heard by the Supreme Court, the rule *nisi* ought to have been refused.

H. C. OF A. 1908.

DWYER v. THE RAILWAY COMMISSIONERS OF NEW SOUTH WALES.

BARTON and O'CONNOR JJ. concurred.

*Appeal dismissed.*

Solicitor, for the respondents, *J. S. Cargill.*

C. A. W.

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[HIGH COURT OF AUSTRALIA.]

PARKER . . . . . APPELLANT;
PETITIONER,

AND

PARKER . . . . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1908.

SYDNEY, *May* 5.

Griffith C.J., Barton and O'Connor JJ.

*Husband and wife—Divorce—Domicil of origin—Change of domicil—Jurisdiction.*

The respondent, whose domicil of origin was in Victoria, where he resided and carried on business, was married in that State, but never lived there openly with his wife. He had a branch office in Sydney; and a few years after his marriage he brought his wife and child from Melbourne to Sydney, and there made a home for them at which he lived with them for a few months and then deserted them. From that time, though in the course of his business he was frequently in New South Wales for considerable periods, he never had any fixed residence there.

In a suit brought by the wife in the Supreme Court of New South Wales for dissolution of marriage on the ground of desertion;

*Held*, on the evidence, that the respondent had not acquired a domicil in New South Wales, and therefore the Supreme Court had no jurisdiction to entertain the suit.

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PARKER v. PARKER.

In order to establish a change of domicil in such a case there must be clear evidence of an intention by the husband to abandon his domicil of origin and to make a new permanent home in the State to which he has removed.

Decision of the Supreme Court: *Parker* v. *Parker*, (1907) 7 S.R. (N.S.W.), 384, affirmed.

APPEAL from a decision of the Supreme Court of New South Wales affirming the judgment of *Simpson* J. in a suit for dissolution of marriage.

The appellant filed a petition in the Supreme Court for divorce on the ground of desertion. The issues of marriage and desertion were found in favour of the petitioner, but the learned Judge was of opinion, on the evidence, that the respondent was never domiciled in New South Wales, and, therefore, that the petitioner was not domiciled in that State, and the Supreme Court had no jurisdiction to entertain the suit.

The evidence upon which the petitioner relied to establish domicil was, shortly, as follows:—The respondent was born in Victoria and was domiciled there at the date of his marriage in 1899. At that time, and up to the date of the petition, he carried on business in Melbourne as proprietor of a newspaper called *The Mining Standard*, having a branch office in Sydney. The petitioner, at the desire of the respondent, did not take the name of Parker, and the marriage was kept secret from his relatives. A child was born and the petitioner was sent to Sydney by the respondent. He visited her there but never lived with her. After about eighteen months she returned to Victoria where the respondent lived with her for some time. In August 1901 the respondent brought the petitioner with the child and household furniture to Sydney, where he took and furnished a house for her and lived openly with her as his wife for a time. In that and other houses taken by the respondent they lived together for short periods at intervals until October of that year, when the respondent left the petitioner and never lived with her afterwards, though he occasionally wrote to her and sent her money. Since that time the respondent has never had any fixed residence in New South Wales, but in the conduct of his business travelled a great deal from one State to another and at other times went as far as South Africa.

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In August 1906 the petitioner instituted this suit for dissolution of marriage on the ground of desertion commencing in October 1901. The suit having been dismissed by *Simpson* J., the petitioner appealed to the Supreme Court. That appeal having been dismissed: *Parker* v. *Parker* (1), the petitioner now appealed to the High Court.

*Bradburn*, for the appellant. The evidence establishes that the respondent had abandoned his domicil of origin in Victoria and acquired a domicil of choice in New South Wales. He "made a home" for his wife and child in Sydney, and that implies a home for himself, for he began to live with them at the house he had taken and furnished. [He referred to the evidence at length.] That showed an *animus manendi*. It is immaterial that the residence is of short duration so long as that intention is proved. *Brook* v. *Brook* (2), upon which *Simpson* J. relied, is distinguishable. In that case there was no satisfactory evidence of intention to change the domicil; the husband had never lived in New South Wales at all. The facts that the respondent made a home there, stayed there for business purposes, and lived with his wife and child under the circumstances proved in evidence are such strong evidence of intention to remain that, in the absence of evidence to the contrary, that intention should be presumed. To establish a change of domicil from one State to another does not require such strong evidence as to establish a change of nationality. [He referred to *Udny* v. *Udny* (3); *Wilson* v. *Wilson* (4); *Platt* v. *Attorney-General of New South Wales* (5); *Bell* v. *Kennedy* (6); *Webb* v. *Webb* (7); *Whitehouse* v. *Whitehouse* (8); *Davies & Jones* v. *State of Western Australia* (9).]

No appearance for the respondent.

GRIFFITH C.J. For my part I share the regret expressed by one

(1) (1907) 7 S.R. (N.S.W.), 384.
(2) 13 N.S.W. L.R. (Div.), 9.
(3) L.R. 1 H.L. Sc., 441, at p. 451.
(4) L.R. 2 P. & M., 435, at pp. 441, 443.
(5) 3 App. Cas., 336.
(6) L.R. 1 H.L. Sc., 307.
(7) (1901) 1 S.R. (N.S.W.) (Div.), 32.
(8) 21 N.S.W. L.R. (Div.), 16.
(9) 2 C.L.R., 29.

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PARKER v. PARKER.

Griffith C.J.

of the learned Judges of the Supreme Court that the petitioner in this case is unable to get the relief which she is certainly entitled to get from some Court or other. The question for determination is entirely one of fact. The learned Judge of first instance declined to draw the inference that the respondent had changed his domicil from Victoria to New South Wales, and the learned Judges of the Full Court were of the same opinion. *Street* J. summed up his view of the facts in a few words, with which I quite agree (1):—"The impression which it"—that is the evidence—"leaves upon my mind and the conclusion which I draw from it is that, though the respondent intended to settle his wife and child in a home of their own in Sydney, and though he probably intended at that time to provide for their support, he did not intend to make his home with them, but intended to continue to live apart in the future as he had done in the past." That state of facts makes this case very different from those in which the question of domicil usually arises. In most cases the definition in the code quoted by this Court in *Davies and Jones* v. *The State of Western Australia* (2) is applicable:—"It is not in doubt that every man has his domicil in the place where he sets up his household shrine and his principal establishment, whence he has no intention of again departing, unless something should call him away, so that when he goes thence he regards himself as a wanderer, whereas when he returns his wandering is ended." There are no facts in the present case to indicate that any such home as that was formed by the respondent in New South Wales. Nothing remains except the domicil of origin in Victoria, and the fact that the respondent came to New South Wales with his wife and child in 1901 and lived here for some time afterwards. That is not sufficient, in my opinion, to warrant the conclusion that he had lost his domicil of origin and acquired a new one in New South Wales.

A circumstance that should be borne in mind in all cases of this kind, in which the Court is asked to exercise a most important jurisdiction, is that in an undefended suit it hears only one version of the facts, and, unless my experience misleads me, it generally only hears a very small part of the material facts.

(1) (1907) 7 S.R. (N.S.W.), 384, at p. 396. (2) 2 C.L.R., 29, at p. 41.

Under such circumstances it would be very dangerous for this Court to reverse the finding of two Courts on a pure question of fact.

BARTON J. I am of the same opinion. I think that it is totally unnecessary to add anything to the conclusive reasons given by *Cohen* J. in the Court below.

O'CONNOR J. I am of the same opinion, and have nothing to add.

*Bradburn*, for the appellant, asked for costs.

GRIFFITH C.J. I have never heard of an order for costs against a successful respondent. I doubt very much whether we have power to make such an order.

*Appeal dismissed.*

Proctor for the appellant, *S. Bloomfield.*

C. A. W.

Var Attorney-General (Qld) v Brisbane City Council (1909) 8 CLR 767

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[HIGH COURT OF AUSTRALIA.]

THE COUNCIL OF THE CITY OF BRISBANE Appellants; Defendants,

AND

HIS MAJESTY'S ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (at the Relation of JAMES THOMAS ISLES, a Ratepayer of the City of Brisbane) . . Respondent. Plaintiff,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1908.

MELBOURNE, *Feb.* 26, 27, 28; *March* 23.

Griffith C.J., Barton, O'Connor, Isaacs and Higgins JJ.

*Local Authorities Act* 1902 (*Qd.*) (1902, *No.* 19), *secs.* 191, 192, 209, 210, 261-265—*Local Authority whose area is divided into Divisions—Expenditure on works in one Division—Accounts—Declaration and Injunction.*