

**THE SPECIAL COMMISSIONERS**

**ROBERT GAINES-COOPER**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**SPECIAL COMMISSIONERS:      Dr A N Brice  
   Charles Hellier**

**Sitting in London on 26 June – 7 July 2006**

**Michael Flesch QC with Nicola Shaw of Counsel, instructed by Messrs Squire,  
Sanders & Dempsey, Solicitors for the Appellant**

**Ingrid Simler of Counsel with Akash Nawbatt of Counsel, instructed by the Acting  
Solicitor for HM Revenue and Customs, for the Respondents**

## DECISION

### The appeals

1. Mr Robert Gaines-Cooper (the Appellant) appeals against a number of assessments, amendments to self-assessments and notices which relate to the tax years 1992/93 to 2003/04 inclusive and which were issued by The Commissioners of Her Majesty's Revenue and Customs (the Revenue). The appeals concern the liability of the Appellant for income tax under Case VI of Schedule D either under sections 739 to 746 of the Income and Corporation Taxes Act 1988 (the 1988 Act) (which sections concern the transfer of assets abroad) and/or sections 660A to 660G of the 1988 Act (which sections concern settlements and the liability of the settlor).

2. There was no assessment or amendment of a self-assessment for the tax year 1999/2000 as it was understood that the Revenue's enquiries for that year were still continuing. The parties agreed that it was sensible for us to make findings about the Appellant's domicile, residence and ordinary residence for that year as well as all the others. However, the Appellant reserved the right to argue, if it became relevant to do so, that any assessment or amendment of self-assessment for that year did not comply with the relevant time limits.

### The preliminary issues

3. It was agreed at an early stage of these appeals that the issues of the domicile, residence and ordinary residence of the Appellant should be heard as preliminary issues. It was the Appellant's case that he abandoned his domicile of origin in England and acquired a domicile of choice in the Seychelles well before 6 April 1992 and that he retained that domicile of choice ever since. Although the Appellant agreed that he was resident in the United Kingdom for the tax year 1992/93 it was his case that, as far as the other tax years under appeal were concerned, he was neither resident nor ordinarily resident in the United Kingdom.

4. Accordingly, the preliminary issues we have to determine are:

(1) whether the Appellant was domiciled in England during the tax years from 1992/93 to 2003/04;

(2) whether the Appellant was resident in the United Kingdom during the tax years from 1993/94 to 2003/04; and

(3) whether the Appellant was ordinarily resident in the United Kingdom during the tax years from 1992/93 to 2003/04.

### The evidence

5. There was a short statement of agreed facts. One bundle of documents was produced by the Appellant and four other bundles were produced by the

Revenue. A sixth bundle, containing copies of the Appellant's passports, was produced during the course of the hearing. Oral evidence was given by the Appellant on his own behalf and oral evidence was also given on behalf of the Appellant by:

Mr Victor Loh Beng-Seng, the Chief Executive Officer of Vicplas International Limited of Singapore;

Mr David Curtis-Bennett, the Managing Director of Chelle Medical Limited of the Seychelles; Mr Curtis-Bennett was also connected with other companies associated with the Appellant;

The Right Reverend French Chang-Him, now retired but previously the Bishop of the Diocese of the Seychelles and the Archbishop of the Indian Ocean;

Mrs Jane Gaines-Cooper, the wife of the Appellant;

Mr Michael Landon, the Managing Director of Venner Trading SA (formerly LMA International SA Group) of Jersey;

Sir James Mancham, the Founding President of the Republic of the Seychelles from 1976 when the Seychelles received independence from the United Kingdom;

Mr Guy Joseph Morel, now retired but before 1993 the Secretary of State for Finance in the Seychelles;

Mr John Pugh, the first British High Commissioner to the Seychelles in 1976; and

Mrs Marie Therese Geva René the Chairperson of the National Council for Children in the Seychelles.

6. A witness statement by Ms Sara Walter, solicitor, containing evidence on behalf of the Appellant was agreed by the Revenue and so admitted in evidence.

7. Before finding the facts we comment on the evidence of the Appellant. The Appellant gave evidence for four and a half days of the ten day hearing. As many of our findings depend upon his oral evidence we have to say how we found him as a witness. We accept that the Appellant did his best to be truthful and honest but he also readily admitted that he made mistakes. For this reason we looked for corroborating documentary evidence but an unusual feature of this appeal was that much of the oral evidence of the Appellant was digressive and discursive and unsupported by any documents. Some of the evidence related to events as far back as 1971 which is now thirty-five years ago. The Appellant had an impressive memory but was not always certain about dates. We accept that some uncertainty about dates is to be expected after such an interval of time.

8. However, the Appellant also sometimes appeared to confuse one of his business ventures with another. The Appellant told us that he had set up (with other business associates) probably in excess of 100 companies all over the world. The names of very many companies were mentioned in oral evidence but not with great precision and without reference to documents. The same comment applies to trusts. A number of different trusts were mentioned but full supporting documentation was not produced. For the purpose of these preliminary issues absolute accuracy about dates and the names of the Appellant's companies and trusts is not required. Where appropriate, therefore, we have referred to dates as approximate dates and to companies and trusts descriptively rather than by specific names because we are not confident that all the dates and names given in oral evidence were accurate.

9. For these reasons we approach the oral evidence of the Appellant with some caution. We bear in mind that the burden of proof in these appeals is on the Appellant.

### **The facts**

10. From the evidence before us we find the following facts for the purpose of these preliminary issues only.

#### *The Appellant*

11. The Appellant was born in Reading in England on 27 September 1937 and attended school in Berkshire, England. He still retains his British passport. Both the Appellant's father and mother were Officers of HM Inland Revenue. The Appellant's mother, Mrs Flora Gaines-Cooper, lived in Berkshire, England until her death in 2004. The Appellant's only sibling, his sister, still lives in England. After leaving school in 1954 the Appellant undertook his National Service in the Royal Air Force and was posted to Cyprus between 1955 and 1957. He enjoyed spending time in Cyprus and he also enjoyed the Mediterranean climate.

#### *1958 – The juke-box business*

12. In 1958, shortly after completing his National Service, the Appellant started a business in the United Kingdom which was carried on through companies called the Gainesmead Group. The business consisted of placing juke-boxes in public houses, caravan parks and other sites in England and supplying background music. The Appellant obtained contracts with most of the major brewery chains to supply juke-boxes to their public houses. During the rest of the 1950s, and in the 1960s, the business became successful.

#### *1964 – Grove House*

13. In 1964 the Appellant purchased for £11,100 a property known as Old Grove House (Grove House) at Emmer Green near Reading, Berkshire. The Appellant's mother also lived at Emmer Green. Grove House was a five-gabled house with four bedrooms and with an area of about 4,000 square feet. It was built of brick and flint in about the 14<sup>th</sup> century and was a listed building. The garden extended to about 0.6 acres. In the grounds was a 250 year old tithe barn

of about 2,500 square feet. However, the buildings were in a bad state of repair. The Appellant restored the house and moved into it in 1966.

*1971 - The Appellant's assets transferred to the Isle of Man*

14. In 1971 the Appellant sold the Gainesmead Group (at a considerable profit) to Management Agency and Music plc and joined that company as finance director.

15. Some time in about 1971 the Appellant transferred all the assets which he owned in the United Kingdom (including the assets representing the sale price of the Gainesmead Group and also Grove House) to a group of companies in the Isle of Man (the Isle of Man companies) which were managed by Singer & Friedlander. In oral evidence at the hearing the Appellant accepted that he was, to all intents and purposes, the beneficial owner of the assets which were held by the Isle of Man companies. Until 1976 the Appellant used Grove House as his residence and some of the physical assets held as investments by the Isle of Man companies (paintings, vintage motor cars and guns) were kept at Grove House for his use.

16. For the purposes of investment, and also in or about 1971, the Isle of Man companies purchased a smallholding called Views Farm in Steventon, Berkshire (now in Oxfordshire) with about 100 acres. The companies later purchased contiguous pieces of land until by 1974 they owned 700 acres and also rented 200 acres of adjacent land. There was then enough land to build a substantial dairy for 350 cows. The name of Views Farm was changed to Willow Brook Farm and the whole estate was called Goose Willow Estate. The estate employed a secretary who also acted as personal assistant to the Appellant when he was in the United Kingdom. The estate was managed by a manager who lived in a house on the estate and there were also two cottages for the farm workers. Altogether there were about three or four workers. The Appellant had no living accommodation on the Goose Willow Estate but he liked to visit the Estate when he was in the United Kingdom; he liked making hay and he liked the three shire horses which were kept there.

*1973 –First visit to the Seychelles*

17. In 1973, while still with Management Agency and Music plc, the Appellant visited the Seychelles for the first time. He was in an aeroplane travelling from Sri Lanka to Zaire on holiday and was delayed in the Seychelles for several days. He said that he “immediately fell in love with the Seychelles and wanted to make his permanent home there”.

18. The Seychelles is a group of 115 islands located in the Indian Ocean to the east of Africa. The population is about 80,000. The largest island is Mahé and 90% of the population live on Mahé. The largest town in Mahé is Victoria. The Seychelles was a British colony until it was granted independence on 29 June 1976 when Mr James Mancham (as he then was) became the first President of the Republic. The traffic in the Seychelles still drives on the left hand side of the road. On 5 June 1977 the government of the Seychelles was overthrown in a coup d'état and Mr France Albert René became, and remains, President.

*1974 – the Canadian venture*

19. On 31 August 1974 the Appellant left Management Agency and Music plc and at about that time formed the view that the tax regime in the United Kingdom was unsympathetic to businessmen and entrepreneurs. Later that year, together with business associates, the Appellant established a property development company in Canada of which he was the finance director. Initially the company restored old office buildings but in 1976 it acquired the opportunity to re-develop a disused golf course in Ville St Laurent, Montreal, for residential development. At the time this was seen as an opportunity because of the prospective Olympic Games in 1976. Because of exchange control regulations the Appellant was not able to take any funds out of the United Kingdom but he was able to obtain business bank loans on the security of his United Kingdom assets. Initially the Canadian venture was successful and in the first year a number of plots were sold to independent builders. When the Appellant visited Canada he stayed with his business associates; he did not buy a house in Canada.

*February 1975 -The Seychelles and the plastics factory*

20. After his first visit in 1973 the Appellant continued to visit the Seychelles. In 1975 the Appellant was introduced to the Chief Minister of the Seychelles and asked if he (the Appellant) could have a residence permit to live there. The reply was that a permit would be granted if the Appellant invested in the local economy and the suggestion was made that the Appellant might start a factory manufacturing plastic goods. Although the Appellant knew nothing about plastic goods he started to learn about the plastics industry and on 1 February 1975 he arranged for the incorporation of Chelle Plastics Limited, a company registered in the Seychelles. Work on the construction of a plastics factory began later in 1975 and was completed in the spring of 1976. A year later, on 25 February 1977, the plastics factory was officially opened by Mr France Albert René, the President of the Seychelles.

21. Meanwhile, in 1976 Chelle Plastics Limited started manufacturing plastic goods (water bottles and carrier bags) in the Seychelles. However, the business was extremely expensive to run (as plastic moulds were very costly) and the domestic market was very small. Accordingly, the Appellant opened a shop at the factory to sell plastic household goods imported from Singapore. The profits from the shop ensured that the factory was no longer operating at a loss but, when selling plastic goods, it was never very profitable. A co-director of the Appellant was the managing director of Chelle Plastics Limited and he managed the operation. The Appellant had an office at the factory and when he was in the Seychelles he negotiated the importation and prices of the raw material from Singapore and liaised with the larger customers.

*October 1975- Bois Noir*

22. During his visits to the Seychelles from 1973 to the end of 1975 the Appellant stayed at the Reef Hotel. We accept his evidence that his visits were so regular and of such duration that the management of the hotel knocked two suites together for his living accommodation. The Appellant got to know that the Reef Estate was being developed and was offered the chance to buy a single storey house called Bois Noir (which was fully furnished and had 3.166 acres)

for £59,000. The house had three bedrooms and an internal area of 3,500 square feet.

23. At that time all the Appellant's United Kingdom assets were restricted by exchange control regulations but the Appellant managed to borrow all the funds needed to buy Bois Noir partly from Barclays Bank and partly from the construction company which built the house. He purchased Bois Noir on 20 October 1975 giving his address in the title deeds as Goose Willow Estate. In February 1976 he planted the seed of a coco-de-mer plant in the grounds of Bois Noir. The coco-de-mer is an indigenous palm tree which only grows in the Seychelles and is also the national symbol of the Seychelles. It is a very slow growing plant. We saw photographs of the plant as it is today and it is now very large indeed.

24. After purchasing Bois Noir the Appellant stayed there on his visits to the Seychelles until about the end of 1976. At that time the Canadian venture was not going well and the Appellant had difficulty in making the repayments on the Canadian loans and also on the loans he had taken out to purchase Bois Noir. He therefore entered into an agreement with the British Government under which Bois Noir was let for the use of the British High Commissioner, who lived there until early 1979. During this time, when the Appellant visited the Seychelles, he stayed with a friend of his who had a house near Bois Noir. The letting of Bois Noir came to an end in 1979 and the mortgage to the construction company was repaid in 1980 or 1981.

#### *1976 - Letting of Grove House*

25. Between about 1964 and 1976 the Appellant resided at Grove House but also from time to time stayed with friends in England. Between 1976 and 1980 Grove House was let furnished to the Bank of America. At this time when the Appellant visited the United Kingdom he stayed with friends. While Grove House was let the Appellant moved his collection of guns (owned in the name of the Isle of Man companies) to the Goose Willow Estate where the guns were the responsibility of the farm manager. Also while Grove House was let the Appellant removed his personal effects (watches, pens, clothing and his favourite Rolls-Royce) to Bois Noir (which was, of course, let to the British High Commissioner from 1976 to 1979).

#### *1976- the residency permit*

26. Meanwhile, on 6 February 1976 the Appellant was granted a residency permit by the government of the Seychelles. Such permits were usually granted for five years and were renewable. The Appellant had such a permit at all times. The permit provides that the holder should not work for a salary in the Seychelles but permits self-employment and acting as a director of companies. The permit also provides that the holder was not to be absent from the Seychelles for more than six months without notifying the authorities. At about that time the Appellant's father, who was an Officer of HM Inland Revenue, advised him that, if he wished to take up permanent residence outside the United Kingdom, he should take formal steps to inform the Bank of England (under the exchange control regulations) and the Inland Revenue.

27. We did not see copies of any correspondence in 1976 with the Revenue but we saw copies of three letters from the Bank of England. The first dated 11 October 1976 was written to Messrs Slaughter & May. It referred to a share in an Isle of Man company held by Messrs Slaughter & May for the account of the Appellant and stated that the Bank of England had been informed that the Appellant had taken up residence in the Seychelles. The letter stated that the four-year period of restriction would end on 20 September 1980. The second letter was dated 6 December 1976. It was addressed to Singer and Friedlander of the Isle of Man and was in reply to another letter which we did not see. The letter gave permission for loan facilities to be made by one of the Appellant's Isle of Man companies to two of its subsidiaries. The letter stated that those two companies were subsidiaries of the Isle of Man company which was ultimately owned by the Appellant who was described as "a resident of the Seychelles". The third letter from the Bank of England was also to Singer and Friedlander and was dated 31 December 1976 and referred to "the re-designation of the Appellant as resident in the Seychelles".

*1977 – the English will*

28. On 20 July 1977 (while Bois Noir was let to the British High Commissioner) the Appellant executed a will which had been prepared by Messrs Theodore Goddard solicitors of London. The will stated that the Appellant lived in Chelle, Les Roches, Mahé, Seychelles and declared that he was domiciled in the Seychelles but that the will was only to affect his property which was situated in the Isle of Man at his death. The will appointed Singer & Friedlander Trust Company (Isle of Man) as his executors and trustees. A small part of the residue was left to Miss Jane Laye-Sion. The Appellant did not at that time make any other will dealing with his assets in the Seychelles.

29. We saw a schedule of assets dated 30 November 1977 which showed that, by that time, the Isle of Man companies owned Grove House and its contents, including four paintings, a collection of five vintage motor cars, some fine wine and some valuable guns. The Isle of Man companies also owned shares in Management Agency and Music Plc, other investments and cash. They also owned other real property in the United Kingdom, namely, North Park Farm, part of East Statford Farm, Tanners Farm and Goose Willow Estate (comprising Willow Brook Farm and Goose Willow Farm).

*1977 – the Californian venture*

30. Although the plastics factory in the Seychelles began manufacturing plastic goods in 1976, the domestic market for plastic products in the Seychelles was insufficient and it was uneconomic to export plastic products for use in other countries. For this reason, Chelle Plastics Limited was not very successful and the Appellant wished to develop other business opportunities. In 1977 the Canadian venture ran into serious difficulties leaving the Appellant with very large business loans from banks which remained unpaid. The Appellant told us that in 1977 he was effectively bankrupt and needed funds to repay his mortgage on Bois Noir and also to repay the very considerable business loans which he owed in Canada. His United Kingdom assets remained restricted by exchange control regulations.

31. Accordingly in mid-1977 the Appellant went from Canada to San José in California in the United States of America. In 1978 he decided to develop residential properties for first-time buyers in partnership with a local government redevelopment agency. Between 1978 and 1992 the Appellant was the finance director, and then the chairman, of two development companies in California. At about this time the Appellant also invested in other businesses in California, namely an antiques business and two British-style public houses. The Californian venture was ultimately a great success and by 1987 the Canadian loans had been repaid. The Appellant ceased to take an active part in the Californian venture in the late 1980s and the businesses folded in 1992.

*1979- the first marriage*

32. Initially the Appellant stayed with friends while he was in California. In 1979 the Appellant married, for the first time, Ms Dilona Lantang who was a citizen of both the Netherlands and Indonesia. The marriage took place in Amsterdam and later there was a service at St Andrew's Church, Sonning, near Reading. Sir James Mancham was one of the guests. Also in 1979 the Appellant purchased a house in California and both the Appellant and Mrs Dilona Gaines-Cooper lived there. For about a year after the marriage Mrs Dilona Gaines-Cooper used to visit the Seychelles with the Appellant; after that she preferred to be in California. Mrs Dilona Gaines-Cooper only visited the Seychelles occasionally and would then go on to visit Singapore. The marriage was dissolved in 1986.

33. Later in 1979 exchange control was abolished in the United Kingdom and the restrictions on the Appellant's United Kingdom assets were released. Some of the assets belonging to the Isle of Man companies (including Goose Willow Estate) were sold and some of the sale price was sent to California to assist with the Californian venture. Other assets belonging to the Isle of Man companies were not sold and these included Grove House and its contents, including the paintings, the wine, the vintage motor cars and the guns.

*1980 – Grove House after 1980*

34. The letting of Grove House to the Bank of America ceased in 1980 and after that date the Appellant did not always find another residential tenant. Accordingly, the Appellant's agents applied on his behalf for various planning permissions for a change of use for parts of Grove House. One letter in 1981 stated that the Appellant "liked the property and the surroundings and was looking forward to living at Grove House again on a permanent basis in due course." Also in 1981, in a notice of appeal against a refusal of permission, a statement was made by an agent that "Mr Gaines Cooper would naturally prefer to secure a tenant known personally to him to occupy his own private residence during his absences abroad".

35. Some time after 1980 Grove House was occupied by a Mr Barber who used one of the four bedrooms and paid some rent. Mr Barber's main home, with his wife and family, was in California but he was doing business in Reading and wanted a house there. The Appellant was unsure about whether there had been a formal letting agreement and, on the evidence before us, we are unable to find that there was. During this time the Appellant stayed at Grove

House with Mr Barber on some of the occasions when he visited the United Kingdom. Also, if the Appellant had friends from the Seychelles who were visiting the United Kingdom he would, on occasion, invite them to stay at Grove House. Sometime in the 1980s Mr Morel visited Grove House and saw three Rolls-Royce Phantom cars, a Bentley and one other motor car. Sir James Mancham also visited the Appellant at Grove House. Finally correspondence addressed to the Appellant was sent to Grove House and he collected it when he was in the United Kingdom.

36. Sometime in the mid-1980s there was a separate letting of the tithe barn at Grove House to a Mr Ashley-Carter who ran a Rolls Royce servicing company there. From this period on Grove House itself was not let. In 1987 the Appellant received planning permission for the conversion of the tithe barn into two houses with garages and these works were carried out some time before 1989.

*1980 – the Revenue’s early enquiries*

37. In February 1980 the Revenue wrote to the Appellant asking for details of his travel to and from the United Kingdom from 1976 to 1979. The Appellant sent to the Revenue details of the time he spent in the United Kingdom in those years. This showed that in the period from 6 June 1976 to 5 April 1977 the Appellant spent 49 days in the United Kingdom and also visited the Seychelles, Canada and Holland. In the tax year 1977–78 the Appellant spent 45 days in the United Kingdom and also visited Canada, Holland, the Seychelles and the United States of America. In the tax year 1978-79 the Appellant spent 56 days in the United Kingdom and also visited Holland, Switzerland, the United States of America and the Seychelles. The days in the United Kingdom were calculated ignoring the days of arrival and departure. No further queries were raised at that time by the Revenue.

*1983 – transfer of United Kingdom assets into trust*

38. At about this time the Appellant took further advice from Messrs Theodore Goddard and on 28 February 1983 a settlement called the Khambatta Settlement was established. This was a settlement of which a Jean Khambatta of the Seychelles was the settlor and a company in Vaduz, Liechtenstein was the original trustee. Jean Khambatta was a senior manager at Chelle Plastics Limited. The settlement was a discretionary trust constituted in Liechtenstein and established ten funds (A to J) of £100 each. The Appellant was initially the protector of all ten funds but the intention was that nine should be transferred later to others. Fund A belonged to the Appellant. On 30 May 1990 the Appellant and the trustee appointed the A fund to the Bird Island Trust so that the Appellant’s trust was then called the Bird Island Trust. We were told that all of the Appellant’s assets which had previously been held by the Isle of Man companies (and which had not been sold) were transferred to the Bird Island Trust although it is possible that this may have been achieved by the transfer of the shares of the Isle of Man companies.

*1987 - Orthofix*

39. In 1987 the Appellant was offered an opportunity to purchase a stake in an Italian company called Orthofix which manufactured and distributed medical

products for use in orthopaedic surgery. The company had been established by the Professor of Orthopaedics at Verona University who had built up a substantial turnover but who wanted to sell the company. The Appellant and another business associate provided the purchase price and the purchase was completed on 23 October 1987. There was a board of twelve directors, four of whom were in the United Kingdom. The Appellant became the deputy chairman and in 1989 became chairman. The Appellant spent the next few years building up the business internationally and this involved a great deal of international travel. Ultimately the company was very successful and in 1992 Orthofix was floated on Nasdaq.

40. Although the registered office of Orthofix was in Verona, Italy, the administration of the company was carried out in Cyprus by PriceWaterhouse Coopers. Some time in or about 1988 Orthofix acquired a 50% stake in a company connected with the Appellant and used that company to distribute Orthofix products in the United Kingdom. Also, in or about 1988 an Orthofix service company, of which the Appellant was a director, started to occupy office premises at Cedar Court Business Centre, Henley-on-Thames, England. There were twenty offices in the building and the Orthofix company occupied one of them.

*1988 – the laryngeal masks*

41. About the same time as he became involved with Orthofix, the Appellant entered into another venture concerned with laryngeal masks and for many years conducted both businesses in parallel. Whilst in the Seychelles the Appellant had been introduced to a Dr Brain, who had been a consultant anaesthetist in the Seychelles but from 1980 was in the United Kingdom. Dr Brain was the inventor of a new medical product known as the laryngeal mask for use in anaesthesia but could not find a company to manufacture it. The Appellant tried to help.

42. In about 1987 early prototype masks were hand made at the factory of Chelle Plastics Limited in the Seychelles. There was conflicting evidence about the date upon which the government of the Seychelles confiscated the factory. In oral evidence the Appellant thought that this was in 1989 but, in the Inland Revenue's Form Dom 1 which the Appellant completed on 8 April 2004, he stated that the confiscation was in the early 1980s. The evidence of Mr Guy Morel and other witnesses was that the factory had been confiscated in or by 1980. However, we accept the evidence of the Appellant that the factory was confiscated in 1989 because we also accept his evidence that hand-made prototypes of the laryngeal mask were produced there and that would have had to have been shortly before 1988. When the factory was confiscated all the contents and machinery were removed but the Appellant was permitted access to the offices at the factory.

43. It was found that the hand-made prototype masks were not suitable for mass production. The Appellant made enquiries and found a suitable business in Indiana in the United States of America which would mass produce the masks. Manufacturing of the masks was officially launched in the United States in 1988.

44. On 23 November 1988 the Appellant, two business associates and two companies entered into an agreement to exploit the invention of the laryngeal mask. The Appellant's address was given as Grove House and the agreement was stated to be subject to English law. The Appellant and his two business associates were appointed trustees of a number of world-wide patents relating to the laryngeal mask to hold them in three equal but undivided shares (shares A, B and C). Share B was to be held for the benefit of the Appellant and on his death for the benefit of the beneficiaries named by him by the terms of a will admitted to probate in England. (At that time only the 1977 will had been executed.) As at November 1988 patents had been applied for in thirteen countries, including the United Kingdom but not including the Seychelles.

45. Although in 1988 all the masks were mass produced in the United States they were not then sold there. Dr Brain supervised the clinical trials of the mask in the United Kingdom and the early clinical work and the development of the mask was done in the United Kingdom. The first mask was actually sold to a hospital in England and within twelve months a substantial number of other hospitals in the United Kingdom were using the laryngeal masks. By 1989 there was a service company in the United Kingdom (for which the Appellant's future wife worked) which liaised between hospitals here and the factories in the United States which were manufacturing the masks. At the end of 1989 the cost of manufacturing the masks in the United States became too expensive and it was decided to set up a factory in the United Kingdom in Kington in Herefordshire. After 1989 about half of all laryngeal masks were manufactured at that factory. All these masks were sold to entities overseas.

46. The Appellant and his business associates established a number of companies for the purposes of the laryngeal mask business. Like Orthofix, the administration of the companies was based in Cyprus. One group of companies (the United Kingdom laryngeal mask group) marketed the mask in the United Kingdom and at least one of these companies became quite a substantial company because it had a lead of two years before the masks were sold overseas. Another group of companies (the international laryngeal mask group) marketed the masks in the rest of the world through a network of subsidiaries. The Appellant's involvement was mainly with the international laryngeal mask group of which he was chairman. He was also a director of a number of other companies in both groups. In addition, other companies with which the Appellant was concerned invested in businesses in the United Kingdom which were concerned with the laryngeal mask.

47. In or about 1990 the offices at Cedar Court in Henley (then occupied by one or more Orthofix companies) also became the business address of an international laryngeal mask company of which the Appellant was director whose function was to support the expansion into overseas distribution of the masks.

*1988 - Old Place*

48. It will be recalled that in 1964 the Appellant had purchased Grove House in Reading, England. In 1971 Grove House was transferred to an Isle of Man

company but the Appellant accepted that he was its beneficial owner. Grove House was let by the Appellant between 1976 and 1980 and in June 1982 it was transferred from the Isle of Man company to a company registered in Panama (the Panamanian company). The tithe barn was let from the mid 1980s. Later the tithe barn was converted into two houses. In January 1989 Grove House was sold in two lots; one lot was the converted tithe barn which was sold for £200,000 and the other was Grove House which was sold for £350,000 making a total of £550,000.

49. Meanwhile in late 1988 the Panamanian company purchased a house called Old Place, Harpsden, Henley-on-Thames with 27 acres for the sum of £725,000. (Some friends of the Appellant from the 1960s also lived in the village of Harpsden and other old friends lived reasonably close). Most of the purchase price for Old Place came from the sale price of Grove House and the difference came from the Appellant's Bird Island Trust. Arrangements were made for a bridging loan between the purchase of Old Place and the sale of Grove House. Old Place consists of two cottages knocked into one. The cottages were originally built in about 1560 and extended in the 1930s. The house has a ground area of about 3,500 square feet but the rooms are small. Part of the house has a depth of only 18 feet. After the purchase of Old Place further land was purchased and currently there are about forty-five acres. The house was also improved and is now worth about £2M. The furniture in Old Place came from Grove House. The Appellant moved his vintage cars, paintings and valuable guns from Grove House to Old Place as well as his clothes for use in Europe.

50. The Appellant applied for the renewal of his gun licences from Old Place. The Firearms Act 1968 provides that an application for the grant of a firearm certificate shall be made to the chief officer of police for the area in which the applicant resides. Although there is provision for applications to be made by visitors, the Appellant made his applications as a resident. For example, in December 1990 the Appellant applied for a firearm certificate for a .22 rifle and gave his current home address as "c/o Old Place, Harpsden, Henley UK" and his permanent home address as Bois Noir in the Seychelles. His business address was stated to be Cedar Court Business Centre, Henley-on-Thames. The application stated that the Appellant intended to use the firearm to shoot rabbits on land attached to Old Place. (In addition the Appellant told us that he shot at other places in the Oxfordshire and Berkshire area and he was frequently in the United Kingdom in the shooting season, that is in October, November and December each year.). A police report on the application stated that the Appellant had an address abroad and spent five months of the year in the United Kingdom. In October 1991 the Appellant applied for a shot gun certificate in respect of four shot guns. The police report on this application stated that the house (Old Place) was used by the Appellant for a total of five months each year and was not used by anyone else. The remainder of the year was split between the United States and the Seychelles where his home was. The report also stated that the Appellant was a registered non-resident in the United Kingdom but he paid British taxes and was not a tax exile.

*Summary of facts to 1992*

51. The years of assessment the subject of this appeal are 1992/93 to 2003/2004 inclusive but the facts we have found are relevant to the question whether the Appellant acquired a domicile of choice in the Seychelles in 1976. At this stage a short summary may be helpful.

52. The Appellant's business ventures began with the successful juke-box business which lasted in England from 1958 to 1974. This was followed by the unsuccessful Canadian venture which lasted from 1974 until all the debts were paid in 1987. Meanwhile the successful Californian venture continued from 1977 to 1992. The Orthofix venture, based in Verona, Italy, began in 1987 and was continuing in 1992. The laryngeal mask business began in 1988 and was also continuing in 1992. The plastics factory in the Seychelles was never very profitable. It began production in 1976 but was confiscated from about 1989 and remained confiscated in 1992. Thus the business ventures which were active at the beginning of the tax year 1992/93 were Orthofix and the laryngeal mask business. In 1992 at least one of the Orthofix companies and at least one of the laryngeal mask companies had offices at Cedar Court, Henley in the United Kingdom and a laryngeal mask company also had a factory at Kington in the United Kingdom; the factory at Kington was manufacturing about half of all the output of masks.

53. As far as personal assets were concerned the Appellant had purchased Grove House near Reading in 1964 which he used as his residence from 1966 to 1976. In or about 1971 all the Appellant's assets in the United Kingdom were transferred to the Isle of Man companies and these included Grove House. Nevertheless, apart from a period from 1976 to 1980 when Grove House was let, the Appellant continued to use Grove House as a residence. In 1975 the Appellant purchased Bois Noir in the Seychelles and this house was let from 1976 to 1979. From 1979 to 1986 the Appellant was married to Mrs Dilona Gaines-Cooper and lived with her at a house in California. At the beginning of 1989 Grove House was sold and at the end of 1988 Old Place had been purchased in its stead. The Appellant accepted that he was the beneficial owner of Grove House and its contents and later Old Place.

54. We now turn to find the facts relating to the years 1992/93 to 2003/2004 which are the subject of these appeals. We begin with personal matters, including some 1992 amendments to the 1977 will, the second marriage of the Appellant, the birth of his son, a 1999 will and developments at Old Place. We then turn to consider developments in the continuing businesses of Orthofix and the laryngeal mask together with changes in the business premises used by those companies in the United Kingdom. Finally we summarise the continuing connections between the Appellant and the Seychelles and the continuing connections between the Appellant and the United Kingdom before concluding with our findings about the time spent by the Appellant in the United Kingdom and in the Seychelles.

*The 1992 amendments to the will*

55. On 20 March 1992 the Appellant amended his will of 20 July 1977 in manuscript. Although the amendments were signed by him that signature was not witnessed and it is therefore not clear that it took effect as an amended will;

the amendments may have been only instructions for a change. The statement that the Appellant was domiciled on the Seychelles was not amended. There was a change in the identity of the executors so that Messrs Theodore Goddard and two individuals were named instead of Singer and Friedlander Trust Company (Isle of Man). 30% of the residuary estate was left to the Appellant's fiancée, Miss Jane Laye-Sion.

*1993 – marriage to Miss Jane Laye-Sion*

56. On 3 April 1993 the Appellant was married to Miss Jane Laye-Sion at the Register Office in Henley-upon-Thames. A blessing arranged by Bishop French took place on 12 April 1993 in Mauritius. Miss Laye-Sion was born on 11 July 1959. Her father was a civil servant in the Seychelles and both her parents were Seychellois. Thus Miss Laye-Sion was also Seychellois. As a child Miss Laye-Sion grew up in Mahé. The Appellant first met her at her father's birthday party in the Seychelles in August 1975 (when she was sixteen) and they became close friends.

57. In 1977 Miss Laye-Sion left the Seychelles and came to the United Kingdom to complete her education. She was a boarder at Padworth College near Reading; the Appellant had introduced her to the owner of the College. During this time Miss Laye-Sion met the Appellant from time to time and on occasions went to Grove House. During her time at Padworth College Miss Laye-Sion took and passed her driving test after which she was given a bright yellow Mini motor car by the Appellant. In 1979 Miss Laye-Sion took her final A-level examination and decided to stay in the United Kingdom. She entered national insurance in 1979 and had a bank account and credit card here.

58. Also in 1979 adverse political pressure led to Miss Laye-Sion's family (her mother, father, sister and two brothers) selling their house in the Seychelles and setting up home in the United Kingdom. In 1982 the whole family were given indefinite leave to remain in the United Kingdom but in or about 1983 Miss Laye-Sion's parents divorced. Her mother went to Australia and later emigrated to Canada. Her father returned to the Seychelles having retired from his employment as a civil servant. Miss Laye-Sion's sister and two brothers remained in the United Kingdom.

59. After obtaining her A-levels in 1979 Miss Laye-Sion took a job with a company called Electro-Biology in Reading; she had met the managing director of that company who was a business associate of the Appellant. During this time she rented a small house in Wallingford. She saw the Appellant when he was in the United Kingdom and they would dine together either in London or near Reading or Henley. In 1984 Miss Laye-Sion was asked to become, and did become, a director of a company connected with the Appellant which later became a company in the international laryngeal mask group.

60. In 1985 Miss Laye-Sion left Electro Biology and visited the Appellant in California a number of times over a period of about ten months. The Appellant was then married to Mrs Dilona Gaines-Cooper but that marriage was disintegrating; there had been a separation and a divorce was planned. Miss Laye-Sion spent some time with the Appellant and lived in a house in California

which belonged to the Appellant or one of his companies. (This was not the same house as that which had been occupied by the Appellant and Mrs Dilona Gaines-Cooper.) In 1986 Miss Laye-Sion enrolled full-time at Ealing College where she completed a degree in Economics.

61. Miss Laye-Sion graduated from Ealing College in 1989 when the Appellant asked her to work for a service company in the laryngeal mask group. The group was run from Cyprus (like Orthofix) but the service company had an office in Cedar Court, Henley-on-Thames. During this time Miss Laye-Sion lived in a flat in Maidenhead. In 1990 she bought a holiday home in Barbados for \$600,000 which is an apartment on a golf course complex. The apartment has a floor space of about 2,000 square feet and is now worth about \$1.2M. For some few years prior to her marriage in 1993 (and at least from 6 April 1992) Miss Laye-Sion was in a “good and stable” relationship with the Appellant. After her marriage Mrs Jane Gaines-Cooper lived at Old Place, the house purchased indirectly by the Appellant in 1988, and she also visited Bois Noir in the Seychelles. The Appellant told us that one of the reasons why he had sold Grove House and purchased Old Place in 1988/89 was because at that time he hoped to persuade Miss Laye-Sion to marry him.

62. In about June 1994 Mrs Jane Gaines-Cooper applied for naturalisation as a British subject. She gave her address as Old Place, Harpsden and stated her occupation as managing director of a laryngeal mask company at Cedar Court, Henley with a registered office in Reading. The form of application for naturalisation asked for details of all absences from the United Kingdom during the previous three years and Mrs Jane Gaines-Cooper replied that she had visited a number of stated countries for business and pleasure with a maximum length of four weeks for a visit but she did not mention the Seychelles. In oral evidence Mrs Jane Gaines-Cooper told us that “quite possibly” she did visit the Seychelles in that three year period but she could not recall exact dates. We saw a record of one visit from 19 to 26 April 1993 recorded on a British Airways schedule but accept that Mrs Jane Gaines-Cooper may have made other visits using other airlines. On receiving British citizenship Mrs Jane Gaines-Cooper did not relinquish her Seychelles citizenship.

#### *1998 – James*

63. On 3 April 1998 the Appellant’s son James was born at the Portland Hospital in London. When James was born the Appellant put him down for Eton and a little later paid all the fees in advance for the five years of James’ future attendance (from the age of 13 to 18) We were told that the arrangement was that if James attended another school instead of Eton the fees would be available for that other school.

64. When James was about three years old, on 22 April 2001, he was baptised by The Right Reverend French Chang-Him in the Seychelles. Mr Curtis-Bennett, who is a British citizen, was one of the four godparents; the other three lived in the United Kingdom. James attended Rupert House preparatory school in Henley-on-Thames until July 2005. During that time Mrs Gaines-Cooper lived at Old Place near Henley during term times and both she

and James spent the school holidays in the Seychelles or travelling with the Appellant on business.

65. After her marriage in 1993, and the birth of James in 1998, Mrs Gaines-Cooper continued with her work for the laryngeal mask company in the United Kingdom until 2001 when she ceased to be managing director of the company. At this time she was spending about nine months each year in the United Kingdom and three months travelling overseas for business and holidays. Her tax declarations stated that she was resident in the United Kingdom and in oral evidence she accepted that at this time her main residence was in the United Kingdom. In the years 1994 to 1997, she made visits to the Seychelles on 10 to 18 July 1994; from 18 September to 3 October 1994, from 9 to 30 March 1995; 24 May to 8 June 1995; 12 to 15 November 1995; 22 September to 7 October 1996; 14 to 18 November 1996; 26 December to 3 January 1997; 23 to 28 February 1997 and 25 May to 6 June 1997.

66. Since September 2005 James has been to school in Switzerland and will remain there until he is 13 years old. The Appellant and Mrs Gaines-Cooper purchased a house in Switzerland so that Mrs Gaines-Cooper and James can live there while James attends school. The house has a total floor space of 3,850 square feet and is a low house with the bedrooms in the eaves. During school holidays the Appellant and Mrs Gaines-Cooper and James spend time together in the Seychelles and Mrs Gaines-Cooper and James join the Appellant on business trips

*After 1992 –the 1999 will*

67. On 1 June 1999 the Appellant executed another Will (the 1999 Will) which had been prepared by Messrs Smith Barkham Solicitors of London. The 1999 Will gave the Appellant's address as Plantation Bois Noir in the Seychelles and stated that the Appellant was domiciled in the Seychelles. The will stated that it was to be construed and take effect according to English law. Mrs Jane Gaines-Cooper, together with the two individual executors named in the 1992 will were appointed executors and trustees. In the event of Mrs Jane Gaines-Cooper predeceasing the Appellant then two individuals living in the United Kingdom were appointed as guardians of James. All the Appellant's estate wheresoever situated was given to the trustees on trust for sale, the proceeds to be held for the benefit of Mrs Jane Gaines-Cooper but, if she predeceased the Appellant, for any children of the Appellant.

*After 1992 - developments at Old Place*

68. After 1992 the Appellant continued to apply for firearms certificates from Old Place. An application for a firearm certificate was made in December 1993 when the police report stated that the Appellant's main residence was Old Place. Similar applications were made in September 1994, November 1996 (when the Appellant's business address was given as Northfield House, Henley-on-Thames), July 1997 (by which time the Appellant had seven guns), December 2001 (when the Appellant gave his home address as Bois Noir and Old Place), and June 2002 when the only home address given was Old Place. Also in 2002 two more guns had been purchased making a total of nine. By the date of the hearing the Appellant's guns were valuable assets.

69. From about June 1990 the Appellant through his agent applied for a number of planning permissions to improve and enhance Old Place. Not all were granted but some were. Some of the planning applications were made in the name of the Appellant but at least one was made in the name of the Panamanian company which owned Old Place. This application stated that “the ownership of the property by [the company] is for administrative reasons. The property is used solely by Mr Gaines-Cooper as his private UK residence”.

70. Renovation work was carried out at Old Place before the Appellant’s marriage in 1993 and after that date a historic monastic barn was re-constructed on the premises at a cost of about £230,000; it was used for garages and a caretaker’s flat. We were informed that after 1994 Mrs Jane Gaines-Cooper was the beneficiary under a trust of Old Place but we received no details of such a trust. The land at Old Place is now farmed by a neighbouring farmer under a share farming arrangement with the Appellant. In November 1999 the Appellant’s agent gave notice of an intention to carry out development for agricultural purposes at Bottom Farm, Harpsden. (Bottom Farm was the previous name of Old Place). The letter indicated that the total holding at Old Place was 65.29 acres including 20 acres at Tanners Farm which was three miles away. (Tanners Farm was an asset previously held by the Isle of Man companies.) In about 2001 an agricultural building (an Essex barn) was erected on land at Old Place for the use of the farmer; this building is separated by a road from the house and the monastic barn and is used to store agricultural machinery and hay etc. The Appellant told us that he liked farms and had purchased the agricultural machinery for the use of the farmer who farms the land at Old Place under the farm sharing agreement.

71. The staff at Old Place included a live-in driver/handyman and a cleaner. Also at Old Place are the paintings, the vintage cars and the collection of guns previously at Grove House together with one juke box. Post is sent to the Appellant at Old Place. The Appellant regarded himself and his family as the beneficial owners of the assets in the United Kingdom including Old Place, the paintings, the vintage motor cars, the guns, and any other assets which were once held by the Isle of Man companies.

*After 1992 - developments in the Orthofix business*

72. After 1992 the Appellant’s connection with Orthofix continued. Orthofix went public in 1992 and the Appellant remained as non-executive chairman. At this time Orthofix was an international company and the Appellant was responsible for the situation in the United States and in Italy. He made many visits there and also many visits to the United Kingdom on company business.

73. On 31 March 1992 the Appellant entered into a contract of employment with Orthofix for duties to be performed in the United Kingdom. Between 1992 and 95 the Appellant spent “a lot of time” in the United Kingdom on business connected with Orthofix. In 1994-95 he was involved in negotiating the acquisition of American Medical Electronics in Dallas on behalf of Orthofix. This was a very large deal and took several months to negotiate. It involved constant travel between the Orthofix shareholders in Verona, Italy and the

directors of American Medical Electronics in Dallas. The bankers financing the deal were based in London and Amsterdam and the Appellant had to attend many meetings with them in the United Kingdom. The deal went through in March/April after which the management of the company moved from Cyprus to the United States of America. In September 1995 the Appellant's contract of employment for duties in the United Kingdom ceased.

74. In 2003 the Orthofix group acquired other United States orthopaedic products companies. We saw a list of the Orthofix companies as at December 2005. The Appellant then owned, directly or indirectly, a ten per cent interest in this group. There was then a parent company registered in the Netherlands Antilles and twenty-four subsidiary companies in Brazil, Cyprus, France, Germany, Italy, Mexico, the Netherlands, Puerto Rico, the Seychelles, the United Kingdom and the United States of America. The Appellant was the director of at least three of the Orthofix companies. The Appellant will finally retire as the non-executive group chairman of Orthofix in December 2006

*After 1992 - developments in the laryngeal mask business*

75. After 1992 the laryngeal mask business continued to develop. In 1994 the Appellant told Mr Curtis-Bennett that the government of the Seychelles was going to return the plastics factory with compensation. The Appellant asked Mr Curtis-Bennett to take over the running of the factory as the Appellant was very busy with his other business interests. Mr Curtis-Bennett agreed. At that time the factory was not operational because all the machines, save one, had been removed. The Appellant was compensated for the earlier confiscation and used the compensation money towards building a new high-specification factory in the Seychelles. It cost \$4 million and has very up-to-date facilities. The new factory is on the same footprint as the original factory but there is an additional third storey with a lecture theatre which is used for conferences for international clinicians. Chelle Plastics Limited changed its name to Chelle Medical Limited and Mr Curtis-Bennett became the managing director of Chelle Medical Limited. Both the Appellant and Mrs Jane Gaines-Cooper have offices at the factory.

76. In 1996 a laryngeal mask company began to assemble the laryngeal mask at the new factory. Parts were imported mainly from the United States and assembled to make laryngeal masks which were then exported. Before 2001 management decisions for the laryngeal mask company continued to be made in Cyprus and after 2001 they were made in the Seychelles. Production of the masks in the Seychelles has been successful. At the time of the hearing 7,000 masks were produced there each month. However, the Seychelles factory only represents a small part of the worldwide laryngeal mask operation.

77. Also in about 1996 Orthofix obtained a licence to manufacture some of its orthopaedic products at the factory in the Seychelles and moved one of its assembly lines to that factory paying rent for the space it uses. The total number of employees at the factory is now about 75 who assemble the laryngeal masks and about 12 who work for Orthofix. The factory has been extended by the addition of a new office, workshop and storage rooms.

78. Returning to the laryngeal masks, there are now two types of mask, the reusable mask and the disposable mask. The re-usable masks continued to be manufactured in the United States and in the United Kingdom but in 2000 the Appellant entered into a joint venture with Mr Victor Loh in Singapore and since then components for the reusable laryngeal mask have also been manufactured in Singapore and shipped to the Seychelles for assembly in the new factory. However, the disposable masks are both manufactured and assembled in Singapore. At the beginning the Singapore factory was small (about 3,000 square feet) but in 2002 the operation moved to a new factory in Singapore of 30,000 square feet.

79. By 2004 the Appellant was group chairman of the international laryngeal mask companies and director of a number of United Kingdom companies in the laryngeal mask business. There was a re-structuring of the companies after flotation on the Singapore stock exchange in about 2005 and we saw diagrams of the various companies after December 2005. Two groups of companies had been formed. The first (the Venner Group) was owned directly or indirectly by the Appellant and had a Panamanian holding company and eighteen subsidiary companies in Germany, Italy, Jersey, Netherlands Antilles, the Seychelles, Singapore, Switzerland, and the United Kingdom. The second (the LMA group) had a Netherlands Antilles holding company (which was owned as to 32% by the holding company of the Venner group) and had fourteen subsidiaries in Australia, Canada, Cyprus, Germany, Italy, the Netherlands, the Seychelles, Switzerland, the United Kingdom and the United States of America. The Appellant was the director of at least ten of these companies.

80. In addition the Appellant had an interest in a smaller group of two companies (the Intavent group) which consisted of one holding company and one subsidiary company. Both of these were registered in the United Kingdom. They manufactured laryngeal masks for wholesale distribution in the United Kingdom, Ireland and the Channel Islands.

*After 1992 – changes in the business premises*

81. Between 1988 and 1995 a United Kingdom laryngeal mask company (with which Mrs Jane Gaines-Cooper was connected) was based at Cedar Court, Henley-on-Thames and an Orthofix company also had an office at Cedar Court. The Appellant used to visit these offices from time to time. In 1995 the companies purchased Northfield House near Henley. Northfield House is about fifteen minutes away from Old Place. It cost £750,000 to buy and its restoration cost the same again. It was owned 60% by an Orthofix company and 40% by a laryngeal mask company. Mrs Jane Gaines-Cooper had an office in Northfield House and the Appellant shared an office with others when he visited the building.

82. Sometime in or about 2002 the administrative activities of the international laryngeal mask companies and the Orthofix companies moved to Jersey and now occupy a building of five floors. The Appellant, who is group chairman of the international laryngeal mask companies, has an office and a secretary in Jersey. We were not informed whether Northfield House was sold.

83. Recently the Appellant has scaled down his business activities. He has reduced his commitment to Orthofix and intends to reduce his commitment to the international laryngeal mask group as well. However he says that he would like to take an active role and interest in all the businesses from Bois Noir and his office in the factory in the Seychelles.

*After 1992 - the Appellant's continuing connections with the Seychelles*

84. In 1996 work started on renovations to Bois Noir (now known as Plantation Bois Noir) and during the renovations the Appellant and Mrs Jane Gaines-Cooper stayed at the Fisherman's Cove Hotel when they were in the Seychelles. A second storey was added to the one-storey house and the design was based on the style of a French plantation house with balconies on all four walls. An attic story now contains two bedrooms and a reception area for the use of James. The ground area is now 15,445 square feet (including balconies). The renovation was complete by the time that James was born on 3 April 1998. There are seven permanent staff who do not live in the house.

85. Plantation Bois Noir also houses the Appellant's favourite antiques including some Ming and Ching pottery. The family pets also live at Bois Noir. Mrs Gaines-Cooper's father's ashes are scattered there and the Appellant wishes his ashes to be scattered there. The Appellant is a member of the Reef Golf Course which is near Bois Noir and enjoys the local fishing. He also enjoys visits to Bird Island, another island in the Seychelles.

86. In 2004 the library at Plantation Bois Noir was re-built, the shelves were changed and a humidifier installed. Documents including books and photographs belonging to both the Appellant and Mrs Jane Gaines-Cooper were then moved from Old Place to Plantation Bois Noir and most of the Appellant's family photographs and other important papers are now kept there.

87. Over the years the Appellant has made many friends in the Seychelles. He became involved with, and is a benefactor of, the National Council for Children which is run by Mrs Geva René, who is the former wife of the President. The Appellant also assisted financially with the publication of books for a Tutorial College established by Mr Guy Morel to provide educational opportunities for children in the Seychelles who needed a second chance. We also heard about a number of other charitable activities in the Seychelles with which the Appellant was associated.

88. We accept the evidence of the Appellant that he very much enjoys life in the Seychelles.

*After 1992 - the Appellant's continuing connections with the United Kingdom*

89. Throughout his life the Appellant has kept up with many friends in the United Kingdom and specifically during the years from 1992 the Appellant has maintained his connections with the United Kingdom. He is the beneficial owner of Old Place near Henley-on-Thames where he stays when in the United Kingdom and he has over the years invested large sums in the improvement of Old Place. After 1993 his wife has lived there and after 1998 his son has lived there. His mother and sister also lived not far away. The Appellant has a circle

of friends in the locality of Old Place and attends a number of social functions; one example is a garden opera which has been produced each year in recent years.

90. During the years after 1992 the Appellant also visited the United Kingdom regularly for pheasant shooting (about twelve days a year); he does not shoot outside England and the people he shoots with here are friends he has known for many years. The Appellant also attends Royal Ascot (where he has been a badge-holder for 30 years) for three days a year and visits the Rolls-Royce Enthusiast Club Rally. The Appellant has been a member of the Rolls-Royce Enthusiast Club since the 1970s and has maintained his membership. He has always owned a number of Rolls-Royce vintage motor cars which are kept in England (apart from one which went to the Seychelles but had to be returned because of the humidity). If all the cars were to be moved to the Seychelles they would have to be kept in a fully air-conditioned and dehumidified environment which the Appellant currently does not have there. The Appellant also visits the United Kingdom for the restoration and maintenance of his vintage motor cars (4 or 5 days each year); and for weddings and funerals of his friends. The Appellant is also a member of British Mensa.

91. Since 1992 the Appellant has also visited the United Kingdom regularly for business purposes. He had a contract of employment with Orthofix relating to duties in the United Kingdom from 1992 to 1995 and both the laryngeal mask companies and the Orthofix companies had offices first in Cedar Court and since 1995 in Northfield House (which is close to Old Place). Northfield House was purchased (not leased) by these companies.

*Time in the United Kingdom and the Seychelles - the day count figures*

92. Before finding the facts about the time which the Appellant spent in the United Kingdom and the Seychelles we have to say something about the Appellant's life-style. We accept his estimate that he made about 150 flights each year. At different times from 1976 to 2004 he had business interests in Canada, the United States of America, Italy, Singapore, Jersey, the United Kingdom and Cyprus to name but a few. All this meant that the Appellant's time was not divided only between the United Kingdom and the Seychelles; much time was spent on travel and some time was spent elsewhere. We accept that the Appellant's family life was unusual. He spoke on the telephone to Mrs Jane Gaines-Cooper at least once each day and to James every night. It is with this unusual background in mind that we consider the amount of time spent by the Appellant in the United Kingdom and in the Seychelles.

*1976 to 1980*

93. Beginning with the earlier years there were no formal day count figures for the Appellant's presence in the United Kingdom for the 1970s until the Appellant's figures, prepared in 1979, for the years from 1976 (which were not disputed). As far as time spent in the Seychelles is concerned, the Appellant claimed that until 1980, even when he was doing business in Canada and California, he would spend at least five months of each year in the Seychelles which he would visit at least four or five times a year. The Revenue had prepared a schedule, taken from stamps in the Appellant's passports, which

indicated the following number of visits to the Seychelles in these years: 1973,1; 1974, 2; 1975, 9; 1976, 8; 1977,7; 1978,7; 1979,5; 1980,6; 1981, 4. Some of these visits were of short duration. The Appellant had prepared a schedule showing:

<i>Year</i>	<i>Days in Seychelles</i>
1975/76	166
1976/77	133/181
1977/78	138
1978/79	129
1979/80	122/146

94. We find that from 1976 to 1980 the Appellant (who was working in Canada and California) made a number of visits to the Seychelles some of which were of short duration. We find it most probable that at this time he spent the amount of days he claimed in his schedule, or thereabouts, in the Seychelles. It is relevant that between 1976 and 1979 the Appellant's house in the Seychelles was let to the British High Commissioner and that in 1979 the Appellant married and lived in California. As far as the time spent by the Appellant in the United Kingdom in these years we have no reason to doubt the figures (which excluded days of arrival and departure) prepared by the Appellant in response to the enquiries made by the Revenue in February 1980, namely:

6 June 1976 to 5 April 1977	49
6 April 1977 to 5 April 1978	45
6 April 1978 to 5 April 1979	56

*1980 to 1990*

95. Turning to the 1980's, when the Californian business was developing, the Appellant estimated that he would spend at least two months of the year in the Seychelles. However, the calculations produced by the Revenue indicated that the visits to the Seychelles were about three a year and that some visits were of short duration. As the Revenue's figures were based on the passport stamps we prefer those figures. We also bear in mind that from 1979 to 1986 the Appellant was married to Mrs Dilona Gaines-Cooper and they lived in California. We had no evidence about the time spent by the Appellant in the United Kingdom between 1980 and 1990.

96. We find that in the 1980s the Appellant visited the Seychelles about three times each year, some of which visits were of short duration. We find that he also visited the United Kingdom but are unable, on the evidence before us, to estimate the amount of time he spent here. He also spent time in California.

*1992/93 to 2003/04*

97. Turning to the years under appeal (1992/93 to 2003/2004 inclusive) three factors are relevant. In November 1992 the Appellant was in the United Kingdom and was advised to have the condition of his heart checked. This he did and found that he needed an urgent heart bypass operation. This took place on 5 December 1992 and the Appellant was unable to fly until the end of

January 1993. The second factor was the birth of James in 1998. Mrs Jane Gaines-Cooper was unable to fly for some time after the birth and the Appellant stayed in the United Kingdom for sixteen days before and after the birth. The third factor is that the Revenue's enquiries commenced in 2000 which may have had an effect on the number of days the Appellant spent in the United Kingdom at about that time.

98. The Appellant's figures for the number of days which he spent in the United Kingdom were:

1992-93	107	(47 and 60 for the heart bypass)
1993-94	78	
1994-95	110	
1995-96	66	
1996-97	109	
1997-98	92	(84 and 8 for the birth of James)
1998-99	110	(102 and 8 for the birth of James)
1999-2000	81	
2000-01	50	
2001-02	0	
2002-03	68	
2003-04	35	
2004-05	48	

99. The Appellant's figures were based upon the principles in the Inland Revenue's publication "IR 20 Residents and Non-Residents – Liability to tax in the United Kingdom". That is, the Appellant's figures ignored the dates of arrival and departure and they also ignored unusual events. As far as the days of arrival and departure are concerned many of the days which the Appellant spent in the United Kingdom were single days (where arrival was one day and departure on the next) which, therefore, were not included at all in his figures. Also, three of the years were modified to take account of the heart bypass operation in 1992 and the birth of James in early April 1998. However, in this appeal we must apply the law rather than the provisions of IR 20. We make findings about the time spent by the Appellant in both the United Kingdom and the Seychelles as such time is one factor to be taken into account in considering domicile, residence and ordinary residence

#### *1996/97 to 2003/04*

100. We begin with the later years, namely 1996/97 to 2003/2004. The Revenue argued that if one ignored both the dates of arrival and departure, and also single days, a distorted picture emerged. For example, if the Appellant arrived in the United Kingdom on one day and left on the next he recorded that no days were spent in the United Kingdom. The Revenue argued that such a visit should count as one day. Accordingly, they prepared figures for the later years under appeal based on the Appellant's schedules but counting the nights actually spent in the United Kingdom These figures showed:

<i>Year</i>	<i>Number of days</i>	<i>Number of Visits</i>	<i>Number of visits of more than one night</i>
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1996/97	146	36	29
1997/98	141	57	37
1998/99	151	42	32
1999/2000	127	46	25
2000/2001	94	39	19
2001/2002	27	27	0
2002/2003	105	43	28
2003/2004	71	37	19
2004/2005	94	46	24

101. The Appellant agreed that, on the basis that these figures were prepared, they were correct. He also agreed that most of the visits were to see Mrs Jane Gaines-Cooper and later James but also to see Mrs Flora Gaines-Cooper, the Appellant's mother. Most of the visits were at weekends but the Appellant did not visit the United Kingdom every week-end. In most years (1996, 1997, 1998, 2000, 2002) the Appellant spent Christmas Day in the United Kingdom. We accept that the Appellant used the London airports as a hub to change aeroplanes but the Revenue's schedules did not include any figure for a flight which left on the same day as the previous flight arrived. For all these reasons we are of the view that the Revenue's figures for these later years are to be preferred.

102. We accept that the Appellant spent time with Mrs Jane Gaines-Cooper and James in the Seychelles but he agreed that that was not as often as he liked and amounted to weeks rather than months in those years. At this time the Appellant did not spend in the Seychelles all the time that he was not in the United Kingdom. He spent 150 days each year in aeroplanes, three or four months each year in Jersey, three or four months each year in the United Kingdom, two weeks in Cyprus, two weeks in Italy, and about six to eight weeks each year in the United States. This leaves little time for visits to the Seychelles.

103. For the years 1996/97 to 2003/04 we find that the days spent in the United Kingdom were as set out in the Revenue's schedule and that the time spent in the Seychelles each year was measured in weeks rather than months.

*1992/93 to 1995/96*

104. Turning to the earlier years (1991/92 to 1995/96) the Appellant accepted that from 1992 to 1995 he was employed by Orthofix half the time in the United Kingdom and was in receipt of a salary paid here (upon which he had paid tax). During these years he came to the United Kingdom "an awful lot" and he had an office here at Cedar Court and after 1995 at Northfield House. The Revenue had examined the British Airways schedules and the Appellant's passports and had produced figures for the earlier years on the basis that any time not otherwise accounted for was spent in the United Kingdom. The Revenue's figures (which included some days of arrival and departure) for the earlier years, were

<i>Year</i>	<i>Days in the United Kingdom</i>	<i>Visits to the Seychelles</i>
1991-92	170	3
1992-93	249 (as amended at the hearing)	2

1993-94	251	1
1994-95	242 (as amended a the hearing)	3
1995-96	232	3
1996-97		5

105. The Appellant disputed the Revenue’s figures because they were based on British Airways schedules which were not always accurate and could not include flights taken with other airlines. We accept that objection. We also consider that it is not reasonable to assume that any time unaccounted for after an examination of the Appellant’s passport and the British Airways schedules must have been spent in the United Kingdom, especially bearing in mind the Appellant’s international obligations. As well as visits to the Seychelles and the United Kingdom the Appellant made very many visits to other parts of the world.

106. Accordingly, for these earlier years we have started with the Appellant’s figures and have adjusted them on the same basis as we have agreed the figures for the later years, namely we have not ignored both the days of arrival and the days of departure but have counted the nights actually spent in the United Kingdom. We have also counted as single nights visits which begin on one day and end on the next. As these were not recorded by the Appellant on his schedules we have assumed that the number of such visits each year was the same as the average for the later years (namely 18).

107. We prefer these figures as they are more consistent with the figures we have found for the later years. They are also consistent with the oral evidence of the Appellant that at this time he spent “about three months in this country – perhaps a little more”. The figures have to be considered together with the evidence of the Appellant, which we accept, that he spent about 150 days a year on aeroplanes in flight. The Appellant also estimated that at about this time he spent two to three months in the United States, a few weeks in Italy, not much time in Jersey, a week or two in Cyprus and as much time as possible in the Seychelles. This leaves up to three months for visits to the Seychelles.

108. We therefore find that for the years 1991/92 to 1995/96 the days spent in the United Kingdom were as below and that the time spent in the Seychelles in each of those years was measured more in weeks than months:

1991-92	107
1992-93	147
1993-94	121
1994-95	158
1995-96	110

109. In the light of our findings of fact we now turn to consider each of the issues for determination in the appeal.

**Reasons for Decision – Domicile**

110. The first issue is whether the Appellant was domiciled in England during the tax years from 1992-93 to 2003/04.

111. It was the Appellant's case that he abandoned his domicile of origin in England and acquired a domicile of choice in the Seychelles in 1976 and that that domicile of choice had subsisted at all times since then. He argued that in 1976 there was a break in the pattern of his life. After that his chief residence was in the Seychelles and there was no home in the United Kingdom available for his use because in 1976 Grove House was rented out to the Bank of America until 1980 and later let to Mr John Barber. He also relied upon the facts that he had built the plastics factory in the Seychelles in 1976 and had notified the Inland Revenue and the Bank of England that he was non-resident in the United Kingdom. He also relied on the fact that in the early years he spent several months in the Seychelles each year (compared to the number of days he spent in England).

112. It was the Revenue's case that the Appellant never abandoned his domicile of origin. He bought a furnished house in the Seychelles in 1975 and built a plastics factory there in order to obtain a residency permit, but the quality of his long established ties with the United Kingdom, his continued residence in the United Kingdom, together with his regular visits to the United Kingdom all established that he remained domiciled in the United Kingdom. His putting his son down for Eton showed his intentions for the future.

113. We approach this issue by first considering the burden and standard of proof. We then identify the legal principle to be applied and consider separately the two elements of residence and intention. Finally we summarise the principles established by the relevant authorities and apply them to the facts of this appeal.

*The burden and standard of proof*

114. As far as the burden of proof is concerned, Mr Flesch for the Appellant accepted that the burden of proving that the Appellant had acquired a domicile of choice in the Seychelles lay on him (see *In the Estate of Fuld deceased* (No 3) [1968] P 675 at 685 D-E).

115. Turning to the standard of proof *Fuld* at 685D-686D is also authority for the view that the standard of proof is the civil standard of the balance of probabilities and not the criminal standard of beyond reasonable doubt. But *Fuld* at 685D-686D also gives guidance in applying the civil standard of proof. The necessary intention must be "clearly and unequivocally proved". The character of a domicile of origin is more enduring; its hold stronger and less easily shaken off. There must be an intention freely formed to reside in a certain territory indefinitely, The court must be satisfied as to the proof of the whole. The weight to be attached to the evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction will vary according to the nature of the case. However, unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists. The acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words.

116. The principle that the standard of proof is the civil standard of the balance of probabilities was confirmed in *In Re Flynn deceased* [1968] 1 WLR 103 at 115G-H where Megarry J indicated that that principle was subject to the overriding consideration that so serious a matter as the acquisition of a domicile of choice was not to be lightly inferred from slight indications or casual words. The principle was also confirmed in *Buswell v Commissioners of Inland Revenue* 49 TC 334 at 361G-H; and most recently in *Agulian and another v Cyganik* [2006] EWCA Civ 129 at paragraphs 7 and 53.

117. We conclude that the burden of proof in this appeal is on the Appellant and that the standard of proof is the balance of probabilities bearing in mind that unless we are satisfied by evidence of change the domicile of origin persists.

*The principle to be applied*

118. The parties agreed that the principle to be applied was summarised in *Dicey and Morris on The Conflict of Laws* Thirteenth Edition (2000) Volume 1 Rule 10 at page 117 as:

“Rule 10 Every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise.”

119. It is clear that, in considering the requirements of residence and of intention, it is necessary to look at all the evidence. Dicey states Rule 11 at p 122 as follows:

“Rule 11 any circumstance which is evidence of a person’s residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice in that country.”

120. The totality of the evidence can include conduct after the date of the alleged acquisition of a domicile of choice. In the very recent case of *Cyganik* (2006) Mummery LJ said at paragraph 46(1):

“First, the question under the [Inheritance (Provision for Family and Dependents) Act] 1975 Act is whether Andreas was domiciled in England and Wales *at the date of his death*. Although it is helpful to trace Andreas’s life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. Positioned at the date of death ... the court must look back at the whole of the deceased’s life, at what life has done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death. Soren Kierkegaard’s aphorism that “Life must be lived forwards, but can only be understood backwards” resonates in the biographical data of domicile disputes.”

121. The totality of the evidence can also include the evidence of the Appellant about his intentions but here there is a need for caution. As Lord Buckmaster said in *Ross v Ross* [1930] AC 1 at 6-7:

“Declarations as to intention are rightly regarded in determining questions of a change of domicile, but they must be examined by considering the person to whom, the purposes for which, and the circumstance in which they are made and they must further be fortified and carried into effect by conduct and action consistent with the declared [intention].”

122. Having stated the general rule we now turn to consider separately the two elements of residence and intention.

*Residence for the purposes of the law of domicile*

123. *Dicey* goes on to say, in relation to Rule 10;:

“For the purposes of this Rule “residence” means very little more than physical presence. But it does mean something more: thus a person is not resident in a country in which he is present “casually or as a traveller”. “Residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it”.

124. The phrase “physical presence in a country as an inhabitant of it” occurs in the judgment of Nourse J in *Inland Revenue Commissioners v Duchess of Portland* [1982] Ch 314 , 318-9; [1982] STC 149 at 155c which also gives guidance where a person is physically present in two countries as an inhabitant of both. In *Duchess of Portland* the issue was whether a taxpayer had abandoned a domicile of choice. She had a domicile of origin in Quebec and on her marriage before 1 January 1974 she acquired a domicile of dependency in England. Under section 1(2) of the Domicile and Matrimonial Proceedings Act 1973 she was, after 1 January 1984, treated as having retained that domicile as a domicile of choice. She visited Canada annually for about eleven weeks each year and maintained a family home in Quebec which was kept ready for her occupation at all times. Otherwise she lived with her husband in England. Nourse J held that the taxpayer had not abandoned her English domicile of choice. At 155c he said:

“Residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it. If the necessary intention is also there, an existing domicile of choice can sometimes be abandoned and another domicile acquired or revived by a residence of short duration in a second country. But that state of affairs is inherently improbable in a case where the domiciliary divides his physical presence between two countries at a time. In that kind of case it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.”

125. Thus *Duchess of Portland* indicates that a person can be resident in two countries at the same time in which case, in deciding where he is resident for the purposes of the law of domicile, it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.

126. In *Inland Revenue Commissioners v Bullock* [1976] STC 409 at 414d Buckley LJ noted:

“A man may have homes in more than one country at one time. In such a case, for the purposes of determining his domicile, a further enquiry may have to be made to decide which, if any, should be regarded as his principal home.”

127. The treatment for the law of domicile of a person with more than one residence was also considered in 1987 in *Plummer v Inland Revenue Commissioners* [1987] STC 698. There a taxpayer with a domicile of origin in England stayed with her father in England while at school and visited her mother and sister in Guernsey for week-ends and holidays. Most of her time was spent in England. Hoffmann J held that the taxpayer had not acquired a domicile of choice in Guernsey. At 706 f he said:

“Speaking for myself, while I find the contrast between an inhabitant and a person casually present was useful to describe the minimum quality of residence which must be taken up in a new country before a domicile there can be acquired, the concept of being an inhabitant seems to me less illuminating in cases of dual or multiple residence such as the present.

Clearer guidance is to be found in the well-known passage in the speech of Lord Westbury in *Udny v Udny* [(1869) L R 1 SC & Div 441]:

“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”

I infer from this sentence ... that a person who retains a residence in his domicile of origin can acquire a domicile of choice in a new country only if the residence established in that new country is his chief residence.”

128. Later at 707b Hoffmann J continued: :

“...loss of a domicile of origin or choice is not inconsistent with retention of a place of residence in that country if the chief residence has been established elsewhere.”

129. Buckley LJ in *Bullock* does not elaborate on the meaning of “principal” residence nor does Hoffmann J in *Plummer* elaborate on that of “chief” residence but a country which is of most importance to an individual, or the centre of his interests, is likely to be the place of his chief or principal residence.

*Intention of permanent and indefinite residence*

130. The second requirement for the acquisition of a domicile of choice is intention of permanent or indefinite residence. As stated by Lord Westbury in *Udny* at 458:

“It must be a residence fixed not for a limited period or particular purpose but general and indefinite in its future contemplation.”

131. In *Inland Revenue Commissioners v Bullock* [1976] STC 409 at 415 a-b Buckley LJ said:

“In my judgment the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to make him change his mind. ... the question was whether the person whose domicile was in question had “determined” to make, and had in fact made, the alleged domicile of choice “his home with the intention of establishing himself and his family there and ending his days in that country.”

*The legal principles summarised*

132. From the authorities we conclude that a domicile of choice is acquired by the combination of residence and the intention of permanent or indefinite residence and in reaching a decision it is necessary to look at the totality of the evidence, including events which occurred after the claimed acquisition of a domicile of choice. Residence for the purposes of the law of domicile means physical presence as an inhabitant but where a person resides in two countries it is necessary to look at all the facts in the light of the principle that a person who retains a residence in his domicile of origin can acquire a domicile of choice in a new country only if the residence established in that new country is his chief residence. There must also be the intention of permanent and indefinite residence: a determination to make the alleged domicile of choice his home with the intention of establishing himself and his family there and ending his days in that country.

*The legal principles applied to the facts*

133. We now turn to apply those principles to the totality of the facts of the present appeal and we begin with the evidence of the witnesses.

134. The evidence of the Appellant was that on moving to the Seychelles in February 1976 he firmly believed and intended that he would live out his days in the Seychelles and that was still his wish. He had never had the desire to return to live in England and he believed that he had acquired a domicile of choice in the Seychelles. He regarded Plantation Bois Noir as his principal residence and his home. Although he had to travel extensively on business, the Seychelles became his true home in the mid-1970s and had remained so ever since. It was where he intended to spend the remainder of his days. We have considered this evidence in the light of the totality of the facts we have found.

135. The evidence of Mrs Jane Gaines-Cooper was that she regarded Bois Noir as her home and Old Place as her base when she was in the United Kingdom. However, she accepted that at one time she was in the United Kingdom for nine out of twelve months each year and later for half of each year.

136. The evidence of Mr Guy Morel was that the Appellant was “definitely settled” in the Seychelles and that “his heart was there” The evidence of Sir James Mancham was that he thought of the Appellant as being domiciled in the Seychelles: “he belongs here and is regarded by all as Seychellois”. The evidence of Mrs Geva René was that the Appellant “was considered a Seychellois” by the people there; it was her opinion that the Appellant had made his home in the Seychelles and had told her that he wanted to end his days there. Mr Pugh told us that the Appellant “always regarded the Seychelles as his home; although he travelled extensively on business, he was always anxious to get back home to the Seychelles”. We bear in mind that Mr Pugh only lived in

the Seychelles between 1976 and 1980. Bishop French stated that his conversations with the Appellant over the years left him in no doubt that the Seychelles was where he considered his home to be. We bear in mind that the Appellant first met Bishop French in 1993. Mr Curtis-Bennett told us that the Appellant considered the Seychelles to be his home and was of the view that the Appellant would never leave the Seychelles. Mr Victor Loh said that he did not believe that the Appellant would ever stop living in the Seychelles; it was his home and he had too many roots there. Mr Landon expressed the opinion that the Appellant was at home in the Seychelles which he always referred to as home; in his view the Appellant would die in the Seychelles. All the witnesses spoke very highly of the help given by the Appellant to charities and good causes in the Seychelles.

137. However, in considering this evidence we bear in mind that the witnesses admitted that they knew very little of the Appellant's life outside the Seychelles and, as will be clear from the facts we have found, the Appellant also retained substantial ties with England as well as interests in Canada, the United States and many other countries. We regard the evidence of these witnesses, therefore, as of relevance to the Appellant's attachment to the Seychelles rather than establishing the place of his principal attachment.

138. In favour of the Appellant is the fact that the Appellant has had a residence in the Seychelles for more than 30 years. The Appellant purchased Bois Noir as a furnished house in 1976 and after the renovations which were completed in 1998 that residence now has a certain quality. The Appellant wishes his ashes to be scattered there. He met his future wife in the Seychelles. His papers are, since 2004, kept there. In his 1977 will he declared that he was domiciled in the Seychelles. He has social, religious and charitable associations with the Seychelles. He likes living in a warm climate. He planted a coco-de-mer plant there in February 1976.

139. However, the fact is that the Appellant has always retained a house in the United Kingdom and that is where his family lived in the period relevant to this appeal. In reaching a decision we have to look at the totality of the evidence. Residence for the purposes of the law of domicile means physical presence as an inhabitant and in our view the evidence supports the conclusion that the Appellant has, and has always had, a physical presence both in England and the Seychelles. His domicile of origin was England and he retained at all times a presence here which had the quality of residence. He can only acquire a domicile of choice in the Seychelles if the residence established in that new country is his chief residence.

140. We regard as significant the fact that nearly all of the Appellant's connections with the United Kingdom were located in a comparatively small area of the contiguous counties of Berkshire and Oxfordshire. In that small area the Appellant was born and went to school and his mother lived there until her death in 2004. Also in that same small area the Appellant married (twice), purchased two houses (Grove House and later Old Place); invested in at least two farms (the Goose Willow Estate and Tanners Farm); had business offices (first at Cedar Court and later at Northfield House for which companies

associated with the Appellant paid £1.5M); had a number of old friends; attended Royal Ascot; and attended shooting events. Mrs Jane Gaines-Cooper also had very many connections in the same locality. She attended Padworth College, Berkshire and was then employed in Reading, Berkshire. Before her marriage to the Appellant she lived locally and after her marriage lived at Old Place. James went to school in Henley-on-Thames Oxfordshire.

141. We also regard the 1999 will (which is the Appellant's present will) to be of some significance. It was prepared by English solicitors; it is to be construed and take effect according to English law; and the persons appointed to be the guardians of James live in the United Kingdom. Similarly, the agreement of 23 November 1988 to exploit the invention of the laryngeal mask created a trust for the benefit of beneficiaries named in a will of the Appellant admitted to probate in England. Also, of course, the Appellant has always retained his British citizenship and did not apply for citizenship in the Seychelles. Mrs Jane Gaines-Cooper applied for British citizenship.

142. We accept that subjectively the Appellant regards Plantation Bois Noir as his chief residence but we adopt the words of Scarman J in *Fuld* at 692B that "a wealthy man cannot, by his interested declarations, alter the facts of his life". Objectively the facts do not support the conclusion that the Seychelles or Bois Noir was the Appellant's chief residence. He occupies a substantial house with land in England and his wife (and his son since his birth in 1998) lived here until 2005. England remained the centre of gravity of his life and his interests. His chief residence was in England. We do not agree with the argument of the Appellant that his chief residence had to be in the Seychelles from 1976 because there was no home in the United Kingdom available for his use because in 1976 Grove House was rented out. At almost the same time that Grove House was rented out (1976 to 1980) Bois Noir was rented out also (1976 to 1979) and the reason for both rentals was because the Appellant was in Canada pursuing the Canadian venture and later because he had another house and a wife in California. The evidence did not, even in this period, when the Appellant spent materially more time in the Seychelles than in England, persuade us that the Seychelles rather than Canada, California or England was his chief residence.

143. There must also be the intention of permanent and indefinite residence and a determination to make the alleged domicile of choice his home with the intention of establishing himself and his family there and ending his days in that country. But one thing that the Appellant has not done is to establish his family principally in the Seychelles. We regard as significant that Mrs Jane Gaines-Cooper, although a Seychellois by birth, has chosen to live in England since 1977. The Appellant admitted that one reason why Grove House was sold and Old Place was purchased was because he hoped to persuade Mrs Jane Gaines-Cooper to marry him. There was no evidence before us that Mrs Jane Gaines-Cooper intended for the foreseeable future to make her chief residence in the Seychelles. Mrs Jane Gaines-Cooper's intentions do not determine the Appellant's intentions as they are independent people. But the Appellant is much attached to his wife and we believe he had the intention to spend time with her. Her possible ambivalence made it harder to conclude that he intended indefinitely to reside in the Seychelles (and that the Seychelles was his chief

residence). Finally, the fact that in aggregate since 1975 the Appellant has spent most of his time at places other than the Seychelles, (although not all in the United Kingdom) is not indicative of the residence of the Appellant in the Seychelles as being permanent and indefinite.

144. We also do not agree that the building of the plastics factory in the Seychelles proved an intention to change domicile. The factory was built in order to obtain a residence permit and, compared with other successful ventures of the Appellant, was never very successful until about 1996 when it started to assemble laryngeal masks. The effort put by the Appellant into maintaining his Seychelles venture, latterly rebuilding the factory and locating some laryngeal mask assembly there, is evidence of some considerable attachment to the Seychelles but it did not make the Seychelles the centre of his business operations or of his life which centre, in the relevant period, was in England. The pursuit of the Seychelles factory, despite its limited success, is evidence of a wish of the Appellant to retain his connection with the Seychelles but not conclusive of an indefinite intention to remain there. His successful businesses were in Canada, California, Italy and England. We also do not agree that the Appellant spent more time in the Seychelles than in England. On the facts we have found he in fact spent more time in England than in the Seychelles at least during the years under appeal.

145. We accept that from 1976 to about 1980 the days spent by the Appellant in the Seychelles were more numerous than the days spent by him in England but in deciding whether he abandoned his domicile of origin in 1976 we are entitled to look at all the facts including events after that date. There may have been a change in the pattern in 1976 but there have been many changes since all of which lead us to conclude that the Appellant did not abandon his domicile of origin. Overall we believe that the Appellant at all relevant times intended to retain a presence in England for an indefinite period. He may also have intended to maintain a physical presence in the Seychelles for the indefinite future, but his chief residence was in England.

146. We adapt the words of Scarman J in *Fuld* at 692E and find that in fact the Appellant never did wholly reject England nor, indeed, that small part of it located in Berkshire and Oxfordshire where he had so many ties and connections; on the contrary he felt its pull upon his affections and interests all his days. We also adapt the words of Hoffmann J in *Plummer* at 707f and accept that the Appellant likes, nay loves, the Seychelles and enjoys all the amenities of the island of Mahé when he is there, quite apart from enjoying the beautiful house which Bois Noir has become since the renovations which were completed in 1998. We do not underestimate the part which the Seychelles plays in his thinking. Nevertheless these considerations do not outweigh the substantial and continuing part which presence in England played in his life.

#### *Conclusion*

147. Our conclusion on the first issue is that the Appellant has not discharged the burden of proving to us that he abandoned his domicile of origin in England and so we conclude that he was domiciled in England for the tax years from 1992/93 to 2003/04.

*An alternative approach*

148. Having reached that conclusion we record that we also considered an alternative approach which was not argued before us and so does not form part of our decision. The alternative approach considers the period from 1976 to about 1985 and, in particular, the earlier part of that period. This was a period in which most of the Appellant's interests were outside England; although he still owned the Goose Willow Estate (until 1979) and Grove House, his business interests were in Canada, the United States of America and the Seychelles; his wife (Mrs Dilona Gaines-Cooper) was in the United States of America although his parents and many of his close friends were in England; and his physical presence in England was not substantial.

149. In this period, if one were to ask the question: "Did the presence of the Appellant in England make him an inhabitant of England, or was his chief residence in England?" it might be difficult to give an unqualified affirmative answer. This was also the period in which his view of the United Kingdom as a place inimical to entrepreneurial activity was at its clearest and at the beginning of which (in 1976) he had let out his place of residence in England. This was the period in which he got closest to rejecting England.

150. This early period contrasts starkly with the period 1992 to 2004 (the years the subject of these appeals). In that period the Appellant's business interests, although involving companies in many countries worldwide, included companies operating in England. The Appellant was a director of Orthofix in England and spent time in an office in England fulfilling his duties as such director (although he also fulfilled those and other duties outside England). The Appellant married in this period and his wife was mainly in England. The Appellant's son was born in England and went to school here and the Appellant tended to come back to see them at weekends. In this latter period if one were to ask the question: "Did the presence of the Appellant in England make him an inhabitant of England, or was his chief or principal residence (not his house but his residence in the domicile sense) in England?" then the answer would be that England was the centre of his interests and that, coupled with his physical presence here, made England his chief residence.

151. In this period (that is, 1992 to 2004) it is harder to say that the Appellant's rejection of England, or any intention he may have had indefinitely or permanently to reside in the Seychelles, did not waiver or falter and in this period it is therefore clearer that the onus of proof about intention was not discharged.

152. Accordingly, if in our decision we are wrong about the period before 1992, and the Appellant did relinquish his domicile of origin in England in that period in favour of the Seychelles, it is clear to us that after 1992 his physical presence in England was that of an inhabitant and that England was the place of his chief or principal residence, and that for that period he did not discharge the burden of proving that he retained an intention permanently or indefinitely to reside in the Seychelles rather than England.

153. As mentioned above it was not argued before us that, if the Appellant had abandoned his domicile of origin in the late 1970s, he re-acquired it in the 1980s or 1990s. Accordingly the views we have expressed on the alternative approach do not form part of our decision. Also, in reaching our decision we have followed the guidance in *Cyganik* and have identified the question in these appeals as whether the Appellant was domiciled in England and Wales during the years of assessment under appeal. Although it is helpful to trace the Appellant's life events chronologically, and to halt on the journey from time to time to take stock, the question should not be decided in stages. Positioned at the time of the years under appeal we must look back at the whole of the Appellant's life, at what life has done to him and at what were his inferred intentions in order to decide whether he had abandoned his domicile of origin in England and acquired a domicile of choice in the Seychelles. We do not think that he did.

### **Reasons for Decision – Residence**

154. The second issue is whether the Appellant was resident in the United Kingdom for the tax years 1993/94. The Appellant accepted that he was resident in the United Kingdom for the tax year 1992-93 because he had accommodation available for his use in the United Kingdom but for subsequent years the Appellant relied upon section 336(3) of the 1988 Act. The Revenue argued that section 334 applied to the Appellant who was a Commonwealth citizen, who had been ordinarily resident in the United Kingdom before 1976, and who since that date had left the United Kingdom only for occasional residence abroad. It was not suggested to us that we should treat differently any one or more of all the years under appeal and so we consider them together. We begin with the legislation.

#### *The legislation*

155. Section 334 of the 1988 Act provides:

#### **“Commonwealth citizens and others temporarily abroad**

Every Commonwealth citizen or citizen of the Republic of Ireland-

(a) shall, if his ordinary residence has been in the United Kingdom, be assessed and charges to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose of occasional residence abroad and

(b) shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from his property in the United Kingdom or elsewhere, or from any allowance, annuity of stipend, or from any trade, profession or employment in the United Kingdom or elsewhere.”

156. After the tax year 1993-94 section 336 of the 1988 Act provided:

#### **“Temporary residents in the United Kingdom**

(1) A person shall not be charged to income tax under Schedule D as a person residing in the United Kingdom ... if-

he is in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence there, and

he has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment  
but if any such person resides in the United Kingdom for such a period he shall be so chargeable for that year.

(3) The question whether -  
a person falls within subsection (1)(a) above ...  
shall be decided without regard to any living accommodation available in the United Kingdom for his use”

157. It is relevant that subsection (1) of section 336 was first enacted in 1799 but subsection (3) was added by section 208(1) and (4) of the Finance Act 1993 with effect from the year 1993-94. Thus, in considering the earlier authorities we have borne in mind that they were decided on the basis of subsection (1) without the addition of subsection (3). We note that section 336(1)(a) contains the phrase “and not with any view or intent of establishing his residence there”. It seems to us that, in that context, the word “residence” could mean either the concrete noun of a place for living or the abstract noun of residence for the purposes of the Taxes Acts. Section 336(3) now makes it clear, inter alia, that, when interpreting section 336(1), it is the second meaning which must be used and not the first but it seems to us that, in the earlier authorities, the word “residence” in section 336(1) was used with both meanings.

158. We also note that there is no statutory definition of residence and that section 336 is, in effect, an exemption from the normal rules for the purposes of Schedule D only. (The matters the subject of this appeal all concern Schedule D). We have, therefore, found it convenient first to consider the authorities to see what general principles they establish about the concept of residence and to reach a view as to whether, under those principles, it could be said that the Appellant was resident in the United Kingdom. We then turn to consider the provisions of section 336 to see if the Appellant comes within its exempting provisions.

#### *The authorities*

159. The first authority cited to us was *Cooper v Cadwalader* (1904) 5 TC 101. There a citizen of the United States, who resided in New York, rented a house (Millden Lodge) and shooting rights in Scotland for the whole of a term of three years, later extended to six years. The house was kept available for his use at all times and he spent two months continuously each year there. He was held to be resident in the United Kingdom. At 105 the Lord President referred to the lease and to the occupation which was not casual or temporary but substantial and continuous. At 106 the Lord President considered whether the taxpayer came within what is now section 336 (without subsection (3)) but held that he did not because he had a “residence always ready for him” and so he was not present in the United Kingdom “for some temporary purpose only and not with any view or intent of establishing his residence there.” At 108 Lord Warren agreed and held that two months each year was not “temporary purposes” and also there was an intent of establishing a residence.

160. *Commissioners of Inland Revenue v Zorab* (1926) 11 TC 289 concerned a British subject who was born in Calcutta and who for thirty years lived all his life in India generally in hotels. In 1920 he left India and thereafter lived in hotels in the United Kingdom, Paris and Belgium. Between November 1920 and May 1925 he lived in the United Kingdom for approximately two and a half years (being about six months of each year) for the purpose of seeing friends. He was assessed to income tax for the year 1924-25 but the Special Commissioners held that he was not resident in the United Kingdom for that year. On appeal Rowlatt J held that there was evidence on which the Commissioners could come to their decision and that they had not misdirected themselves in law. At 291 he said:

“Of course it is perfectly right to say that a man has not got to have a residence in the shape of a building to be resident in this country. That is quite clear. But I think that one has to consider not only the time that he is in this country but the nature of his visit and his connection with the country ... Because the question to be solved is not whether he is resident for the five months he is here, but whether he is resident for the whole year during the time he is not here. ... This gentleman seems to be a mere traveller. ... All that can be said about it is that in the course of his habitual travels he spends a considerable period every year in England.”

161. *Commissioners of Inland Revenue v Brown* (1926) 11 TC 292 also concerned an Indian civil servant who retired in 1893 and came to the United Kingdom where he took a house and lived until February 1918. He then gave up his house and lived in hotels in the United Kingdom until October 1919. He then spent nine months of each year in hotels in Europe and three months in the United Kingdom for a change and to visit his family and friends; he had four sons who all lived in the United Kingdom and two were married. The issue was whether he was resident in the United Kingdom for the year 1924-25 and the Special Commissioners held that he was not. His presence in the United Kingdom was for temporary purposes only within the meaning of section 336(1)(a). Rowlatt J found no error of law in the Special Commissioners’ decision but said that he would also have upheld them if they had decided the matter the other way.

162 *Levene v Inland Revenue Commissioners* (1928) 13 TC 486 concerned a British subject who lived in London until 1919 when he left with the intention of living abroad. He returned to the United Kingdom for five months each year but had no fixed residence either in the United Kingdom or abroad. The issue was whether he was resident or ordinarily resident in the United Kingdom for the years 1920-21 to 1924-25 and the Special Commissioners concluded that he was. At 505 Viscount Cave LC said:

“My Lords, the word “reside” is a familiar English word and is defined in the Oxford English Dictionary as meaning “to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place”. ... In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. ... But a man may reside in more than one place. Just as a man may have two homes – one in London and the other in

the country – so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable to tax in this country.”

163. Later Viscount Cave went on to consider some examples including that of the wanderer who had no home in any country and at 506 said:

“If, for instance, such a man is a foreigner, who has never resided in this country there may be great difficulty in holding that he is resident here. But if he is a British subject the Commissioners are entitled to take into account all the facts of the case . . . . Further the case may be different, and in such a case regard must be had to [what is now s 334 of the 1988 Act] which provides that every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad.”

164. In *Inland Revenue Commissioners v Lysaght* (1928) 13 TC 511 the taxpayer was born in England and lived here until 1919 when he retired and went to live permanently in what was then called the Irish Free State. He continued as an advisory director of an English company; he came to England each month for a directors’ meeting when he stayed for about a week usually at a hotel. The issue was whether he was resident and ordinarily resident in the United Kingdom for the years 1922-23 and 1923-24. The Special Commissioners found that he was and the House of Lords held that there was evidence upon which they could properly arrive at that conclusion.

165. From these authorities we derive a number of principles. First, that the concept of residence is not defined in the legislation; the word therefore should be given its natural and ordinary meaning (*Levene*). Secondly, that the words “residence” and “to reside” mean “to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place” (*Levene*). Next, that the question whether a person is or is not resident in the United Kingdom is a question of fact for the Special Commissioners (*Zorab*). Fourthly, that no duration is prescribed by statute and it is necessary to take into account all the facts of the case; the duration of an individual’s presence in the United Kingdom and the regularity and frequency of visits are facts to be taken into account; also, birth, family and business ties, the nature of visits and the connections with this country, may all be relevant (*Zorab; Brown*). Fifthly, that in general the availability of living accommodation in the United Kingdom is a factor to be borne in mind in deciding if a person is resident here (*Cooper*) (although that is now subject to section 336(3)). Next that the fact that an individual has a home elsewhere is of no consequence; a person may reside in two places but if one of those places is the United Kingdom he is chargeable to tax here (*Cooper* and *Levene*). Seventhly, that there is a difference between the case where a British subject has established residence in the United Kingdom and then has absences from it (*Levene*) and the case where a person has never been resident in the United Kingdom at all (*Zorab*).

166 Applying those principles to the facts of the present appeal we find that the Appellant had a settled abode in Old Place, Henley-on-Thames. There he dwelt permanently and had dwelt in that locality for a considerable time. The day count figures indicate that he spent more time in the United Kingdom each year than he spent in the Seychelles (or any other particular jurisdiction). He made regular and frequent visits to the United Kingdom and had birth, family and business ties here. He was born and went to school here; his mother and sister lived here; after 1993 his wife and later his son lived here; his wife has been settled in the United Kingdom since 1977 and considers herself resident here. His business ties are such that he spent three years working here and the companies with which he was concerned purchased and restored expensive business property here.

167. We accept that the Appellant considered himself resident in the Seychelles and the 1976 letters from the Bank of England support that view. However, in our view he resided in both the United Kingdom and the Seychelles and so under general principles he was resident here. Mr Flesch, for the Appellant, accepted that the authorities indicated that visits to the United Kingdom coupled with available accommodation here *prima facie* sufficed to establish tax residence in the United Kingdom before 1993/94.

168. We therefore conclude that, under general principles, the Appellant was resident in the United Kingdom for the years under appeal.

*Does section 336 take the Appellant outside the charge to tax?*

169. We now turn to see whether, even if the Appellant were resident in the United Kingdom under general principles, section 336(3) takes him outside the charge to tax.

170. We first comment that, in our view, it is section 334 which applies to the Appellant rather than section 336. We do not, for the reasons set out below, regard the Appellant as a temporary resident in the United Kingdom. He is a British subject and, at the times relevant for these appeals, had a residence in the United Kingdom. Even when he went to the Seychelles and established a residence there he, at all times which are the subject of these appeals, retained a residence in the United Kingdom. However, in case section 336 does apply to the Appellant we have considered its provisions.

171. Section 336(3) gives an exemption from tax under Schedule D if “a person ... is in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence there”. For the years 1993-94 and after, this question has to be decided without regard to any living accommodation in the United Kingdom available for the person’s use. We note that section 336(1)(a) contains two cumulative requirements, namely a temporary purpose and no intention to establish residence.

*A temporary purpose*

172. We accept the argument of Mr Flesch that the words “temporary purpose” should be given their natural meaning. “Temporary” is defined in the Oxford English Dictionary as “lasting for a limited time, existing or valid for a

time (only); not permanent; transient; made to supply a passing need.” In approaching the meaning of “temporary purpose” we also consider the authorities cited to us to see what principles they establish.

173. In *Cadwalader* (1904) Lord Adam at 108 said:

“Now, there might have been a question whether coming here to shoot for a few months in the year was to be considered under the construction of this Act as a temporary purpose. I should have thought it was not, because evidently this part of the Act applies to much more temporary purposes than that.”

174. And at 109 Lord McLaren said:

“I don’t think that Mr Cadwalader is in a position to affirm, when he comes year after year during the currency of his lease to spend the shooting season in Scotland, that he is here for a temporary purpose only.. ... taking the ordinary meaning of the word I should say that temporary purposes means casual purposes as distinguished from the case of a person who is here in pursuance of his regular habits of life. Temporary purpose means the opposite of continuous and permanent residence.”

175. However, in *Brown* (1926) the appellant was found to be in the United Kingdom for temporary purposes only even though his visits were habitual, for three continuous months each summer and for the same purpose each summer (to see his family). However, given the comments of Rowlatt J we regard this finding as a question of fact rather than of law.

176. In *Levene* (1928) at 506 Viscount Cave LC described the taxpayer’s visits abroad for eight months each year, which were made for the sake of his health, to search for a house and to mitigate his liability for United Kingdom tax as “temporary purposes”. However, *Levene* was decided on the basis of what is now section 334 of the 1988 Act which applies to Commonwealth citizens temporarily abroad and the phrase “temporary purpose” does not appear in that section. We are reluctant to regard that case as establishing any principle applicable to section 336(3).

177. In *Lysaght* (1928) the Court of Appeal reversed the decision of the Special Commissioners that the taxpayer was resident in the United Kingdom and at 13 TC 521 Sargant LJ stated that the purpose of the taxpayer in the United Kingdom (as an advisory director of an English company) “could fairly be described as “temporary” notwithstanding that it was of a regularly recurrent character”. A reference was made to the predecessor of section 336(1). However, the decision of the Court of Appeal was over-ruled by the House of Lords who restored the decision of the Special Commissioners. Viscount Cave LC dissented and at page 532 said that although the appellant came to the United Kingdom at regular intervals and for recurrent business purposes such facts explained the frequency of his visits but did not make them more than temporary visits or give them the character of residence in this country. No specific

reference was made to section 336. As this was a dissenting opinion we have not been able to identify any binding principle from these statements.

178. Thus the relevant authorities are *Cadwalader* and, to a limited extent, *Brown*. We conclude that a temporary purpose is a purpose lasting for a limited time; a purpose existing or valid for a time; a purpose which is not permanent but transient; a purpose which is to supply a passing need. “Temporary purpose” means a casual purpose as distinguished from the case of a person who is here in pursuance of his regular habits of life. Temporary purpose means the opposite of continuous purpose. A decision to visit the United Kingdom for a few months each year to shoot (ignoring the availability of living accommodation) is not a temporary purpose (*Cadwalader*).

179. Applying those principles to the facts of the present appeal we find that the Appellant’s purpose in visiting the United Kingdom was not a purpose which lasted for a limited time; the purpose was to visit his wife and son, his mother and, to a lesser extent, his other friends. This was a permanent and not a transient purpose nor was it simply a passing need. Neither was it a casual purpose but rather it was in pursuance of the regular habits of the Appellant’s life. A decision to visit the United Kingdom on a large number of days each year to be with one’s wife and child is not a temporary purpose.

180. The Appellant relied upon the fact that from 1996/97 onwards most of the visits to the United Kingdom were for two days or less and that pointed to the conclusion that each of the visits was for a temporary purpose only within the meaning of section 336(3). The Appellant’s evidence was that some of his visits to the United Kingdom were short because London was a convenient hub for international flights and sometimes he would be in the United Kingdom while in transit. However, in calculating the time spent by the Appellant in the United Kingdom we have ignored visits he made where he arrived and left on the same day. We also reject the general proposition that because a visit is short it must necessarily be for a temporary purpose.

181. We conclude that the presence of the Appellant in the United Kingdom for the years under appeal was not for a temporary purpose.

*Intention to establish residence*

182. The second cumulative requirement in section 336(1)(a) is the absence of an intention on the part of the taxpayer to establish his residence in the United Kingdom. We accept that the Appellant had a residence, meaning a place to live, in the United Kingdom in the form of Grove House and later Old Place but that is now to be ignored by virtue of subsection (3). We are also of the view that the Appellant had no subjective intention of establishing his residence here for the purposes of the Taxes Acts and would have done quite a lot to ensure that residence with that meaning was not established but that does not mean that objectively he was not resident here.

183. Because the requirements of a temporary purpose and no intention to establish residence are cumulative and not alternative, and as we have found that

the Appellant was not here for a temporary purpose, we conclude that the exemption in section 336(3) does not apply to the Appellant.

*Conclusion about residence*

184. Our decision about residence is that the Appellant was resident in the United Kingdom during the tax years from 1993/94 to 2003/04.

**Reasons for decision – ordinary residence**

185 The third issue in the appeal is whether the Appellant was ordinarily resident in the United Kingdom during the tax years from 1992-93 to 2003/04.

186. The Appellant’s case was that it was not possible to be ordinarily resident in the United Kingdom for any year in which one was not resident and that as the Appellant was not resident in the UK for the years in question he was not ordinarily resident in those years either.

187. In *Levene* at 507 Viscount Cave said:

“The expression “ordinary residence” ... is contrasted with occasional or temporary residence; and I think it connotes residence in a place with some degree of continuity and apart from accidental or temporary absence. So understood, the expression differs little in meaning from the word “residence” ... and I find it difficult to imagine a case in which a man while not resident here is yet ordinarily resident here.”

188. At 527 of *Lysaght* Viscount Sumner said:

“My Lords, the word “ordinarily” may be taken first. The Act on the one hand does not say “usually” or “most of the time” or “exclusively” or “principally”, nor does it say on the other hand “occasionally” or “exceptionally” or “now and then” .. . I think that the converse to “ordinarily” is “extraordinarily”, and that part of the regular order of a man’ life, adopted voluntarily and for settled purposes, is not “extraordinarily”. Having regard to the time and duration, the object and the obligation of Mr Lysaght’s visits to England, there was in my opinion evidence to support a finding that he was ordinarily resident, if he was resident in the United Kingdom at all. ... Grammatically, the word “resident” indicates a quality of the person charged and is not descriptive of his property, real or personal.”

189. We conclude that the concept of “ordinary residence” requires more than mere residence; it connotes residence in a place with some degree of continuity (*Levene*) and “ordinary” means normal and part of everyday life (*Lysaght*).

190. Applying those principles to the facts of the present appeal we conclude that the Appellant was resident in the United Kingdom in the years of assessment under appeal and that his residence here was continuous in the sense that it continued from year to year. It was ordinary and part of his everyday life bearing in mind that his everyday life was far from ordinary. We are also of the

view that the Appellant would still be ordinarily resident in the United Kingdom even if there were an occasional year when he was not resident here.

*Conclusion*

191. Our decision on ordinary residence is that the Appellant was ordinarily resident in the United Kingdom during the tax years from 1992/93 to 2003/04.

**Decisions**

192. Our decisions on the issues in the appeal are:

(1) that the Appellant was domiciled in England during the tax years from 1992/93 to 2003/04;

(2) that the Appellant was resident in the United Kingdom during the tax years from 1993/94 to 2003/04; and

(3) that the Appellant was ordinarily resident in the United Kingdom during the tax years from 1993/94 to 2003/04.

193. These decisions do not determine the appeal as this is a Decision on preliminary issues only. Either party can apply to the Special Commissioners within three months of the date of the release of this Decision if they wish the other issues in the appeal to be heard or wish to apply for any other directions.