling in India,
but fully intended, if he could
afford it, to retire & Settle
in his father's Country.

7 The above Shows Conclusively
your humble Memorialist
Submits, that his domicile
of origin, like his father's, is
the same as his grandfather's,
viz, Welsh, & he Submits
that the Circumstances
of your Memorialist having
only gone to England after
he attained the age of 23
Cannot in any way affect
the question of his domicile
His late departure to England
was not a question of choice
with him.

7 attachment to the Soil of
India prevented him from
leaving this Country until the
age of 23 when your Memoria-
list had the good fortune to
win "The Sir Henry Havelock
Scholarship" of London, &
with the funds thus obtained
together with such slender
assistance as his father
could then give him he
proceeded to England, studied
in London in 1876-79, &
qualified himself for the
Commissioned ranks of the
Indian Medical Service.

8. Your humble Memorialist
Submits in Conclusion that
his domicile is one which
would unhesitatingly be
admitted in the Courts of
Law to be Welsh & not
and as it is of the
the in Exchange.
The Elementary
Laying out Committee

9 Measured out to him, labouring
8 Of the facts your Memorials.
Most respectfully prays
that the order in question
may be modified, that he
may be declared to be entitled
to draw the Exchange Compensa-
tion allowance as an Eurasian
with a non-Indian domicile,
& be allowed to draw it
from 1st October 1894.

9. Your Memorialist, in Conclu-
sion, humbly begs to point
out that the sole intention
of The Exchange Compensation
allowance was to afford
relief to those ^{non-} domestic
necessities made ^{incumbent} upon them to send remittances
Home at rates which have
become ruinous unless not
the operation of the ^{fall} of
the decline in Exchange.
The Element
Laving ^{ing} Committee

9 Measured out to him, labouring
as he is under a heavy loss
of having to remit money
Home every month for
his wife & two children. Now
there is probably no larger
question in the whole range
of British Indian jurispru-
dence, than this one of
domicile. The leading princi-
ple as laid down in
Gilbert Henderson's Commen-
ary on the Succession act
is that the domicile of
origin is presumed to be the
domicile of the person concerned,
"unless there is an intention
to abandon the old & acquire
a new domicile. It is expres-
ly laid down that change
of residence, however
long & continued, is not
sufficient evidence of
such intention.

The J. & J. Committee

Thos.
Cooney

St. Mary's

St. Mary's

10 Of the Privy Council have held that in case of doubt a decision is to be arrived at according to "Justice, Equity, & Good Conscience".

Again "When a domicile of Choice is acquired, the domicile of origin is in abeyance, that domicile of origin is neither extinguished nor obliterated." With regard to intention, acts are more important than declaration. Now if any act can be held to be a decisive indication of intention, it is Surely that by which a Man provides for the permanent residence of his family at Home whether in due course he declares his intention of following them. The domicile of origin of every person is the Country in which

11 at the time of his birth,
his father was domiciled".

10 For the Various reasons
Set forth Supra your
Memorialist humbly
prays for a reconsideration
of his case; and your
Memorialist, as in duty
bound, will ever pray.

M^r. J. Thomas, Surg. Major
Ag. Dist. Med. & Sanit. Off.
Rangoon!

Current No. 312

of 1-5

OFFICE OF SURGEON-GENERAL

WITH THE GOVERNMENT OF MADRAS,

No. 312

Encl.

From

SURGEON MAJOR-GENERAL C. SIETHORPE,

SURGEON-GENERAL WITH THE

GOVERNMENT OF MADRAS,

Madras,

To

THE HON'BLE THE CHIEF SECRETARY TO GOVERNMENT,

Financial DEPARTMENT.

SIR,

I have the honor to forward for disposal the accompanying memorial from Surgeon Major W. F. Thomas District Medical and Sanitary Officer, Kistna praying for the benefit of exchange compensation allowance being extended to him.

I have the honour to be,

Sir,

Your most obedient Servant,

C. Siethorpe

Surgeon Major-General,
in the Govt. of Madras.

Financial

1005

1005
T. 1005
1895 DEPARTMENT.

9/14: 30.10.94
648/19: 27.8.94
+ 9/14: 30.10.94

From

SURGEON MAJOR-GENERAL C. SETHBORPE,

SURGEON-GENERAL WITH THE

GOVERNMENT OF MADRAS,

Madras,

ORDER of 15th May 1895 No 390

Surgeon Major Thomas'

grandfather had, apparently, an
English domicile of origin and did
not acquire an Indian domicile.

His son (Surge. Major Thomas'
father) started with an Eng.
domicile of origin but he unques.
tionably acquired an Indian
domicile, which Surgeon Major
Thomas derived from him. The
Gov. is unable to admit the
claim of Surge. Major Thomas
to a non-Indian domicile.

C.B.
13.5.95

[From Orders]

Surge. Genl. (DESPATCHED)
22 MAY 95
IN M.S.

[B.]
25.
59-8-2-95.

Financial DEPARTMENT.

C. No. 1005

FOR ORDERS.

Apparently Surg. Maj.

T's grandfather was English
domicile of origin & never
acquired an Indian domicile.

His son (Surg. Maj. T's father)
therefore started with an English
domicile of origin but I think
it is unquestionable that
he acquired an Indian domicile.
Therefore Surg. Maj. T's domicile
is Indian. I don't think he
can be allowed exchange
Compt. Allen

8/5/95

I agree 29 10/5

And T.
12 May

Please see the marked position
of G.O. of 27.8.94, No 648, and G.O.
of 30.10.94, No 914.

If Surgeon Major Thomas'
law is good, then every Eurasian,
who can claim a paternal grandfather
or Great Grandfather whose domicile
was not Indian, can claim a
non-Indian domicile for himself.
Surge. Major Thomas' father
spent the whole of his life in
India. Surgeon Major Thomas
himself did not leave the
country until he was 23
years of age when he went to
England for four years in order
to qualify for his profession.
Proceeding on the ruling in
rule 3 under §41A of the C.A.
Code, Surge. Major Thomas' father
had an Indian domicile & the
son has done nothing to destroy
this

C.B.
21/5/95

21/5/95

Dated 29 } April 1895.
Received 30 }

Regd. 15 May

No. 648/94

SUBJECT.

Forwards memorial
from Surg. Maj. T.
Thomas praying for
the benefit of exchange
Compt. Allen allowance
being extended to him

4174. 38.10.74
Exchange Compensation

Sergeant Major Thomas

FOR ORDERS.

St. Hill & Co

W. H. Hill

Given for copying
copied

189

RECEIVED G.O., No.
189

DATED

RECEIVED No.

RECEIVED TO G. No.

RECEIVED OF GOVERNMENT

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RECEIVED WITH DUTY

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IN ORIGINAL.

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