

THE RESIDENCE AND DOMICIL OF CORPORATIONS

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PREFACE

IF an excuse is required for adding to the literature upon Private International Law, it is to be found in the Report of Lord Macmillan's Income Tax Codification Committee where it was said with reference to the domicil of companies : " An investigation of the subject revealed that " it was one which, even at the present day, remains " practically unexplored, and which throws up problems " upon which no direct statutory or judicial authority " exists " (Cmd. 5131, 1936, p. 41).

Until recently it was the universally accepted view of the textbook writers that the criteria which determine the residence of a corporation were identical with those which determine its domicil, e.g. Dicey, Rule 19. It has, however, been shown that for the purposes of income tax, at any rate, these two concepts must be distinguished—see Cases IV and V Schedule D, Income Tax Act, 1918, and discussion at 51 L. Q. R. (October 1935), pp. 694-7. The view put forward in that article has received added support from the Income Tax Codification Committee's Report (*vide supra*) and from Dr. G. C. Cheshire who, in the second edition (1938) of his *Private International Law*, accepts the position that the residence and domicil of a corporation must be determined by different criteria (Preface p. vi and pp. 197-204).

This work is an attempt to define the concepts of residence and domicil as regards a corporation and the reader is referred to the Introduction for a summarised account of the mode of approach. I feel it desirable, however, to state here what I have *not* attempted. The theoretical aspect of the nature of a corporation has been considered only in so far as is necessary for a proper definition and in order to differentiate between the English and American theories as to corporate existence beyond the country of incorporation. Moreover, the incidence of enemy character in time of war has been examined only from the common law angle and as

regards the attachment of a commercial domicil, by way of residence, to a corporation.

Throughout the work the relevant American law has been considered, as far as possible, alongside the comparative English law. It may usefully be stated here that the term "corporation" is normally to be understood as meaning a "trading company" since it is mainly by reference to such corporations that the law relating to corporate bodies has, both in England and America, been developed during the last hundred years.

My thanks are due, in the first place, to LORD MACMILLAN for his great kindness in writing a foreword to this book. I must record my gratitude to Mr. W. C. BERWICK SAYERS, F.L.A., President of the Library Association and Chief Librarian of the Borough of Croydon, and to his staff, for the unfailing help they have afforded me during my research. Dr. G. W. KEETON, M.A., LL.D., Professor of English Law at University College, London, has assisted me with helpful criticism while the text was in typescript, while information of great value, regarding the American law of taxation bearing on residence and domicil, has very kindly been placed at my disposal by Mr. GUY T. HELVERING, Commissioner of Internal Revenue, The Treasury Department, Washington, U.S.A. I am indebted to the Editors of *The Law Quarterly Review* and of *The Journal of Comparative Legislation and Jurisprudence* for permission to reproduce, in whole or in part, articles of mine which have appeared in their learned journals. Finally I must express my thanks to my friend, Mr. A. M. MASLEN, LL.B., Solicitor of the Supreme Court, who has rendered me invaluable assistance in the reading of the proofs.

The publication of this work has been aided by a grant from the Publication Fund of the University of London. It should also be stated that this work represents the results of my own private research and that it is to be regarded neither as official nor as published under the authority of the Board of Inland Revenue.

A. FARNSWORTH.

CROYDON,
March, 1939.

FOREWORD

THERE are comparatively few areas left on the map of the law which still bear the alluring inscription "unexplored." In selecting for study the subject of the Residence and Domicil of Corporations, Mr. Farnsworth has adventured into a territory which, if not *terra incognita*, may at least be said to have been hitherto very imperfectly mapped and of which previous explorers have given singularly confused and conflicting accounts. Much of the confusion has arisen from the failure even of the highest authorities to use terms with precision, and Mr. Farnsworth renders valuable service in his careful discrimination of the exact meanings of "residence," "ordinary residence," "domicil" and "commercial domicil" in the various contexts in which these expressions are employed. The application to corporations, which are artificial persons, of conceptions which are primarily applicable to natural persons is beset with the perils which attend the use of analogies in law, and Mr. Farnsworth, who does not hesitate to break a lance with eminent authorities, judicial as well as academic, is able to show that not infrequently they have fallen into error.

I am not going to be tempted into a discussion of the author's views. Indeed, it would be indiscreet of me to pronounce upon his conclusions for it may be my fortune to have to do so hereafter in another capacity. But this I can safely say, that no one in future who has to deal with the problems discussed in these pages will be properly equipped for his task unless he has studied this admirable monograph. Nowhere else is the whole learning on the subject to be found so exhaustively set out and so critically analysed. The University of London has already recognised the merits of Mr. Farnsworth's work by awarding him the degree of Doctor of Philosophy, but the professional public to which it is now made available will be no less ready to acclaim it.

MACMILLAN.

11th April, 1939.

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