had not summoned the handwriting expert there were other materials and evidence on record to give a finding. In the face of contradictory statement I would refrain from comparing the disputed signature with admitted signatures. However, a close scrutiny of the evidence shows that firstly the respondent has stated that the transaction was finalised at his shop in the presence of Abdul Majeed and Abdul Ghafoor in whose presence the receipt was executed by the appellant. Abdul Majeed has supported this statement of the respondent that he and Ghafoor were sitting on respondent's shop when the appellant came and settled the matter and executed the receipt. Abdul Ghafoor has completely denied his presence and showed complete ignorance about the transaction and execution of the receipt. Abdul Ghafoor was examined by the respondent and when he made this statement in his examination-in-Chief he was not declared hostile. His statement therefore completely contradicts the statement of the respondent and Abdul Majeed and in these circumstances it is not safe to rely on their statement. The receipt according to the respondent was prepared by the appellant who had brought it to his shop and had executed it. A glance at the receipt shows that it contained the number of the cheque for Rs.20,000 which was issued by the respondent. If the transaction had been settled and made on 10th February,1960 and there being no evidence that the parties had some prior negotiation, then it means that everything happened on 10th February, 1963 at the respondent's shop. If the appellant had prepared the receipt before-hand and brought it with him, then how could he mention the number of the cheque which was delivered to him by the respondent at the time of the execution of the receipt. This supports the contention of the appellant that the respondent had delivered the cheque as a security for purchasing the goods which would have been delivered the next day against cash payment. The fact that the respondent did not have sufficient money in his bank account or with him in business and further that the source of money which the respondent has tried to establish is doubtful it seems logical that the cheque for Rs.20,000 was delivered to the respondent as security for the transaction and payment was to be made at the time of delivery and that no receipt was executed by the appellant. The respondent has stated that Rs.23,000 and cheque of Rs.20,000 which were delivered to the appellant were towards the full price of goods which he had purchased. According to the contract the price of 400 maunds of scrap leather Rs.105 per maund would come to Rs.42,000 and it is not known why a cheque of Rs.20,000 was given when only Rs.19,000 would have been sufficient to make-up the price of the entire goods. No explanation has been given by the respondent in this regard. Even if the cheque was given as security for payment why it was in excess of Rs.19,000. These facts clearly demonstrate that the respondent has not been able to establish that receipt was executed by the appellant and Rs.23,000 was paid to the appellant in cash.

The appeal is therefore allowed with no order as to cost.

Appeal allowed.

M.Y.H.

1984 C L C 2876

[Karachi]

Before Saleem Akhtar, J

GOVERNMENT OF WEST PAKISTAN through Secretary, Home Department--Appellant

versus

NARAINDAS and another--Respondents

Civil Second Appeal No. 321 of 1966, decided on 22nd December,1983.

(a) Pakistan Citizenship Act (II of 1951)--

---S.7--Foreigners Act (XXXI of 1946), S.3(2)--Civil Procedure Code (V of 1908), S.100--Migration--Meaning--Permanent transfer of residence from one country to another with intention to permanently settle in country of migration and abandon citizenship of country of origin--Determination of domicile of choice or fresh domicile depending upon residence and intention of immigrant--Visits for temporary purpose in country of origin, held, would not affect immigrants' intention of permanent settlement in country of residence. [p. 2879] A

(b) Pakistan Citizenship Act (II of 1951)--

---S.7--Civil Procedure Code (V of 1908), S.100-- Migration-- Nature of evidence and standard of proof for determining intention and residence--No rule, held, could be fixed for such determination as facts and circumstances in each case might differ-- Intention of a man is a state of mind which could be ascertained not only from his declaration but from his conduct, approach to his personal problems, deeds and actions. [p. 2880] B

Drevon v. Drevon (1864), 34 L.J. Ch. 129 and Muller v. Wadsworth (1889) 14 App Cas 631 rel.

(c) Evidence Act (I of 1872)--

---S.103--Burden of proof -- Parties producing their evidence, question of burden of proof, held, lost its significance. [Burden of proof]. [p. 2881] C

(d) Pakistan (Control of Entry) Ordinance (XVII of 1948)--

---S.3--Civil Procedure Code (V of 1908), S.100-- Control of entry -- Respondents going to India after Ist March, 1947 and coming to Pakistan in 1950 after enforcement in 1949 Ordinance XVII of 1948--Respondents neither showing whether they obtained permit or passport for entry into Pakistan nor conclusively establishing in what manner they had been visiting Pakistan during period from 14th July, 1953 upto their entry in 1956 when restriction on movement from India to Pakistan and vice versa had been imposed--Respondents' migration to India after Ist March, 1947 having been established, held, it was incumbent upon them to prove that they fell within ambit of proviso to section 3 of Ordinance and unless their case covered by proviso to section 3, consequence of leading territory included in Pakistan, held further, should follow and apply with full force. [p. 2881] D

(e) Pakistan Citizenship Act (II of 1951)--

---S.7--Pakistan Control of Entry Ordinance (XVII of 1948), S.3--Civil Procedure Code (V of 1908), S.100---Entry --Proof--Respondents having gone away to India not returned under a valid permit of resettlement or permanent return issued by a competent authority--Respondents' evidence establishing that from 1949 to 1956 they mostly resided in India and that they owned no property in Pakistan--Contention of respondents that their visit to India was for temporary periods, mostly with intention to visit their relations,held, was not correct as no person visting foreign country could live with his relative for six long years except with intention of permanent residence--Other facts also showing that respondents had migrated to India after Ist March, 1947 with intention to settle permanently, respondents, held further, as such ceased to be citizen of Pakistan. [p. 2882] E & F

AIR 1928 Lah.640, AIR 1948 Oudh 1, 54 I C 166; P L D 1971 S C (?) and P L D 1964 Kar. 150 ref.

(f) Pakistan Citizenship Act (II of 1951)--

---S. 6--Citizenship and Domicile --Two different status--Mere domicile, held, does not confer citizenship. [p. 2883] G

Abbas H.Farroqui and Azizul Husnain for Appellant.
S.M.Sadiq and A.S.Waswani for Respondent.
Dates of hearing: 25th September, 2nd, 9th and 30th October, 1983.

JUDGMENT

This judgment will dispose of IInd Appeal 321/66, IInd Appeal 323/66, IInd Appeal 364/66 and IInd Appeal 366/66. The appeals arise out of two suits filed by Naraindas as plaintiff in Suit No.275/59 and Nirmala and her three children as plaintiff in Suit No.276/59. Nirmala is the wife of Naraindas. The facts and reliefs sought in both the suits are common.

Naraindas the respondent No.1 filed suit for declaration and injunction on the allegation that he was born in 1927 in the territory now included in the State of Pakistan at Village Perumal. Taluka Sanghar, Distt. Sanghar. It was averred that he holds domicile certificate issued on Ist February, 1958. He is married to Nirmala Bai and has three children viz. Shyam aged 10 years, Suresh son aged 5 years and Miss Devi aged 8 years. His wife and children were also granted domicile certificate. He claimed that he is not a foreigner as defined by section 3(2), sub-clause (c) of Foreigners Act, 1939. He was granted Pakistani passport on 21st March, 1956. He however applied for a fresh passport in August, 1956 but it was not issued. Instead an externment order was passed which was stayed by the Prime Minister of Pakistan till 30th September, 1958. The plaintiff instituted Suit No.56/58 for declaration and injunction which was dismissed for want of notice under section 80, C.P.C. The Government of Pakistan appellant in IInd Appeal No. 321/66 is threatening to extern him from Pakistan and the externment order, dated 18th September, 1959 has been served. It has been alleged that the respondent No.1 is a citizen of Pakistan and the order passed by the Government of Pakistan is illegal, ultra vires and without jurisdiction. After notice under section 80 Naraindas filed the suit for the following reliefs:

(a) That this Honourable Court will be pleased to declare that the plaintiff is a citizen of Pakistan and is not a foreigner and is entitled to all rights of a Pakistan citizen and not liable to be externed from the State of Pakistan. The Order of externment being illegal and void ab initio and in excess of authority vested in the defendants.

(b) That a permanent injunction do issue against the defendants prohibiting them from removing the plaintiff from the State of Pakistan either by themselves or through their agents.

(c) That the defendants be ordered to bear the costs of the plaintiff.

(d) Such other relief as this Honourable Court deems proper and reasonable."

Nirmala Devi and her three children filed suit for the same reliefs on identical averments.

The suits were first instituted against the Government of West Pakistan but later Government of Pakistan was also impleaded as a defendant. The appellants filed written statement denying all the allegations. It was denied that the respondent/plaintiffs are citizen of Pakistan and that they are foreigners under the Foreigners Act. It was pleaded that the Domicile Certificate was fraudulently obtained and has no legal sanction behind it. The children were born in India and are citizens of India. All the plaintiffs/respondents are foreigners and have been so declared by the competent authority. The passport has been impounded and the order of externment is legal and proper. It was also pleaded that the respondents migrated to India and resided there till 1956 without getting themselves registered with the Pakistan High Commission. The plaintiffs/respondents are guilty of fraud and concealment of material facts and are not entitled to any relief.

The trial Court dismissed the suits but in appeal this judgment was set aside and suits were decreed as prayed. The Government of Pakistan filed II Appeal No.321/66 and II Appeal 364/66. The Government of West Pakistan filed II Appeal 323/66 and II.A.366/66. All these appeals have been heard together.

The learned counsel for the appellant contended that the learned appellate Court has proceeded on wrong assumption of law and fact. In this regard Mr. A. H. Faruqui referred to the following observations in the impugned judgment:

(1) "It is clearly admitted that the appellants (plaintiffs) were citizen of Pakistan on 13th April, 1951 when the above Act (Citizenship Act, 1951) was passed" (Para. 6 while dealing issue No.1).

(2) "It is admitted that the appellants were citizens of Pakistan by operation of provisions of section 16 of the Pakistan Citizenship Act, 1951" (Para. 7).

(3) "The learned subordinate Judge has seriously erred in placing burden of proof of issue No.2 as to whether the appellants ceased to be citizens of Pakistan in spite of such admitted position in the written statement filed by the respondent.(Para. 8).

(4) "The appellants were admittedly citizens of Pakistan and therefore burden lay upon the respondents to show that they lost citizenship within the purview of section 7 of the Pakistan Citizenship Act."

The learned appellate Court then proceeded to consider that the only question which will decide the whole case is whether the respondents had migrated from Pakistan and lost their citizenship as mentioned in section 7 and held that the appellants have not discharged the burden. Section 7 reads as follows:

"Notwithstanding anything in sections 3, 4 and 6, a person who has after the first day of March,1947, migrated from the territories now included in Pakistan to the territories now included in India shall not be a citizen of Pakistan under the provisions of these sections:

Provided that nothing in the section shall apply to a person who, after having so migrated to the territories now included in India has returned to the territories now included in Pakistan under a permit for resettlement or permanent return issued by or under the authority of any law for the time being in force."

According to section 7 any person migrating from territories comprising Pakistan to territories included in India after 1st March, 1947 shall not be a citizen of Pakistan. The date of migration has been fixed at 1st March, 1947 i.e. before the creation of Pakistan. Therefore those persons who have migrated after 1st March, 1947 to the territories comprising India will not be treated as citizens of Pakistan. Even those persons who have migrated from Pakistan to India after 14th August, 1947 will also not be treated citizens of Pakistan. Section 7 recognises loss of citizenship by migration from the territories comprising Pakistan to the territories comprising India. The proviso however saves such migrants provided they have returned to territories included in Pakistan under a permit for settlement or permanent return issued by or under the authority of law. The migrants who remigrate to Pakistan under the permission of Government for permanent return and settlement will be saved from the mischief of section 7.

The word 'migration' is used for permanent transfer of residence from one country to another with intention to permanently settle there and abandon the citizenship of origin. In migration there should be manifest A intention to acquire residence permanently in the country of migration

and designed to last indefinitely without change. The determination of domicile of choice of fresh domicile depends upon residence and intention of the immigrant. Visits for temporary purposes in the country of origin will not affect the immigrant's intention of permanent settlement in the country of residence.

In Whicker v. Hume (1958) T H L Cas. 124 Lord Cranworth remarked 'by domicile we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it." In Udny v. Udny (1969) L R I Sc & Dir 441 Lord Westburry remarked:-

> "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 an intention of continuing to reside there for an unlimited time.... If must be a residence not for a limited period of particular purpose, but general and indefinite in its future contemplation."

Again in the Estate of Fuld (No.3) (1968) P.675 Scarman, J. observed:-

> "A domicile of choice is acquired only if it be affirmatively shown that the propositus is resident within a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely."

According to Cheshire & North's Private International law 10th Edition Page 165 "the two requisites for acquisition of a fresh domicile are residence and intention. It must be proved that the person in question established his residence in a certain country with the intention of remaining there permanently. Such on intention, however unequivocal it may be, does not per se suffice."

"This much is clear, however that a person's residence in a country is prima facie evidence that he is domiciled there. There is a presumption in favour of domicile which grows in strength with the length of the residence."

Now it is to be considered what should be the nature of evidence and standard of proof for determining the intention and residence. It is difficult to fix any rule for such determination as facts and circumstances in each case may differ. The intention of a man is a state of mind which can be ascertained not only from his declarations but from his conduct, approach to his personal problems, deeds and actions. According to Cheshire:-

> "It is impossible to lay down any positive rule with respect to the evidence necessary to prove intention. All that can be said is that every conceiveable event and incident in a man's life is relevant and an admissible indication of his state of mind."

In Drevon v. Drevon (1864) 34 L.J. Ch. 129 it was observed:-

> "There is no act, no circumstances in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicile. A trivial act might possibly be of more weight with regard to determining this question then an act which was of more importance to a man in his lifetime."

In Muller v. Wadsworth (1889) 14 App. Cas. 631 it was held that "it is not be naked assertion, but by deeds and acts that a domicile is established. "Cheshire summed up thus:-

> ".....It is impossible to formulate a rule specifying the weight to be given to particular evidence. All that can be gathered from the authorities in this respect is that more reliance is placed upon conduct than upon declarations of intentions, especially if they are oral."

In the light of these principles it has to be considered whether respondents had the intention to permanently settle in Bharat.

The learned counsel for the respondent has contended that the burden of proof to establish that the respondents are not citizen of Pakistan is on the appellants. In fact when the parties have produced their evidence the question of burden of proof loses its significance. The appellants have not denied that Naraindas and Nirmala Devi were not citizens of Pakistan. However their contention is that they lost citizenship by migration and children were born in India and are not citizens of Pakistan.

A perusal of the evidence of the respondent/plaintiff clearly establishes that before permit system was introduced they had proceeded to India to meet their relation viz. Nirmala's father. They have stated that they have been coming and going to Pakistan. The statement is too vague as it does not give even the approximate dates of their visits. Finally in 1956 they obtained passport for three months from Pakistan High Commissioner at Bombay and came to Pakistan. From this statement it is clear that they went away to India in 1949 and finally returned on Pakistani passport in 1956. During this period of 7 years the respondents claim to have visited Pakistan several times. They are however unable to satisfy when and in what manner they have been visiting Pakistan. Whether under any permit or Passprot? Naraindas states that he went in 1949 and returned after 12 months and after that he has been coming and going.

Pakistan (Control of Entry) Ordinance,1948 (XVII of 1948) was enforced in 1949. It provided that no person proceedings from India unless exempted, shall enter any part of Pakistan without a permit or passport. Therefore, as the respondents came to Pakistan after 12 months i.e. in 1950 they would have obtained a permit or a passport. It was for the respondents to have conclusively established in what manner they have been visiting Pakistan. Nirmala has admitted that his sons were born in India. Their date of birth is 5th September,1949 and 14th July,1953. On these material dates she and her children were in India. She has stated that her daughter was born on 12th October,1950 in Pakistan but her birth registration certificate or any other document has not been produced to establish it. From 14th July,1953, upto their entry in 1956 nothing has been stated. During this period restrictions on movement from India to Pakistan and vice versa had ben imposed. No documentary evidence of entry to Pakistan during this period has been prodcued. Therefore from the evidence of the respondents it is established that after 1-3-1947 they had gone to India. It was therefore incumbent upon them to establish that they fall within the ambit of the proviso in section 3 of the Act unless their case is covered by the proviso to section 3, consequences of leaving the territory included in Pakistan as specified therein shall follow and apply with full force.

In the suit filed by Nirmal she stated she alongwith her children had visited Pakistan in 1950 and to corroborate it Abdul Haq, head Constable, Perumal Police Station was examined as Plaintiff's witness who produced a register containing the names of persons coming from Bharat, which was maintained at the said Police Station. There were entries to show that Nirmala and her son Shyam had come to Perumal in 1950. Two witnesses were examined to prove the entries in the register of Dispensary at Perumal village. According to these entries Shyam was treated as outdoor patient on 24th September, 1950, 31st October, 1950 and Ist December, 1950 and Nirmala was treated on 12th March, 1951. From the evidence of the respondent's witness it seems that Nirmala alongwith Shyam had been in Pakistan in 1950. The Police register does not contain any entry about Naraindas. It should be presumed that he did not come otherwise his name would have been entered in the register maintained at the police station. No other entry has been produced to show that between 1951 to 1956 how many times they visited Pakistan. It therefore seems clear that during this period he remained in India. The entries establish Nirmala and Shyam's visit during 1950, 1951. This does not establish their continuous residence up to 1956. The fact thta they came over to Pakistan in 1956 establishes that they had gone away to India and resided there till 1956.

The appellants have produced through A.S.I. Imtiaz Muhammad an entry from the register of Indian National maintained by D.I.B. Sanghar Exh.46. The entry shows that Naraindas came to Pakistan on Indian Passport No. CQ 05410 issued at Jaipur on 5th December, 1950 and Pakistan Visa No.1399, dated 9th March, 1955. He came to Pakistan via Karachi on 12th March, 1955 via check post No.570. He visited Perumal on 19th March, 1955 Sanghar on 30th March, 1955 and Karachi on 17th March,1955. The other witness Akhtar Ali produced a register of persons coming from Bharat on permit or passport. According to entry Exh.49 Naraindas son of Mulchand came on 30th March, 1952 on temporary permit from Bharat. This was extended upto 25th October, 1952. Mr. S.M. Sadiq, the learned counsel has contended that these entries are inadmissible in evidence on the ground that they are not public documents and that they have not been prepared in the discharge of official duty. In this regard reliance has been placed on **A I R 1928 Lah.640, A I R 1948 Oudh 1 and 54 I C 166.** Reliance has also been placed on the following passage from Monir's law of Evidence:--

> "In order to render a document admissible under this section (35) three conditions must be satisfied, first of all, the entry that is releid upon must be one in any public or other official book, register, or record, secondly, it must be an entry stating a fact in issue or a relevant fact; and thirdly, it must be made by a public servant in the discharge of his official duty, or any other person in performance of a duty specially enjoined by the law."

The appellants have not been able to establish under what authority the register Exh. 46 was maintained and that entries were made by a public servant in the discharge of his official duties. However, as regards Exh. 49 from the statement of the Plaintiff's witness Abdul Haq it seems that a register containing the particulars of person coming from Bharat was maintained at the police station because such a register was produced by that witness. The entries in this register will be relevant for purposes of this case.

Now coming to the question of burden of proof it is well-settled as held in **P L D 1971 S C and P L D 1964 Kar. 150,** that under section 7 of the Citizenship Act burden is upon the party which alleges that the citizen has lost citizenship due to migration. The evidence has there to be examined in the light of the principles stated earlier. A brief analysis of the evidence of the parties has been given above. It is established that the respondents had gone away to India and have not returned under a permit of resettlement or permanent return issued by a competent authority. It has, therefore, to be considered whether leaving of the country was with the intention to migration to India and permanently E settle there. From the respondents evidence it is established that from 1949 jto 1956 they mostly resided in India. They do not have any property in Pakistan. Their visit according to them, was for temporary periods, mostly with the intention to visit their relations. This does not seem to be correct because any person visiting his relations in a foreign country cannot stay for about six years which is a long period and indicates the intention of permanent residence. There is no other evidence to show that they had gone to India and lived there for some purpose which was trmporary in nature.

Their two sons were born in India. They have not been registered with the High Commissioner of Pakistan, as citizens of Pakistan. Even the respondents did not register themselves as citizen of Pakistan. The long period of stay cannot be with the sole purpose of meeting their relations. A person jwith his wife and three children cannot be expected not to earn F livelihood for the maintenance of his family. Their is no evidence to show that money was remitted from Pakistan for their maintenance. All these facts show that the respondents had migrated to India after 1st March,1947 with the intention to settle there premanently and thus ceased

to be citizens of Pakistan.

The learned appellate Court has observed that the respondent had temporarily shifted to India by compulsion of circumstances viz. outbreak of riots. This is not borne out from the evidence on record. Naraindas and Nirmala have stated that they had gone to Bharat to visit Nirmala's relations. The reason to leave for Bharat was not out of fear of riots which implies that when the situation normalise they would return. There is no evidence that from 1949 to 1956 there were riots in Pakistan.

Mr. Sadiq contended that as after arrival in Pakistan in 1956 the respondents have obtained domicile certificate they should be deemed to be citizens of Pakistan. I am afraid this contention is not correct: G Domicile and citizenship are two different status. Mere domicile does not confer citizenship. Three minor children of the respondents will also be governed by the domicile and status of their parents.

For the aforestated reasons the impugned judgment and decree passed by the learned District and Session Judge is set aside. All the appeals are therefore allowed.

M.Y.H. Appeal allowed.

1984 C L C 2883

[Karachi]

Before Ajmal Mian, J

WALI MUHAMMAD--Appellant

versus

SHAFI MUHAMMAD--Respondent

Second Appeal No.333 of 1980, decided on 22nd April, 1984.

(a) West Pakistan Urban Immovable Property Tax Act (V of 1958)--

---S.10(2)--West Pakistan Urban Rent Restriction Ordinance (VI of 1959), Ss.13 & 15(4)--Revision of assessment--Assessment of rent--Order passed by revisional authority regarding assessment of rent without notice to owner of property--Without jurisdiction.--[Natural justice, principles of]. [p.2885] A

(b) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)--

---Ss.13 & 15(4)--West Pakistan Urban Immovable Property Tax Act (V of 1958), S.10--Rent Controller, held, had no jurisdiction to examine legality of revisional order regarding assessment of rent particularly when no such plea was raised by tenant--Mere statement made by tenant in cross-examination that revisional order passed without notice to tenant, held further, would not be sufficient to hold that revisional order was illegal and tenant in that eventuality should have agitated question of legality before competent forum. [p. 2885] B

(c) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)--

---Ss.13 & 15(4)--Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S.30--Ejectment on ground of default in payment of rent--Tenant failing to tender rent within statutory period after receipt of notice under section 30, Displaced Persons (Compensation and Rehabilitation) Act, 1958--Ground of default, held, sustainable--Ejectment order maintained. [p.2886] C

(d) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)--

---Ss.13 & 15--Civil Procedure Code (V of 1908) S.96--Appeal--Amalgamation of rent cases--Two cases of ejectment filed by landlord against tenant one for default in payment of rent and other for unauthorised alterations