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domicile of the deceased was to be determined by foreign and not by English law. The main issue was the disposition to be made of English movables. By English law, which controlled the property, the domicile of the deceased was the determining fact. Obviously, therefore, the question of domicile should have been determined by English law. These two cases not only rest on no authority, but are opposed to two eminent text-writers,[9] to the weight of the scanty American authority,[10] and to prior and apparently controlling decisions in England, which seem to have been overlooked by court and counsel alike.[11] The true rule, therefore, appears to be that when the requisites of domicile, according to the *lex rei sitae*, exist, that law infers domicile, without regard to the law of the country where the deceased resided.

Another point in the prior Chancery decision[8] is worth comment. The court suggests that, if it recognized the Baden domicile, it would then be bound to ascertain, not the Baden law of succession, but what territorial law of succession the Baden law would adopt under the circumstances, and then distribute these English movables accordingly. In other words, the court would apply first the English rule and then the Baden rule as to conflict of laws, in order to ascertain the rule of succession. This doctrine seems fundamentally wrong. It treats English movables, situated in England and controlled by English law, as if they were situated in Baden and controlled by Baden law. It reaches the right result only when the English and the foreign law adopt the same rule of succession, and then the application of the foreign law is superfluous. Collier *v.* Rivaz,[11] it is true, gives some support to this position, but the apparently controlling cases of Bremer *v.* Freeman [11] and Hamilton *v.* Dallas [11] are directly opposed.

DAMAGES AGAINST IMPROVER OF CONVERTED PROPERTY. — Both on authority and on legal theory there has been much doubt as to what measure of damages should be recovered from one who has wrongfully severed property from another's land and increased its value. The tendency has been to depart from the technicalities of the common law and to deal with the question on grounds of fairness and public policy. The cases which have arisen may be divided into four classes: where there are a *bona fide* plaintiff and a *bona fide* defendant; a *bona fide* plaintiff and a *mala fide* defendant; a *mala fide* plaintiff and a *bona fide* defendant; and a *mala fide* plaintiff and a *mala fide* defendant. Where the plaintiff has acted in good faith, the authorities are practically unanimous in making the *fides* of the defendant a determining factor. Against a *bona fide* defendant, a *bona fide* plaintiff has been allowed by different courts to recover the value of the property before severance from the land,[1] the value after severance,[2] and the enhanced value less the increase for which the defendant was responsible.[3] This conflict is due to the fact that the courts have not generally proceeded according to what seems to be the true theory, —

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[9] Dicey, Conf. of Laws, 113; 1 Wharton, Conf. of Laws, 157.

[10] Harral *v.* Harral, 39 N. J. Eq. 279. But see Dupuy *v.* Wurtz, 53 N. Y. 556, 570.

[11] Collier *v.* Rivaz, 2 Curt. Eccl. 855; Anderson *v.* Laneuville, 9 Moore P. C. 325; Bremer *v.* Freeman, 10 Moore P. C. 306; Hamilton *v.* Dallas, 1 Ch. D. 257.

[1] Forsyth *v.* Wells, 41 Pa. St. 291.

[2] White *v.* Yawkey, 108 Ala. 270.

[3] Anderson *v.* Besser, 131 Mich. 481.

namely, that a *bona fide* defendant should be entitled on quasi-contractual principles to the cost of his labor, so long as it does not exceed the total increase in the value of the property.[4] On the other hand, a defendant who has acted in bad faith is generally held answerable to a *bona fide* plaintiff to the extent of the value of the property in its improved state.[5] His bad faith of course prevents his receiving any quasi-contractual relief. The enhanced value of the property should be made the measure of damages, not for the purpose of punishing the defendant, but because that is the value to which the plaintiff is justly entitled, since the defendant, knowing the facts, must be taken to have made the improvements for the owner's benefit.

The exceptional situation of a *mala fide* plaintiff and a *bona fide* defendant arose in a recent Michigan case. *Gustin* v. *Embury Clark Lumber Co.*, 108 N. W. Rep. 650. The court allowed to be deducted from the enhanced value of the property the increase in value brought about by the defendant. The *mala fides* of the plaintiff was evidently considered, but on grounds of fairness it might well be urged that as the plaintiff consciously delayed suit he should recover only the value of the property before severance,[6] thus losing any possible increase in value due to a rise in the market. The remaining combination of a *mala fide* plaintiff and a *mala fide* defendant was presented in a single case,[7] in which damages were limited to the value of the standing timber. The case seems unsupportable, for neither on quasi-contractual principles nor on grounds of general fairness did the defendant deserve anything of the court. The plaintiff's like bad faith could not here affect his legal right, and the rule in the ordinary case of a *mala fide* defendant should apply.

If the doctrine of Wetherbee *v.* Green[8] is ever extended to include the case of a *mala fide* converter, a new problem as to damages will arise. Since the defendant by sufficiently increasing the value of the property will have acquired title to it, to allow the former owner to recover from the new owner any value added to the property after title passed would be manifestly illogical. But neither should the defendant escape by paying only the value of the property at the time of the conversion, for, had he been sued immediately before title passed, he would have been compelled to pay the value at that time. It would therefore seem proper to compel him to pay the value of the property when he acquired title.

RES IPSA LOQUITUR BETWEEN MASTER AND SERVANT. — The doctrine of *res ipsa loquitur* has been most frequently applied in cases of injuries to passengers of common carriers and to persons on the highway who have been struck by some substance falling from an adjoining building. In the case of a servant injured in the course of his service there is much dispute as to whether the doctrine should be applied.[1] A recent case, where a servant was injured by the fall of an elevator, holds its application proper. *John*

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[4] See Trustees *v.* International Paper Co., 132 Fed. Rep. 92; 18 HARV. L. REV. 305.

[5] Cheeney *v.* Stone Co., 41 Fed. Rep. 740. See Woodenware Co. *v.* United States, 106 U. S. 432.

[6] *Cf.* Single *v.* Schneider, 24 Wis. 299.

[7] Single *v.* Schneider, 30 Wis. 570.

[8] 22 Mich. 311.

[1] See Highland Boy Mining Co. *v.* Pouch, 124 Fed. Rep. 148.