

COURT OF SESSION.

Wednesday, March 13.

FIRST DIVISION.

[Lord Hunter, Ordinary.]

CRUMPTON'S JUDICIAL FACTOR v.
FINCH-NOYES.*Domicile—Succession—Foreign—Domicile
of Minor Derived from His Widowed
Mother.*

A boy, whose father and grandfather were merchants in Barbadoes, was born there on 30th August 1859. His mother had a Scottish domicile of origin but acquired a domicile in Barbadoes on her marriage. The husband died in July 1870, when she returned to Scotland with her son, abandoning Barbadoes as her permanent home. She thereafter paid one visit to Barbadoes to wind up her husband's estate. Her son remained in Scotland, where he attended a school in Edinburgh, spending his holidays partly with his mother and partly with his aunt, both of whom were living in Scotland. His aunt lived near Moffat. In March 1876 his mother re-married, but her son did not thereafter reside with her. In April 1877 the son went to Barbadoes, which he did not like, and which he left in 1878. In 1879 he was resident in London, where he married, and after a short residence with his wife in England he brought her to Moffat, where they took a furnished house. His wife left him in 1879. He continued to reside in Moffat, removing from the furnished house to lodgings, where he continued to reside till he was certified insane and removed to an asylum in 1882, where he died in February 1916. His mother died in 1881. In a competition as to the succession to his moveable estate, *held (dub. Lord Johnston)* (1) that after leaving Barbadoes the mother reverted to her Scottish domicile of origin, (2) that her pupil son living with her in Scotland derived from her a Scottish domicile, and (3) that he never thereafter lost that domicile and died domiciled in Scotland.

Opinion per the Lord President that the son had acquired *suo jure* a domicile of choice in Scotland.

Thomas Bennet Clark, C.A., judicial factor on the estate of the late W. T. Crumpton, *pursuer and real raiser*, brought an action of multiplepounding and exoneration against John Arthur Douglas Finch-Noyes and Mrs Gwladys Dorothy Mabel Finch-Noyes or Moore, *defenders and claimants*, and others.

The *defenders and claimants*, who were the children of Mrs Jessie Cadien or Crumpton, mother of the late William Thomas Crumpton by her second husband, Major Augustus Finch-Noyes, and therefore half-brother and half-sister uterine of the late

William Thomas Crumpton, lodged a claim in which they averred that the domicile of origin of the late William Thomas Crumpton was in Barbadoes, and that that was his domicile at the date of his death; that by the law of Barbadoes they as his next-of-kin were entitled to succeed to his whole moveable estate, which was the fund *in medio*, and on that footing *claimed* the whole of his moveable estate; and alternatively, if his succession fell to be regulated by the law of Scotland, they claimed one-half of his estate.

Mrs Isabel Christy or Mahon, with consent, and Wilhelmina Christy, daughters and surviving children of a sister of the grandfather of the late William Thomas Crumpton on the one hand, and Charlotte Augusta Crone, daughter and only surviving child of another sister of the grandfather of the late William Thomas Crumpton on the other hand, *claimants*, lodged claims, and after averring that the late William Thomas Crumpton died domiciled in Scotland, on that footing *claimed* respectively two-thirds and one-third of the fund *in medio*, or alternatively one-sixth each of the fund *in medio*. Those claimants *pleaded* respectively—"The deceased William Thomas Crumpton having died intestate, domiciled in Scotland, the claimants are entitled to be ranked and preferred in terms of their claim."

The *facts* of the case appear from the following narrative, which is taken from the opinion of Lord Mackenzie:—"The late William Thomas Crumpton's domicile of origin was in Barbadoes, where he was born on 30th August 1859, and where his father and grandfather were merchants. His mother, whose maiden name was Cadien, was born in Dumfriesshire on a small property called Riddingwood, which had been bought by her father, a merchant in Jamaica. William Thomas Crumpton was in Scotland with his mother in 1864. He returned to Barbadoes with her. His father died in Barbadoes in July 1870, and Mrs Crumpton then returned to Scotland with her son. In 1873 or 1874 Mrs Crumpton went to Barbadoes for the purpose of winding up her husband's estate. She had abandoned it as her permanent residence when she left in 1870. Between 1870 and 1876 she lived in Scotland (except for the time she was in Barbadoes). Riddingwood was her home during these years, and William Thomas Crumpton was at Dr Bryce's School in Charlotte Square, Edinburgh. His holidays he spent partly at Riddingwood and partly with an aunt, Miss Turnbull, who lived at Moffat. There is some evidence of his having been at school in Moffat, but this is not clearly made out. On 28th March 1876 Mrs Crumpton married Major Finch-Noyes. She died in Malta in 1881. After her re-marriage Mrs Finch-Noyes does not seem to have had her son living with her. William Thomas Crumpton inherited under the will of his grandfather, who died in 1870, a sum of £10,000, the interest upon which, amounting to £300 or £400, constituted his means of subsistence. He went out to Barbadoes in April 1877 and seems to have remained there till 1878.

In January 1879 he resided in London, where he married. He lived in London and in Surrey with his wife until September 1879, when he brought her to Moffat. They then rented a furnished house called Corsleyburn. The marriage proved an unhappy one. William Thomas Crumpton's wife left him in September 1879. He continued to live on at Moffat. He resided for a week or so at Corsleyburn and then went to lodge with a hairdresser and tobacconist. William Thomas Crumpton remained there until 1st April 1882, when he was certified insane and was removed to the Crichton Asylum, Dumfries. He died there, without having recovered, on 22nd February 1916."

On 2nd August 1917, after a proof, the Lord Ordinary (HUNTER) pronounced the following interlocutor:—"Finds that the domicile of the deceased William Thomas Crumpton was, at the time of his death on 22nd February 1916, in Scotland, and accordingly, in terms of said finding, ranks and prefers (1) the claimants Mrs Isabel Christy or Mahon and Wilhelmina Christy each to one-sixth of the whole fund *in medio*, in terms of the alternative claim . . . ; (2) the claimant Charlotte Augusta Crone to one-sixth of the whole fund *in medio*, in terms of the alternative branch of her claim . . . ; and (3) the claimants John Arthur Douglas Finch-Noyes and Gwladys Dorothy Mabel Finch-Noyes or Moore to one-half of the whole fund *in medio* equally between them, in terms of the alternative branch of their claim. . . and decerns. . ."

Opinion.—"The pursuer and real raiser of this action of multiplepounding and exoneration is Mr Bennet Clark, judicial factor on the estate of the late William Thomas Crumpton, who was an inmate of the Crichton Royal Institution for the Insane, Dumfries, since 2nd April 1882, and who died there intestate and without issue or widow on 22nd February 1916. The fund *in medio* is the estate left by Mr Crumpton, and the claimants upon the fund are, on the one hand, his heirs according to Scots law, and on the other hand his heirs according to the law of Barbadoes. The question which I have to determine upon the evidence led before me is whether Mr Crumpton died domiciled in Scotland or in Barbadoes.

"William Thomas Crumpton was born in Barbadoes in 1859. His father Thomas Crumpton was a merchant in that island, and died there in 1870. His grandfather, Mr Crumpton senior, who is said to have been born in Britain, had lived in Barbadoes as a planter. He died in London in 1870.

"William Thomas Crumpton's mother was a Miss Jessie Cadien, who was born in 1841 at Riddingwood, in Dumfriesshire, a small property bought by her father, who had been a merchant in Jamaica, but who appears to have been settled in Scotland several years before his death. I do not think it doubtful that Miss Cadien's domicile of origin was Scotch. She was married in Scotland in 1858, and after spending her honeymoon in this country she went with her husband to Barbadoes.

"The evidence as to the early life of William

Thomas Crumpton is very meagre. Several witnesses speak of his having been with his mother at Riddingwood when he was a boy of four or five in 1863 or 1864. The length of this visit is uncertain. It is also uncertain whether after returning with his mother to Barbadoes he paid another visit to Scotland before his father's death. On the evidence I think it improbable that he did so, and I assume that he did not.

"On her husband's death in 1870 Mrs Crumpton came to Scotland bringing her son William Thomas Crumpton with her. She seems to have made Riddingwood in great measure the home of herself and her son. For several years he was educated at Dr Bryce's school in Charlotte Square, Edinburgh. During this period Mrs Crumpton resided for some time in furnished apartments in Edinburgh.

"In coming to Scotland I think that Mrs Crumpton abandoned any intention of returning to reside in Barbadoes as her permanent place of residence. No doubt in 1873 or 1874 she paid a visit to Barbadoes, but she seems to have done this with the object of winding up her affairs and with the intention, as explained by Mrs Galsworthy, of coming back again to Scotland. On this occasion she did not take her son with her to Barbadoes, but left him in Scotland. After Mr Thomas Crumpton's death I think that his widow reacquired her Scotch domicile of origin. In 1876 she seems to have married a Major Finch-Noyes. After her second marriage she saw little of her son. She died in Malta in the year 1881.

"According to Mr Alston, William Thomas Crumpton informed him that he had been at school in Moffat. Mr Coupland, in whose house he subsequently lived, and Mr Young, who certainly knew him as a boy, speak to this as within their own knowledge. All these witnesses were thoroughly reliable, and there is hearsay evidence of others to the same effect. It may have been the case, but I do not think that I can hold it proved. He had a grandaunt, a Miss Turnbull, with whom he was very friendly, and the evidence as to his being at school in Moffat may be explained by the circumstance that when he was of school age he paid lengthened visits to this lady, who resided in Moffat.

In 1877-8 William Thomas Crumpton paid a visit to Barbadoes. This appears from a letter written to Mr Tait by an aunt of William Thomas Crumpton, who was then resident there, but who afterwards came to Scotland and lived near Dumfries until her death. It appears to me quite clear that William Thomas Crumpton did not like Barbadoes, and that he had no intention of ever settling there. In 1878 he returned to Scotland, but the place of his residence there is not accurately fixed.

"In 1879 William Thomas Crumpton married in London. After residing for some months with his wife in Surrey, he came to Moffat, where he and his wife rented a furnished house. The marriage from the outset was an unfortunate one, but it is not necessary to examine the causes of this. In March 1880 he and his wife separated and

never lived together again. Mr Tait, a witness in the case, who had just started business as a solicitor in Moffat, prepared a contract of separation between him and his wife, and also acted for him in endeavouring to get information upon which an action of divorce might be based. No such action, however, was ever raised. There was no child of the marriage. Mrs W. T. Crumpton died on 20th November 1892.

"After separation from his wife Mr William Thomas Crumpton continued to live in Moffat, lodging at the house of a Mr Coupland in Well Road, where he remained until he was removed to the asylum on 2nd April 1882.

"On 5th June 1884 the pursuer Mr Bennet Clark was appointed by the Court of Session *curator bonis* to Mr William Thomas Crumpton, and he continued to administer his estate down to his death. On 3rd April 1916 Mr Bennet Clark was appointed judicial factor on the deceased's estate.

"During his long residence in the Crichton Institution Mr William Thomas Crumpton had frequent lucid intervals. At these times his interest centred in Moffat and in the doings of Moffat people. The question whether he had lost his domicile of origin and acquired a Scotch domicile must, however, be determined by what had occurred prior to the date of his confinement.

"William Thomas Crumpton unfortunately for himself never learned or practised any trade or profession. He was possessed of a considerable amount of private means and spent his money freely. Before he reached the age of majority he had got into debt, and his debts were discharged by advances made by his aunt, Miss Crumpton, the executrix on his grandfather's estate, in which he had a substantial interest. He appears to have taken a pleasure in doing from time to time eccentric acts which somewhat scandalised the older inhabitants of Moffat. At more or less frequent intervals he drank to excess. In his drinking bouts he made the acquaintance of companions who had a bad influence upon him. At times he realised this himself and desired to get rid of such associates. This I gathered from the evidence of Mr Young, a gentleman now aged 74, who had been in business as a grocer in Moffat for many years, who knew Mr Crumpton as a boy, and also his aunt Miss Turnbull. In his opinion it was Mr Crumpton's intention to set up a house at Moffat. He says—'We had many interviews with regard to the matter; when he was in his sober senses he used to come into my shop and consult me and I used to advise him. He wanted to get rid of the crowd that were about him and to get a quiet place away from them where he could settle down. I had many conversations with him about that. He indicated to me that he would like to settle down in Moffat or the neighbourhood if he could get a quiet place outside the town where he would not be disturbed.' The evidence given by this witness made a very favourable impression upon me. Its value was not affected by the circumstance that he may have been a little confused, particu-

larly in cross-examination, about the exact dates when some of his conversations with Mr Crumpton occurred.

"Although an idler Mr Crumpton had received a good education and took some interest in books and politics. He seems to have had several quite suitable companions, among whom were Mr Hullett and Mr Churchill, two of the masters at a school in Moffat. The latter gentleman is now dead, but the former was examined as a witness. He says that he knew Mr Crumpton intimately from about Christmas 1880, and he looked upon him as a Moffat man, all his interests being centred in and around Moffat. There appears to be no doubt that the deceased took a keen interest in the local cricket club at Moffat, playing regularly, and keeping up his interest in the doings of the club even after he went to the asylum. Mr Hamilton, an S.S.C. in Edinburgh, although some years younger than William Thomas Crumpton, knew him fairly well between 1879 and 1882. He often went walks with him, and they played together in the same cricket team. According to this witness's recollection 'He expressed a fondness for Moffat; frequently I walked home from the cricket field with him, and he very often spoke to me about the friendships he had formed in Moffat and that he had enjoyed his stay in Moffat, and I understood from him at that time that he had made Moffat his home. I never heard him express any intention of going to Barbadoes or to any other place to settle.' According to other witnesses he subscribed to local charities. Mr Alston, now a farmer, who was a policeman at Moffat in 1880 and 1881, speaks to Crumpton's interest in politics.

"Mrs Frederick Cadien, who in 1879 was married to a brother of William Thomas Crumpton's mother, speaks to his having told her that he would stay in Moffat. Another of his aunts, Mrs Barbara Cadien, speaks to William Thomas Crumpton's visits as a boy to Riddingwood. She also learned from one of her sisters-in-law, now dead, about his separation from his wife and his continued residence in Moffat, but her evidence hardly throws any light upon the question as to his intention to remain in Moffat.

"After his separation from his wife Mr William Thomas Crumpton prepared and sent through Mr Tait a power of attorney to his aunt Miss Crumpton in Barbadoes enabling her to realise his property in that island. It is proved that he had an aversion to Barbadoes, and I do not think that he had the remotest intention of ever returning there.

"One witness, who was a cutter in a firm of clothiers in Dumfries for some time before 1880, speaks to cutting and fitting on a Yeomanry suit for Crumpton, for which payment was made by his mother, but there is no further evidence that he ever joined any local volunteer regiment. It is, however, proved that he spoke of himself as a Scotsman, and I have no doubt that he so regarded himself and was so regarded by his friends.

"So far as the evidence led by the claim-

ant, who maintains that William Thomas Crumpton was not domiciled in Scotland, is concerned, I need refer, and that briefly, to only three witnesses—Dr Grange, who certified him as a fit subject for an asylum in 1882; Mr Knight, who is an ex-provost of Moffat; and Mr Tait, who, as I have already said, made his acquaintance at the time of his separation from his wife, and acted for him in connection with that matter and also in the sending out of a power of attorney to his aunt. The evidence of the first two of these witnesses does not come to more than that they did not regard him as permanently resident in Moffat, and considered him of too fickle a disposition to have any real intention with reference to a permanent residence. The question, however, is not whether he might not subsequently have changed his intention as to residence, but whether he did not at the time immediately prior to his confinement have an intention to permanently reside at Moffat. I cannot regard anything said by these gentlemen as seriously affecting the inference as to William Thomas Crumpton's intention to continue to reside at or near Moffat which I draw from the great bulk of the evidence. In 1884 Mr Tait, in a letter to the agents acting for the pursuer, stated that Mr William Thomas Crumpton had never lost his domicile of origin in Barbadoes. At that time questions had arisen with Mr Crumpton's wife, and it might have been in the interests of those representing him to plead that he had not a Scots domicile. From the answers given by him in cross-examination I think that Mr Tait at the time when he expressed this opinion was not familiar with the facts bearing upon the question of his client's domicile.

"In the view which I take of the facts of this case it is not necessary that I should refer to the cases cited to me that bear upon the question of domicile. I accept as sound the proposition that a man's domicile of origin is not easily superseded, and that to establish a domicile of choice it is necessary to prove not merely that a man's residence has been in a particular place, but that he has evinced a clear intention to make that place his permanent residence or home. In my opinion, the claimants who maintain that William Thomas Crumpton's domicile was Scots have established both these points as regards his residence at Moffat subsequent to his reaching majority and prior to his confinement in the Crichton Asylum. I shall therefore pronounce a finding to this effect."

The defenders and claimants (Finch-Noyes) reclaimed, and argued—(1) William Thomas Crumpton never had a domicile in Scotland derived from his mother. If Mrs Crumpton had reacquired her Scottish domicile prior to her second marriage, her son's domicile would only follow that change of her domicile if he was in fact living with her as his guardian—Dicey, Conflict of Laws, 2nd ed., pp. 127 and 128. During that period William Thomas Crumpton was not living with her; he was at school in Edinburgh and merely spent some of his holidays with his mother at Riddingwood. But even if William

Thomas Crumpton's domicile did follow his mother's domicile, he lived with his mother in England after her second marriage, and accordingly must have lost any derivative Scottish domicile that he had acquired. Further, such a derivative domicile was assimilated to a domicile of choice. (2) The Lord Ordinary was wrong. He had approximated domicile too closely to residence, had ignored the difficulty of putting off the domicile of origin, and had minimised the *onus* which rested on the claimants to prove that the domicile of origin had been excluded by the acquisition of another domicile. Historically, so long as law was personal there was no room for the idea of domicile, but when law became territorial it became necessary to have a territorial system of law to regulate the status of individuals—Westlake, Private International Law, p. 11, *et seq.*; Bentwich, Domicile and Succession, p. 34. Domicile was therefore essentially dependent on the relation of an individual to a territorial system of law. It had never been defined with success, but there were various *indicia* of its nature. It was a creation of the law attached to an individual at birth, or ascribed to him later because he had by his acts attracted to himself the law of the country in which he resided—*Abd-ul-Messih v. Farra*, 1888, 13 A.C. 431, *per* Lord Watson at p. 439, approving of Chitty, J., in *in re Tootal's Trusts*, 1883, 23 Ch. D. 532. Domicile of origin differed fundamentally from domicile of choice; it was an artificial creation of the law of a most adhesive nature, and remained the domicile of the individual unless excluded by the active acquisition of a domicile of choice (mere abandonment of the domicile did not exclude it)—*Udny v. Udny*, 1869, 7 Macph. (H.L.) 89, *per* Lord Chancellor Hatherley at p. 95, Lord Chelmsford at p. 97, and Lord Westbury at p. 99; Dicey, Conflict of Laws, 2nd ed., p. 119, Rule 8. It was absolute in character and did not depend upon actual associations with the place of domicile, and there was no difference between the mode of excluding a domicile of origin in a place with which the individual had many associations and a domicile of origin in a place where there were no or few actual associations. Absence of real associations might weigh in a question of intention to abandon a domicile of origin, but they were of no weight on the question of acquisition of another domicile—*Vincent v. Earl of Buchan*, 1889, 16 R. 637, *per* Lord Adam at pp. 645 and 647, and Lord President Inglis at p. 648, 26 S.L.R. 481. To acquire a domicile of choice so as to exclude the domicile of origin, there must be *animus et factum*, and the *onus* of proof was always upon the party who founded on the acquisition of a domicile of choice, and that *onus* was a heavy one. Here the domicile of origin was in Barbadoes, and it was for the respondents to prove the acquisition of a domicile elsewhere. There was the *factum* of residence in Scotland, but the *animus* necessary to establish the acquisition of a domicile of choice in Scotland had not been proved. That *animus* involved a fixed determination to make Scotland the permanent home, and so to put on the legal

rights and status of a Scotsman—*Steel v. Steel*, 1888, 15 R. 896, per Lord President Inglis at p. 908, 25 S.L.R. 675; *Bell v. Kennedy*, 1863, 1 Macph. 1127, per Lord Cowan at p. 1138, 1868, 6 Macph. (H.L.) 69, per Lord Cairns, L.C., at pp. 71, 74, and 75, per Lord Cranworth at p. 76, per Lord Chelmsford at p. 77, 5 S.L.R. 566; Fraser, H. and W., p. 1265; *Lord Advocate v. Brown's Trustees*, 1907 S.C. 333, 44 S.L.R. 275; *Marchioness of Huntly v. Gaskell*, 1905, 8 F. (H.L.) 4, per Lord Halsbury at p. 5, 43 S.L.R. 112; *Arnott v. Groom*, 1846, 9 D. 142, per Lord Fullerton at p. 148; *Aikman v. Aikman*, 1861, 3 Macq. 854, per Lord Cranworth at p. 863 and Lord Wensleydale at p. 877. Where the mind was indefinite, unstable, or vacillating, the necessary intention could not be held to have been established—in *re Patience*, 1885, 29 Ch. D. 976, per Chitty, J., at p. 980; *Fairbairn v. Neville*, 1897, 25 R. 192, per Lord President Robertson at p. 206, 35 S.L.R. 178. In the present case William Thomas Crumpton's state of mind was certainly most indefinite and unstable, and further it must be kept in view that towards the end of his life he was undoubtedly insane. In the absence of clear proof of the acquisition of a domicile of choice, the domicile of origin still remained in force—in *Winans v. Attorney General*, [1904] A.C. 287, per Lord Halsbury, L.C., 289.

Argued for the claimants (Mrs Mahon and others)—(1) William Thomas Crumpton had acquired a domicile in Scotland through his mother. After his father's death his mother abandoned the domicile she had during marriage, and reacquired her domicile of origin in Scotland. The domicile of her son changed with that change of her domicile when he came to Scotland with her in 1870, i.e., when he was still in minority. When the father had died his infant child's domicile changed with any change of the mother's domicile if it was residing with her—*Pottinger v. Wightman*, 1817, 3 Mer. 67; *Johnstone v. Beattie*, 1843, 10 Cl. & Fin. 42, per L.C. Lyndhurst at p. 66 and Lord Campbell at p. 138; Savigny, Private International Law (Guthrie's Translation), p. 100, note 2; *Arnott v. Groom*, 1846, 9 D. 142, per Lord Fullerton at p. 147; Story, Conflict of Laws (8th ed.), section 506; Burge, Colonial and Foreign Law, i, 39. Such a derivative domicile was really of the nature of a domicile of origin, and as a result the *onus* was on the reclaimers to show that it had been displaced—Westlake, Private International Law, sections 248 and 261; in *re Craignish*, [1892] 3 Ch. 180. (2) Alternatively William Thomas Crumpton had acquired a domicile in Scotland in his own right. He had the *factum* of residence admittedly. The only question was as to his *animus*. The evidence was sufficient to establish the necessary *animus*. He certainly had no wish to return to Barbadoes. If he had any home, Moffat was his home. He preferred to remain in Scotland rather than to go with his wife to England. There was no compelling domicile of choice. His boyhood had been spent in Scotland, and his only connection with Barbadoes was the artificial legal results arising from the fact of his birth there. The real ties he had

formed were all with Scotland. *Bell's case (cit.)* was contrasted with the present case on the facts. The necessary *animus* was sufficiently proved when, as here, it could be said with reasonable certainty that the *de cujus* had made his permanent home in a particular place. It was unnecessary to prove an expressed or implied intention to put off the legal rights of one system of law and to put on those of another—*Corbridge v. Somerville*, 1914, 51 S.L.R. 406, per Lord President Strathclyde at p. 410; *Winans v. Attorney-General (cit.)*, per Lord Macnaghten at p. 291; *Udny v. Udny (cit.)*, per Lord Westbury at p. 101; *Bell v. Kennedy (cit.)*, per Lord Cranworth at p. 76; *Macphail v. Macphail's Trustees*, 1906, 14 S.L.T. 388; in *re Steir*, 1858, 3 H. & N. 594, 28 L.J., Ex. 22; Westlake, Private International Law, p. 340.

At advising—

LORD PRESIDENT—On the assumption that in 1878, when he made Moffat his place of residence, William Thomas Crumpton had a domicile of origin in Barbadoes, I am of opinion that at that date he had abandoned his domicile of origin, that it fell into abeyance, and that he then acquired a domicile of choice in Scotland. The evidence appears to me to be clear, convincing, and adequate. Actuated by no extraneous considerations, temporary and fleeting, but from the simplest possible motive, he settled down in Moffat and left Barbadoes because he liked the one place and disliked the other. This appears to me to be a typical case of a man acquiring a domicile of choice because free to choose a residence anywhere he pleases he deliberately abandoned his domicile of origin and settled down in another domicile because it seemed to be the one place in the world for which he had any liking. "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 the unlimited intention of continuing to reside there for an unlimited time"—*Udny v. Udny*, 1869, 7 Macph. (H.L.) 89, per Lord Westbury at p. 89. That seems to have been the frame of mind of William Thomas Crumpton in 1879.

Accordingly I should have been prepared on the assumption which I have indicated to affirm the conclusion arrived at by the Lord Ordinary. That assumption, however, I consider to be unfounded in fact and in law in this case, because in 1879 when he made Moffat his home he was in my opinion a domiciled Scotsman. At that date he had a domicile derived from his mother as head of the family. She was born and brought up at Riddingwood near Dumfries, and lived there with her parents until the date of her marriage. At the date of her marriage her domicile of origin was unquestionably Scottish. Immediately her husband died in 1870 in Barbadoes she came home to Scotland, accompanied by William Thomas Crumpton, who was then eleven years of age. She made Riddingwood, Dumfries, her home once more. There she resided with her mother in family until 1876, when she married a second time. During the

whole of that period the boy lived in family with his mother, being educated at a boarding-school in Edinburgh. She then had reacquired her domicile of origin—at all events it had revived—and he took that domicile as derivative from her being the head of the family throughout that period.

The law is plain and is quite undisputed. Upon principle and authority it seems clear that the widow is competent to transfer her domicile to her children during minority. This was decided as far back as 1817 by the case of *Pottinger v. Wightman*, 1817, 3 Mer. 67—a case which was described thus by Lord Campbell in *Johnstone v. Beattie*, 1843, 10 Cl. & F. 42, at p. 138—"I think that the case of *Pottinger v. Wightman* must be taken conclusively to have settled the general doctrine that if after the death of his father an infant lives with his mother, and the mother acquires a new domicile it is communicated to the infant." That law appears to me to have been accepted without question in the case of *Arnott v. Groom*, 1846, 9 D. 142, in this Division of the Court, and as I have said it was undisputed in argument.

All that was urged but not argued was that the evidence here was insufficient to show that the widow had reacquired her Scottish domicile. In my opinion the evidence although not very copious is sufficient. It satisfied the Lord Ordinary. It satisfies me—[*His Lordship referred to the evidence.*]

It was not contended to us that the effect of the second marriage in 1876 was to deprive William Thomas Crumpton of the derivative domicile acquired from his mother and to revive his own domicile of origin. The law indeed is quite clear to this effect, as stated by Lord Fraser in his treatise on Husband and Wife (par. 1253)—"After the father's death if the child live with the mother, and she acquire a new domicile, it is communicated to the child. . . . If the mother marry a second time, the domicile which she acquires by her second marriage would not become that of the child, but its domicile would continue to be that which the mother possessed previously to her second marriage." It was not contended that the fleeting visit paid by William Thomas Crumpton to Barbadoes between April and May 1877 and June or July 1878 had the effect of reviving his domicile of origin. The reason for his departure from this country we do not know. There is no evidence on the point. The reason for his return we do not know, but anything less like an intention of settling down in Barbadoes and leaving Scotland than the ongoings described in the letter of his aunt to Mrs Tait, dated 5th September 1881, it would be very difficult to conceive. Apparently it was merely a passing visit. He disliked Barbadoes throughout but liked Scotland, and Moffat in particular throughout. And the conclusion I arrive at is that the domicile derived from his mother as head of the family during the period from 1871 to 1876 was retained by him to the date of his death. On that ground I am prepared to affirm the Lord Ordinary's interlocutor.

LORD JOHNSTON—I have come to the same result, but I do not think precisely on the same grounds.

William Thomas Crumpton when residing at Moffat was certified insane on 2nd April 1882 and confined in the Crichton Institute, Dumfries, where he remained until his death on 22nd February 1916. The type of mental derangement from which he suffered consisted of alternate fits of exaltation and depression, with intervening lucid intervals. His succession must be regulated by the law of his domicile at the date of his certification. It was either Barbadoes, his domicile of origin, or Scotland, where he was living at the date of his confinement in the Crichton Asylum. For he certainly acquired no other domicile.

In determining the question of his domicile the first important point to settle is, I think, what is the crucial period on which that question depends, and in my opinion that point has been largely misapprehended. On a general view of the evidence I think that both parties have pinned themselves mistakenly to the period of his residence in Moffat from September 1879 till his removal to the Crichton Asylum in April 1882, a period of two and a half years. If the question of domicile depended on the proof or disproof of the acquisition of a domicile of choice by William T. Crumpton in Scotland, by his residence at Moffat during the above-mentioned years, I think that the claimants who aimed at proving the positive of the proposition have failed. The evidence is of an unsatisfactory complexion in any case, but I think that it must be read in light of the character of the young man himself. When he came to Moffat in September 1879 he was just twenty years of age. The most reliable witness is, I think, Mr Tait, a solicitor in Moffat, to whom the young man appealed for assistance in relation to his affairs, and who continued to act on his behalf from March 1880 until after his certification, and who in 1880 to 1883 was in correspondence with his aunt Miss S. E. Crumpton, who had charge in Barbadoes of his grandfather's estate there, in which he had a considerable interest. The rest of the Moffat witnesses had no business relations with him. In particular, I can make nothing of a Mr Young, who seems to have impressed the Lord Ordinary. Mr Tait says of him—"After leaving Corsleyburn" (where he lived for a short time with a French actress whom he had married in London on 9th January 1879) "he went to stay with a Mr Coupland, a barber in Moffat. I got him in there; I could not get him in anywhere else. At that time Mr Crumpton was rather a madcap sort of a youth, quite an irresponsible unsettled young fellow. He was very erratic and excitable. He was occasionally given to drink. (Q) And I suppose that made him worse?—(A) Undoubtedly. I think he was easily affected by drink." This description entirely tallies with what might be gathered from the rest of the Moffat evidence and with his subsequent life history. Mr Tait's statement is not detracted from but rather confirmed by his having early in his client's sojourn

at the Crichton Asylum indicated to his *curator bonis* Mr Bennet Clark his decided impression that his client was a domiciled Barbadean, for he does so by way of warning, and fully appreciated that it would have been to his client's, the ward's, interest that he should be dealt with as a domiciled Scotsman. I do not think that it is possible to attribute that settled intention which is necessary to the acquisition of a domicile of choice to a young man who could on just attaining majority be properly described as unsettled, erratic, and irresponsible, whose conduct had been and continued to be such as is described by the other Moffat witnesses, and who within two years after he first came into Mr Tait's hands had so much deteriorated in mental stability as to require confinement for the rest of his life—a period of thirty-four years. I do not think it necessary to say anything further in negating the contention that a Scottish domicile was acquired by the deceased by residence in Moffat from 1879 to 1882. But this does not necessarily determine the case against the Scottish domicile, as this may have been acquired prior to 1879. It is necessary, therefore, to try and ascertain the facts of W. T. Crumpton's earlier life.

The proof is most sketchy and unsatisfactory. There are only four witnesses on this subject—Mrs Margaret Cadien and Mrs Barbara Cadien, the deceased's aunts by marriage, sisters-in-law of his mother, who can tell little about him and that little inaccurately, and Mr Tennent and his sister Mrs Galsworthy, first cousins of his mother. What they have to tell, and that is little, has the stamp of greater accuracy. There are also some entries from registers. But all are silent as to what I think is the crucial period, viz., the years 1877-78.

I think that the only proved facts are these—the father and mother of the deceased were both of West Indian families; the Crumptons originally English, the Cadiens certainly not Scottish. Thomas Crumpton, the deceased's father, was probably born in the West Indies, was a merchant and planter in Barbadoes, and died there in 1870. In 1858, when in this country, he married Jessie Cadien, whose father, having been a Jamaica merchant, came home and settled in Dumfriesshire, buying a small place called Riddingwood near Dumfries, where he died in 1853. His daughter Jessie, the deceased's mother, was born in 1841 after her father had settled at Riddingwood, and therefore had a Scottish domicile of origin. After their marriage in 1858 the deceased's father and mother sailed for Barbadoes, where they resided until Mr Crumpton died there in 1870, a domiciled Barbadean. W. T. Crumpton was born in Barbadoes on 30th August 1859, and therefore took from his father a domicile of origin in Barbadoes. Shortly after her husband's death his mother came back to this country bringing her son and only child with her. Riddingwood was still the Cadien's family home, and Mrs Crumpton's mother, *née* Turnbull, and some at least of her brothers and sisters lived there and continued to do so at any rate till after

the period with which I am at present concerned. Mrs Crumpton had been home in 1863 or 1864 for a few months to visit her relations, bringing her boy of four or five years with her and returning with him to Barbadoes. It is attempted to establish a connection with Moffat by placing him at school at Moffat in 1863 or 1864. That is not proved, and if it was would be immaterial. On her husband's death in 1870 Mrs Crumpton returned to Scotland and for some years made Riddingwood her headquarters, but put her son, then eleven years of age, to school at Dr Bryce's School in Edinburgh, she herself living sometimes in rooms in Edinburgh on his account, and sometimes boarding him with Dr Bryce. From the school register it is shown that the deceased was at Dr Bryce's from the latter part of 1870 till the summer of 1876. During this period Mrs Crumpton went to Barbadoes for a few months to wind up her husband's affairs. This was probably in 1873-74. And on her return, if not sooner, there can be no doubt that she had put off the domicile in Barbadoes derived from her husband and resumed her Scottish domicile of origin. I think on the authorities that there can be equally little doubt that on his mother reverting to her Scottish domicile, the deceased, her son, acquired that domicile derivatively from her in place of his Barbadoes domicile of origin. But Mrs Crumpton married again, a Major Noyes, an Englishman, on 28th March 1876. She therefore then took from him an English domicile, which however did not enure to her son. He retained for the time at least the Scottish domicile which he had derived from her. Such a domicile derived from the mother is in my opinion the easiest of all to be lost. And the difficulty in the present case is to find anything satisfactorily proved in the history of young Crumpton from his mother's marriage in March 1876 till his appearance at Moffat in September 1879, a period of three years and a-half, which conclusively determines whether he retained or lost that derivative domicile.

This much is known, viz., that the deceased did not get on with his stepfather, who would have none of him. He seems to have been cast off by his mother, for there is no hint anywhere of relations being kept up between them. Mrs Crumpton's interest in a legacy of £10,000 from her husband's father, the fee of which was her son's patrimony, ceased on her second marriage, and the deceased's beneficial interest in it then commenced, though it was still under trust. He left school apparently after the summer term of 1876. It is not improbable that he made Riddingwood his home for some time, as a claim was made for his board after his grandmother, Mrs Cadien's, death by her executrix, which was paid by his agent Mr Tait after he came to attend to his affairs, which was not till 1880. It is not improbable that this claim was for the period after he left school in 1876. But that is mere surmise. He is known, however, to have gone to Barbadoes about April 1877 and to have remained there for about fifteen

months, or till about midsummer 1878. At whose instance he went there is no hint—whether his own, his mother's, his relatives at Riddingwood, or his aunt Miss S. E. Crumpton, in Barbadoes, who was the executrix of his grandfather and therefore trustee of his legacy. He led a somewhat wild and extravagant life in Barbadoes for some time, but latterly did go on to a plantation to learn something about the Barbadoes plantation business. But that did not last long. I think that it is to be inferred that he went to Barbadoes, where his patrimony lay, for it had to be realised out of his grandfather's interest, mostly real, in that dependency, and where he was also heir to a very small property, which was apparently all that his father left, with the idea that he would try his fortune there. But if so he did not take to the life, and as I have said returned to Great Britain in the summer of 1878. There is no trace of his coming to Scotland. Where he was and what he was doing is not known. But he must have found his way to London in the latter part of 1878, as on 9th January 1879 he married there a French actress of more than dubious repute. The pair lived in Surbiton or Norbiton or both till September 1879, when they went to Moffat, and there lived together in a house called Corsleyburn until 20th March 1880, when they separated, the deceased remaining in Moffat and his wife returning to London. The remainder of his history I have already dealt with.

Having regard to his thorough foris-familiation from his mother's family and care, to his departure to Barbadoes in 1877, where his pecuniary interest lay, and to his apparent intention to try his fortune there, I am disposed myself to think that there is enough to lead to the conclusion that the deceased had lost his domicile in Scotland derived from his mother and reverted to his Barbadean domicile of origin, for which he did not substitute any other domicile of choice. But the proof is so defective that I cannot draw this conclusion with sufficient confidence to justify me in dissenting from the judgment which your Lordship has indicated, particularly as I think that the *onus* of proof is upon those who seek to displace the Scottish domicile which the deceased had derived from his mother.

LORD MACKENZIE— . . . [After the narrative of facts, quoted *supra*] . . . —The question is whether at his death William Thomas Crumpton's domicile was in Barbadoes or Scotland. The critical date is 1st April 1882, when he entered the asylum, for after that nothing affected his status.

There is one feature in this case which depends upon a question of law, and that is the effect of William Thomas Crumpton's return to Scotland with his widowed mother in 1870. She made Riddingwood her home. Her own mother was living there, and she and her son, then a boy of eleven, were taken into the family circle. There can be no question that Mrs Crumpton's domicile of origin, which was Scotch, then revived. It follows from the decision in *Pottinger*, 1817, 3 Mer. 67,

approved in *Johnstone v. Beattie*, 1843, 10 Cl. & F. 42, at p. 138, that William Thomas Crumpton derived from his mother a Scotch domicile, and that his domicile of origin in Barbadoes was lost. The case of *Arnott*, 1846, 9 D. 142, may also be referred to. I did not understand it to be disputed that this was the effect in law of her return to Scotland in 1870 with her child, who remained with her. There was some argument that when the mother re-married in 1876 William Thomas Crumpton had gone with her to Aldershot or elsewhere in England. I do not think this is proved. The evidence goes to show he remained in Scotland. There is in these circumstances no warrant for holding that when his mother re-married, and thereby acquired her husband's domicile, this had any effect on the existing domicile of her son by her first marriage.

The question then arises—Did William Thomas Crumpton ever lose his Scotch domicile and acquire one elsewhere? No doubt he went to Barbadoes, and remained there for about fifteen months during 1877 and 1878. The case is almost bare of evidence in regard to the circumstances of his going. His stay there seems to have been unsatisfactory from every point of view. He spent money, and so far from being content to settle there it is evident from his subsequent references to his sojourn on the island that he cordially disliked the place. It is impossible in my opinion for those who maintain that William Thomas Crumpton acquired a domicile during this visit in Barbadoes to discharge the *onus* there is upon them. They have to show that he left Scotland *sine animo revertendi*, and settled in Barbadoes *animo manendi*. There is no ground for arriving at the conclusion that either of these propositions in fact is made out. The domicile he had in Scotland may be regarded as equivalent to a domicile of choice. When he left Barbadoes in 1878 he was not going to a new country; he was returning to the country in which since 1870 his legal domicile had been. Whether he returned direct to Scotland or went to London does not, in my judgment, matter. Something is said in some of the documents produced of his intending to read for the English Bar. It is not proved he had that intention, and even if he had there is no evidence he took any steps to carry it out. After a few months' residence with his wife, first in England and then at Moffat, they separated. She returned to England. He stayed on at Moffat. It is at this point that the chapter of his life to which the evidence chiefly relates commences. It is at this point that in my opinion further inquiry may cease. Whatever his subsequent intentions may have been they cannot affect the case, for he had reached the country of his domicile when he crossed the Border, and so long as the fact of residence there continued no change could take place.

I am therefore of opinion, though on different grounds, that the judgment of the Lord Ordinary should be affirmed.

LORD SKERRINGTON—I concur in the judgment which your Lordships propose to

pronounce, and for the reasons explained by Lord Mackenzie. I am unable to agree with the view of the Lord Ordinary that the evidence justifies the conclusion that this young man acquired a domicile of choice in Scotland. It appears, however, that he acquired a derivative domicile from his mother when she returned to her native country after she became a widow, and it is not proved that he ever abandoned that domicile. Accordingly when he became a lunatic his domicile was in Scotland.

The Court adhered.

Counsel for the Defenders and Claimants (Reclaimers)—Macphail, K.C.—C.H. Brown. Agents—Mackenzie & Kermack, W.S.

Counsel for the Claimants Mrs Mahon and Others (Respondents)—Christie, K.C.—Garson. Agents—Balfour & Manson, S.S.C.

Counsel for the Pursuer and Real Raiser—Inglis. Agents—Robson & Maclean, W.S.

Saturday, March 16.

FIRST DIVISION.

LOTHIAN'S TRUSTEES v. MACEWEN AND ANOTHER.

Succession — Testamentary Writings — Revocation — Restoration by Subsequent Codicil of Bequest Expressly Revoked by Prior Codicil.

A testator having left a legacy of £5000 to a legatee in his will, revoked that legacy in a codicil and gave that sum to another legatee. By another and later codicil the testator bequeathed £2000 to the original legatee, and stated "This is in addition to any legacy mentioned in my will and codicils." At the time of writing that codicil the testator was not in possession of his will and the earlier codicils, and the legatee to whom the revoked legacy had been given was alive. *Held* that the original legacy of £5000 had not been restored by the subsequent codicil making the bequest of £2000.

Best v. University of Edinburgh, 1880, 8 R. 66, 18 S.L.R. 45, distinguished.

Philip Francis Wood, K.C., and another, the testamentary trustees of the late Maurice John Lothian, *first parties*, Brigadier-General Maurice Lilburn MacEwen, C.B., *second party*, and Alfred Henry Back, M.D., *third party*, brought a Special Case for the determination of questions arising out of the testamentary writings of Maurice John Lothian, who died on 15th January 1917, leaving a trust-disposition and settlement dated 9th December 1898 and various codicils.

The *trust-disposition and settlement* conveyed the testator's whole estates to the first parties for various purposes, including the payment of debts, expenses, and legacies to his trustees and certain of his servants, and after giving the *liferent* of the whole residue of his estate to his mother (who

predeceased him) provided as follows:—“(Fourth) That my trustees shall, at the first term of Whitsunday or Martinmas that shall occur three months after the death of my said mother should she survive me, or at the first term of Whitsunday or Martinmas that shall occur three months after my death should my said mother have predeceased me, pay, free of legacy duty or other Government duty, the following legacies to the persons and institutions after mentioned, viz. To Doctor Alfred Henry Back of Reepham, Norfolk, the sum of five thousand pounds. . . .”

A *codicil dated 9th September 1901* provided—“I, Maurice John Lothian, before designed, hereby recal the legacy of five thousand pounds hereinbefore bequeathed to Doctor Alfred Henry Back of Reepham, Norfolk: And I hereby bequeath the sum of five thousand pounds, free of legacy duty or other Government duty, to my cousin John William Macfie of Rowton Hall, Chester, or his heirs, payable at the first term of Whitsunday or Martinmas that shall occur three months after my death.”

A *codicil dated 11th November 1907* provided—“I bequeath the sum of two thousand pounds sterling, free of legacy duty, to Doctor Alfred H. Back, residing at Acle, Norfolk. This is in addition to any legacy mentioned in my will and codicils.”

The Case set forth—“1. [The trust-disposition and settlement and various codicils, including the codicil of 9th September 1901] were prepared by [the testator's] agents, Messrs Fraser, Stodart, & Ballingall, W.S., and remained in their custody from the date of their execution, and were at no time in the possession of the testator. The [other] codicils are holograph of the testator. At an interview which the testator had at his house on the day of his death with his agent Mr Ballingall, W.S., he gave Mr Ballingall to understand that there were certain codicils to his trust-disposition and settlement in the safe in his dressing-room which he desired Mr Ballingall to look at, and as desired by him Mr Ballingall went to the safe and found in a drawer in it the two [holograph] codicils [dated 7th October 1911]. The testator inquired if these codicils were in order, and Mr Ballingall informed him that they were, and by deceased's desire he took possession of them. The [other holograph] codicils were found after the testator's death in another compartment of the said safe tied up with certain other documents. Each of the holograph codicils was written on a separate sheet of the testator's private notepaper. The testator left about £120,000. 2. . . . By the fifth purpose of his trust-disposition and settlement the testator directed his trustees to make over the whole free residue and remainder of his means and estate to [the second party], whom he nominated as his residuary legatee, whom failing to his heirs. . . . 3. [The] codicil of date 9th September 1901 was one of the testamentary writings which remained in the custody of [the testator's] agents. [The] codicil dated 11th November 1907 was one of the holograph writings found in [the testator's] safe after his death. No