to satisfy the Court that the codicil was the act of the deceased, notwithstanding there was no previous declaration and no subsequent recognition. But there is no evidence to satisfy me that this was the intention of the deceased, I have **[854]** not the benefit of any fact before me. I do not mean to say that the deceased himself was not capable of originating such a codicil, or capable of expressing himself in the manner stated in the allegation of Mr. Dufaur, but I have no evidence to shew that he did, the only evidence before the Court with respect to the execution is that it was read over without one syllable being said by the deceased with reference to the contents of the instrument read; and seeing the fluctuating state of the deceased's capacity during the very time it was read—for immediately afterwards he relapsed into a state of incoherency and inconsistency—I say I am not satisfied in my own mind (and that is the whole extent to which the Court goes) that the deceased did intend that this codicil should be carried into effect in connection with the instrument he had previously made, and (as far as the Court can find) adhered to up to the period of the execution of this codicil; that is, that the three gentlemen named in the will should manage the whole of his affairs after his death.

I do not say anything as to the manner in which the opposition to this codicil has been conducted. I think it was the bounden duty of the executors to take the opinion of the Court as to the validity of this paper; and it is but justice to say, with regard to Mr John Simpson and Mr. Pinder Simpson, that I see no reason why they should feel greater animosity to Mr Dufaur than Mr Underwood and Mr. Croft. I see no reason why Messrs. Underwood and Croft should not be as much against this codicil as Mr Pinder Simpson and Mr. John Simpson. I think it was the bounden **[855]** duty of the executors to take the opinion of the Court as to this paper, and if they were of opinion that the codicil could not stand under the circumstances in which it was made, they were justified in opposing the paper, not as improperly or fraudulently obtained, though if they believed that Mr. Dufaur had not conducted himself with perfect propriety towards the deceased, and on that ground declined to act with him, I see no reason why they should not oppose the codicil and conduct themselves as they have done. But when it is suggested that Mrs. Day has no interest to oppose Mr. Dufaur, and that no person has an interest but Mr. John Simpson, or "cares a pinch of snuff" whether the codicil is established or not, I must say that the executors were perfectly justified in opposing the codicil, there being as much doubt whether it was the intention of Mr. Day to add to the number of his executors as to add Mr. Dufaur, considering the probabilities of the case, the great caution of the deceased when he added Mr. Croft to the number, to ask whether the person he appointed would dovetail with Mr. Simpson or not, shewing how anxious he was as to the best mode of carrying his intentions into effect.

Under all the circumstances of the case, I am of opinion, not that there has been fraud here, but that there is a defect and failure of proof, that I cannot come to the conclusion on this evidence that there is sufficient to satisfy the requisites of the law. Mr. Dufaur was himself present at the execution of the codicil. If Mr. Dufaur had suggested, as he ought to have done, that under the circumstances of his being the person benefited by **[856]** the codicil, and the instructions being in his handwriting, that he should withdraw from the room, and questions should be addressed to the testator as to whether he knew the contents of the instrument, and whether it was in accordance with his wishes and intentions, as it was supposed to be, the case would have worn a different aspect, but no questions are suggested—all passes in dumb shew, as far as the deceased is concerned, with the exception only of what he said about signing his name, and another exception of his asking for the desk.

On the whole case, I am of opinion that there is a failure of proof, and I pronounce against the validity of the codicil, and decree probate of the will and four other codicils to the executors.

1838 J. 18. DE BONNEVAL *against* DE BONNEVAL. Prerogative Court, August 7th, 1838.—The domicil of origin continues until another is acquired. A new domicil is not acquired by residence unless it be taken up with an intention of abandoning the former domicil—A Frenchman having quitted France in 1792, in consequence of the Revolution in that country, and having resided in England until 1814, when he returned to France, and from that time resided occasionally in both countries, held, not to have abandoned his original domicil.—The validity of a

will is to be determined by the law of the country where the deceased was domiciled at his death.

[Referred to, *Croker* v *Marquis of Hertford*, 1844, 4 Moore, P C 360. Discussed, *Lanenville* v. *Anderson*, 1860, 2 Sw. & Tr 43]

On petition.

Guy Henri du Val, Marquis de Bonneval, the deceased in this case, died in Norton street, Fitzroy-square, on the 22nd September, 1836, a bachelor, without a parent, leaving the Comte de Bonneval, his brother by the whole blood, and the Marquis de la Jonquiere, his brother by the half blood, his only next of kin

He left a will in the English language, executed **[857]** in England on the 19th of December, 1814, of which the First Lord of the Treasury for the time being, his nephew, Guy Charles Oscar du Val, Vicomte de Bonneval, Robert Herries and Otty-well Robinson, Esquires, were appointed trustees and executors

He also executed a further will in France on 14th February, 1826, disposing of his property in France only, and confirming his will made in England.

Probate of the English will was prayed on behalf of the Vicomte de Bonneval, one of the executors, this was opposed on the part of the Comte de Bonneval, the brother of the deceased, who prayed to be heard on his petition in objection thereto. the act on petition was afterwards brought in, and the only question now before the Court was, whether the Marquis de Bonneval, the party deceased, was domiciled at his death in England or in France?

Lushington and Haggard for the French domicil.

Addams and Curteis contrà.

Judgment—Sir Herbert Jenner. This question comes before the Court in the shape of an act on petition, respecting a will of the Marquis de Bonneval, dated in 1814, the deceased having died in 1836. He was a bachelor, and he left a brother by the whole blood, and a brother by **[858]** the half blood, who would be entitled in distribution to his personal estate both by the laws of France and England if he died intestate.

The parties before the Court are Charles François Guy du Val, Comte de Bonneval, the brother by the whole blood, and Guy Charles Oscar du Val, Vicomte de Bonneval, nephew of the deceased, who would be entitled to a benefit under the will, if good and valid. The simple question is, whether the deceased was domiciled in France or in this country? On that point it will depend by the laws of which country the validity or invalidity of the will is to be tried. for it is now settled by the case of *Stanley* v. *Bernes* (3 Hagg. Ecc. 273) that the law of the place of domicil, and not the lex loci rei sitæ, governs the distribution of and succession to personal property, in testacy or intestacy. In that case the question related to the validity of certain codicils disposing of property in this country, and it was decided by the High Court of Delegates that if the instrument be not executed according to the law of the domicil of the testator, it is invalid. As far as I am aware of the point decided in that case, it was held that the law of the domicil applies to questions of testacy as well as of intestacy. It appears that my learned predecessor expressly stated the question in that case to be, whether a British subject, who died abroad (Mr Stanley, the testator, having died abroad, after acquiring a domicil in Portugal), disposing of his property in this country by will, must make it according to British law or foreign law? and he went on to say that if, in a case of testacy, the lex domicilii applied, and not the law of the country where the property was situated, it would **[859]** operate to defeat the intention of the testator; for, he observed (p. 443): "What is the Court called upon by the opposer of the codicil to decide? That it is invalid, contrary to the manifest intention of the testator, that intention being expressed in an instrument duly executed, according and with reference to the law of this country, in his own handwriting, and attested by three witnesses" The Court of Delegates having reversed the sentence of the Prerogative Court, it follows (though no reasons are given by the Court for its decision) that the two codicils were pronounced against, on the ground that they were not executed according to the law of Portugal, where the testator was domiciled, and that consequently this Court must hold that all wills disposing of personal property situated in this country must be executed according to the law of the country where the party executing the instrument was domiciled

The facts of the case, as set forth in the act on petition, and affidavits on both sides, are these: That the deceased, Guy Henri du Val, Marquis de Bonneval, died at

the age of 71, on the 22nd September 1836, in Norton-street, Fitzroy-square, that the will in question is made in the English form, and was executed for the purpose of disposing of the property in England alone, being confined simply to that, that he also made a will, in 1826, at Paris, by which he disposed of his property in France, and that he thereby institutes the Vicomte de Bonneval, his nephew (son of the party before the Court, the Comte de Bonneval), sole and univer-**[860]**-sal heir, that the deceased was born in France, in 1765, of French parents, and continued to reside there till 1792, when he left that country in consequence of the Revolution, that his parents were of high rank, and he succeeded to estates in France, and was President à Mortier in the Parliament of Normandy, that on his leaving France, in 1792, he proceeded first to Germany and afterwards to England, and continued to reside here till 1814 or 1815, during which time he received an allowance from the government of this country, as a French emigrant, that on the return of the Bourbons he repaired to France, and it is stated on behalf of his brother (who asserts the French domicil) that the deceased went to France in 1814, and that on the escape of Bonaparte from Elba he came again to this country, but returned to France in 1815, that from 1815 (according to the statement of the brother) he continued to reside in France, occasionally visiting this country, till 1821, when he became entitled to certain property under the will of his aunt, including the chateau and estate of Soquence, in the district of Rouen, and in 1823 he succeeded to part of the estate of his mother, that from 1814 to 1827 he was actively engaged in the settlement of his property and family affairs in France, that he agreed to purchase of his brother part of his paternal property, which had been confiscated under a decree of the French government, and to part of which property he was entitled It is further stated that in the deed of purchase of these estates in 1827, made at Paris, the deceased is described as "residing usually at the chateau of Soquence," and that in a decree of the Court of **[861]** Appeal, at Caen, he is described as "living on his rents and domiciliated in the Commune of Sahurs, district of Rouen." The act on petition goes on to state that in 1825 the deceased received compensation as a French emigrant for the property confiscated at the Revolution, and that from 1815 to 1821 he resided on his property in France, and took up his domicil in the chateau of Soquence, and maintained it till his death; that from 1815 to 1821 he made occasional visits to England, and in 1821 he took a house in Norton-street, in which he resided when he came to England, but that such visits (which is not denied by the other side) were interrupted for several years together, that in 1834 he came to England, but with the intention of returning again to France; that he was rated as proprietor of the property at Soquence to the electoral contributions of the district, that he exercised his political rights as a French subject, and constantly described himself, and was described in legal proceedings, as domiciled in France, and there are entries in the Register of Mortgages at Rouen, from 1827 to 1836, in which he is so described, that the deceased was a Marquis of France, and by the will of 1826, disposing of his property in France, he directs his nephew, out of certain estates in France, to form a majorat, to serve as an endowment to the title of hereditary marquis, granted to their ancestors about 1680, and to settle the same upon the heirs male of their name, by order of primogeniture and proximity to the elder branch.

These are the grounds upon which the brother contends that the deceased was domiciled in France, **[862]** and consequently that the validity of the will must be determined by the law of that country.

On the other side, it is alleged that the deceased came to this country in 1793, and that, with certain exceptions, he ever after resided here down to the time of his death, that in June, 1814, the deceased took the lease of a house in Mortimer-street, Cavendish-square, for the term of eight years, and in 1820 he took the lease of another house in Norton-street for forty-four years, for which he paid 360l. premium and a rent of 40l. per annum, putting himself to considerable expense in fitting up and furnishing the house, which he continued to occupy till his death, keeping up an establishment of servants there, and spoke of the house as his "home." The act denies that, on his return to France, he was generally or principally resident there from 1814 to 1821, and alleges, that in 1821, he had no house in France, but went there merely to visit his friends and relations, and to obtain compensation for his losses, that, after he became entitled to the chateau and estate of Soquence in 1821, he was involved in law suits in France, which he was compelled frequently to visit,

passing considerable portions of time there, and in order to give validity to acts done there he was obliged to describe himself as of a certain residence or domicil in that kingdom, but from 1834 to the time of his death he continued permanently to reside in this country, without paying a single visit to France, though not prevented from doing so by ill health, or by any other circumstance than his uniformly avowed preference for a residence in this country, and that, in 1834, the name of the deceased was included in **[863]** the list of persons entitled to vote at the election of members of Parliament for the borough, and that he at all times kept his property in England wholly distinct from his property in France.

These are the principal grounds on which it is contended that the party died domiciled in this country.

In the reply it is alleged that the deceased kept up an establishment at Soquence, and that, at his death, a correspondence consisting of about 1200 letters, dated from 1818 to 1835, and from different persons and places, was found at his chateau at Soquence, carefully preserved and classed, and that the family papers and plate of the deceased were deposited there. That the house in London was kept for his convenience when here, and in case of new disturbances in France, of which he expressed fears, and that he exercised in France the political rights of a French subject.

Before I proceed to consider the effect of the facts stated in the affidavits, admissions and documents, I will refer briefly to what I consider the principles on which this question ought to be decided, with reference to the state of the facts I apprehend that it being primâ facie evidence only that where a person resides there he is domiciled, it is necessary to see what was the domicil of origin of the party Having first ascertained the domicil of origin, that domicil prevails till the party shall have acquired another, with an intention of abandoning the original domicil. That has been the rule since the case of *Somerville* v *Somerville* (5 Ves. jun. 750). Another principle is, that the acquisition of a domicil does not simply depend upon the residence **[864]** of the party, the fact of residence must be accompanied by an intention of *permanently residing in the new domicil, and of abandoning the former*, in other words, the change of domicil must be manifested, animo et facto, by the fact of residence and the intention to abandon. A third principle is, that the domicil of origin having been abandoned, and a new domicil acquired, the new domicil may be abandoned and a third domicil acquired. Again, the presumption of law being that the domicil of origin subsists until a change of domicil is proved, the onus of proving the change is on the party alleging it, and this onus is not discharged by merely proving residence in another place, which is not inconsistent with an intention to return to the original domicil, for the change must be demonstrated by fact and intention.

Applying these principles to the case now to be decided, there is no doubt that the domicil of origin of the deceased was France, for there he was born and continued to reside from 1765 to 1792, and he left that country only in consequence of the disturbances which broke out there He came here in 1793, but he came in the character of a Frenchman, and retained that character till he left this country in 1814, for he received an allowance from our government as a French emigrant Coming with no intention of permanently residing here, did anything occur, whilst he was resident here, to indicate a contrary intention? It is clear to me that, as in the case of exile, the absence of a person from his own country will not operate as a change of domicil, so, where a party removes to another country to avoid the inconveniences attending a residence in his own, he does not intend to abandon **[865]** his original domicil, or to acquire a new one in the country to which he comes to avoid such inconveniences At all events, it must be considered a compulsory residence in this country, he was forced to leave his own, and was prevented from returning till 1814. Had his residence here been, in the first instance, voluntary, had he come here to take up a permanent abode in this country, and to abandon his domicil of origin, that is, to disunite himself from his native country, the result might have been different. It is true that he made a long and continued residence in this country, but I am of opinion that a continued residence in this country is not sufficient to produce a change of domicil, for he came here avowedly as an emigrant, with an intention of returning to his own country so soon as the causes ceased to operate which had driven him from his native home. He remained a Frenchman, and if he had died during the interval

between 1793 and 1815 his property would have been administered according to the law of France

Up to 1814, then, he had not acquired a domicil in this country, the connexion with his native country was not abandoned, from whence then is the Court to collect that he had at any time acquired a domicil in this country by any act manifesting an intention to do so? I can find no fact beyond the mere residence in this country till 1814, and his taking the lease of a house for eight years, which would be a strong fact to shew intention, if it had been followed up by a continued residence here. But what is the fact? In 1814 the Bourbons were restored, and as he returned to his own country after taking this house, **[866]** the inference is that he did not intend to reside here, but took the house with a view of securing a residence of his own if he should be forced to return hither, and it turned out that his apprehensions were not ill-founded He remains in France during the greater part of the interval, between that time and 1821 It is alleged that he was employed during these visits in settling his family affairs, and it has been argued that his return to France was not in order to resume his French domicil—an argument which might have some force if he had lost his French domicil But the question is, Had he abandoned his French domicil? I am of opinion that he had not abandoned his French domicil, nor acquired one in England, up to 1814 or 1815.

I have looked through the affidavits to find what time the deceased resided in this country after 1815, but there is no evidence as to the period he resided here between 1815 and 1821. Maria Bureau, his servant at the house in Norton-street, knew nothing of him till 1824, and his agent in France, M. Gamare, was not acquainted with him till 1826, M. Gamare, whose affidavit is produced by the party who contends for an English domicil, states that he "considered at all times that the general residence of the deceased was in England," that the deponent was in the constant habit of corresponding with him by letter, when he was there; that "upon many occasions, when the deceased was in England, and his presence was necessary in France, the deponent experienced great difficulty in inducing the deceased to quit his residence in England, and to come to that country, to attend his interests **[867]** there." That must have been after 1826, "that from the end of September, 1834, until his decease, the deceased did not quit his residence in England, although he was not prevented from so doing, as he sincerely believes, by his health or by any other circumstance than his constantly avowed preference for his residence in England," and he goes on to state that the deceased kept his property in England entirely distinct and apart from that in France.

The evidence with respect to the periods of time during which the deceased resided in the two countries respectively is extremely loose. It is difficult to collect, from the affidavit of Gamare, what were the periods of the deceased's residence in France, and he says nothing of his residence there for three years and a half from 1828, spoken to by Bureau. It appears, from her affidavit, as well as from documents in the cause, that he left England in 1828 and resided entirely in France for three years and a half, that subsequently he was again absent from England for eight months (which is not spoken to by Gamare), and in the contract of sale in March, 1827, when he purchased some property of his half-brother, he is described as "residing usually at the chateau de Soquence, near Rouen" It would appear that he was engaged in law proceedings in France till 1831, that he was there in 1833 and 1834, and that between 1830 and 1834 he was seen frequently to proceed by the steam-boat up the river to Rouen.

Now, under these circumstances, it appears to me that there is no evidence to shew that the deceased ever acquired a domicil in this country. I see nothing but the fact of the taking of the lease of **[868]** a house in Norton-street in 1820, for a long term undoubtedly, but which does not appear to denote anything more than an intention of providing a place of occasional residence in this country. But up to 1820 he had acquired no domicil here, and during the subsequent time he was absent in France for several years, there is nothing, therefore, to shew that he had abandoned his original domicil and had taken up his sole domicil (for that is the expression used in *Somerville* v. *Somerville*) in this country, although he kept two female servants in this country; yet when I find that he kept an establishment at Soquence, that he had plate and furniture there worth 1200*l.*, that his family papers and his correspondence were deposited there, the letters classed and arranged, his having a house

here can have been only for an occasional residence in England, even if he divided his residence between the two countries, or even if he spent the greater part of his time here, but all the evidence as to his continued residence in this country is that he resided here from 1834 to 1836, though it does not appear that he did not intend to return to France I do not consider that, in this case, any more than in *Somerville* v. *Somerville*, the declarations made by the deceased at different times that he preferred a residence in this country can be a ground upon which the Court is to rest its judgment, the domicil cannot depend upon loose declarations of this sort, where there are documents which shew that the party looked to France as his home. Unless the evidence was nicely balanced, the Court would pay no regard to such declarations, shewing a preference for a residence in this country, **[869]** and not a decided intention to abandon his native land and take up his sole residence here

I am not inclined to pay much more attention to the descriptions of the deceased in the legal proceedings in France, for it may have been necessary, as the proceedings related to real property, that he should describe himself as of some place in that kingdom I am inclined also to pay very little attention to the statements as to his exercise of political rights in France, or to his being registered as a voter here being a house-keeper he was registered here as a matter of course

It is stated that he resisted with success the contribution to some of the French rates, which a person resident in France was liable to, but the grounds are not stated, and it is too loose a reasoning, that because all French subjects are liable to such rates, and he successfully resisted them, therefore he was not domiciled in France It must be shewn that the question came regularly before the French tribunals, and he was held to be not a domiciled subject of France.

I am, therefore, of opinion that the deceased continued a domiciled French subject to the time of his death, and consequently that the validity or invalidity of his will must be determined by the French tribunals, and not by this Court The precise form in which the Court must pronounce its sentence is this that the deceased, at the time of his death, was a domiciled subject of France, and that the Courts of that country are the competent authority to determine the validity of his will and the succession to his personal estate, and, **[870]** as in the case of *Hare* v *Nasmyth* (2 Add 25), the Court suspends the proceedings here, as to the validity of the will, till it is pronounced valid or invalid by the tribunals of France

DORMER, FALSELY CALLED WILLIAMS *against* WILLIAMS Consistory Court of London, Nov 16th, 1838.—The marriage of parties under a license from "a person not having authority to grant the same" is not void by 4 G 4, c. 76, s 22, unless both parties knowingly and wilfully intermarry by virtue of such license.

This was a question as to the admissibility of the libel in a suit of nullity of marriage, brought by Mrs. Williams, proceeding as Maria Teresa Dormer, of the parish of St. George, Hanover Square, against Mr. William Henry Williams of the same parish.

The libel pleaded:

1st. That by the statute 4 Geo. 4, c. 76, it is, among other things, enacted "that if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special license as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or license from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to, or acquiesce in, the solemnization of such marriage, by **[871]** any person not being in holy orders, the marriage of such person shall be null and void to all intents and purposes whatsoever," &c.

2nd. That the said William Henry Williams, being a bachelor, of the age of twenty-one years, paid his addresses to the said Maria Teresa Dormer, a spinster, of the age of nineteen years and upwards, that they agreed to be married, that the father of Mr. Williams, as also the aunt and other relatives of Miss Dormer, with whom she was then residing at Swinnerton, in the county of Stafford, severally were averse to the said intended marriage, but that the parties, nevertheless, determined to effect the same.

3rd. That it being agreed between the said parties (in order to effect their said