

passed his first years in Lower Canada. He entered the service of the North West Company in 1801, and in 1802 was stationed at Rivière aux Rats, in the Athabaska country. He went there to buy furs and skins from the Indians with no more idea of settlement or residence there than such as was necessary to carry on his trade. It can be easily supposed that he did not, for a single moment at any time, entertain the idea of making his permanent abode or residence in that country, or that he ever lost his intention of returning to Canada so soon as he could. But Mr. Justice Aylwin's evidence leaves no doubt upon these points. The absence of all intention to fix his domicile in that country, the *animus manendi* and the *animus revertendi*, are as obvious as such things can be, from the circumstances of Connolly's position; perhaps no evidence could render the presumption more palpable, but, if such be required, Mr. Connolly himself, in conversations with Mr. Justice Aylwin, has placed this matter entirely beyond question.

It is an admitted principle, that the domicile of birth is presumed to continue till the contrary is proved, that domicile is changed only—

“Quando quis re et facto animum manendi declarat” and that “domicilium non procedit, si ille haberet animum revertendi.” These are admitted principles; and two things, therefore, must concur to constitute a domicile; first, residence; and secondly, the intention of making it the home of the party. There must be the fact and the *intent*; for, as Pothier has truly observed, a person cannot establish a domicile in a place except it be *animo et facto*. Voet emphatically says: *Illud certum est, neque solo animo atque destinatione patris familias, aut contestatione solâ, sine re et facto, domicilium constituit; neque solâ domus comparatione nec aliquâ regione; neque solâ habitatione, sine proposito illic perpetuo morandi*. So D'Argentré says: *Quamobrem, si figendi ejus animum non habent, sed usus, necessitatis aut negotiationis causâ alicubi sint, protinus à negotio discessuri, domicilium nullo temporis spatio constituunt; cum neque animus sine facto, neque factum sine animo ad id sufficiat*.

“Domicile is acquired ‘par le concours de la volonté et du fait,’ *animo et facto*—that is, by actual residence in the place with the intention that the place thus chosen should be his principal and permanent residence, the seat of his fortune, his family, and his pursuits in life. A new domicile cannot be acquired by intention alone; but having been once acquired, it may be retained by intention, without actual residence. Neither can it be acquired by residence alone, however, long, without that intention.”