

(B) In the Court holden for the Division

(1) *In which the defendants or any one of the defendants resides or*

(2) *Carries on business at the time the action is brought.*

(1) *In which the defendant resides:—*

There are a number of cases bearing on the subject and applicable to the construction of the term here used: to these it is proposed to make brief reference. The term "residence" is synonymous with the terms "place of abode," or "dwelling." It means a domicile or home. A dwelling is constituted by actual occupancy coupled with the intention to give the character of permanence to such occupancy (See *R. v. Thompson*, 2 Leach, 771; *Lambe v. Smythe*, 15 L. J. Ex. 287). In the words of Story, that place is the domicile of a person in which his habitation is fixed without any intention of removing therefrom (Conflict of Laws, sec. 43). And domicile is equivalent to home or the place in which a man dwells. Indeed a person's *residence* (as used in 2 Wm. IV., c. 45, sec. 9) was said by *Erle*, C. J., to mean the same as his home (7 M. & G. 1). A man's dwelling or residence is *prima facie* the place where his wife and family reside, and if he has a family dwelling in one place, and he occupy a house and occasionally sleep in another, he will not be a resident in the latter place, for his residence is his domicile, and his domicile is his home, and his home is where his family reside (Story's Conflict of Laws, sec. 63; *Rex v. Duke of Richmond*, 6 T. R. 560; and see *Reg. ex rel. Taylor v. Caesar*, 11 U. C. Q. B. 461; *Reg. ex rel. Forward v. Bartels*, 7 U. C. C. P. 533).

Where a party had a shop or warehouse with a private parlour in which he passed all the day, taking his meals and entertaining his friends there, but neither he nor his servants sleeping there, this was held by all the judges as not sufficient to constitute it his dwelling house (or place of residence) (*Reg v. Martin*, 1 R. & R. 108).

Where a man only moved his goods into a house with an intent to dwell there, it is not his dwelling house (*Reg. v. Thompson*, 2 Lea. 771; *In re Harris*, Ib. 701). And it is not even necessary that either the party himself or his servants should be sleeping in any given place at that particular time in which it is sought to make him out as dwelling there, for if one has two houses, and at one time

lives in one and at another in another, yet in his absence the empty house is still his dwelling house, or he may be said to dwell there though no one be in it (*Hale P. C.* 556). So though a barrister leave his chambers, or, *semble*, the student of a college his rooms during the vacation, in which he resides during term time, it will be his dwelling house, or he will be considered as dwelling there if the party on leaving them had an intention of returning. (*Ib.*) So if a man leave his house empty and locked up while he goes a journey, as for a month, with an intention of returning, the house will still be his dwelling house (*Reg. v. Murray*, 2 East P. C. 496).

When the claimant for a vote (under the Reform Act) as one "residing" &c., follows his occupation as a wine merchant at G., where he had for many years occupied a house in which he carried on his business and kept his family and a domestic servant, but had a bedroom in T. in the house of a friend, which he rented with a closet, for wine samples, and only slept there about eighteen or twenty times in the year on occasion of his coming to T. on business, and once took a meal there, it was held he did not reside there, and that there was no residence in fact (*Whitehorn*, appellant *v. Thomas*, respondent, 7 M. & G. 1). If there be an actual dwelling with an intention of continuing it for an indefinite period, even for a short time, it would seem to be a residence within the meaning of the section. In *King v. Sargent*, 5 T. R. 467, it was held that though a party had only slept in a house for two or three nights before the time in question, yet as he had an intention of continuing to do so he was a resident.

The sort of place in which a party resides seems immaterial provided that his dwelling is there in other respects (*R. v. Westwood*, 1 R. & R. 495; 3 Inst. 65; 1 Strange, 60; *R. v. Burton Bradstock*, Bur. S. C. 531).

Besides these decisions on analogous provisions, there are several cases upon the clauses of the English County Courts Act (9 & 10 Vic, c. 95) which may be said to be directly in point, the word used being "*dwell*." Thus where the permanent residence of the plaintiff was at Inverness in Scotland, but every year he came to London on business, where he took lodgings for his business, and at the time the action was brought he had lodgings in Golden Square, London, which he occupied from March to October. The court held that this did not