

I consider the present question of awful importance. Should the report of the Committee on elections be reversed, that decision will establish a precedent, the effect of which in future times upon the purity & independence of the House of Representatives cannot at present be properly [?]. We should have a case, how we break down any of those [?] which the Constitution has interposed between the executive branch of the government & the [?] Legislature. If we [several words obliterated by mold] the federal constitution intended to perpetuate the independence the House, the defect, it is true, might not be discovered for years, but in the end it must it must destroy the purity of our institutions. Judging from my short experience in public life, this is the very point at which we are in the most danger. The power of appointment gives an influence when here. This will enable to exercise an influence in bringing members to this House. The history of England, a country which presents before us so many examples to be imitated & so many to be shunned, speaks volumes upon this subject. The House of Commons has become the very spot upon which all the [rays?] of executive influence are concentrated, and the consequences are known to all.

What is the state of the present case. [sic] The constitution declares that no person shall be a representative, “who shall not, when elected, be an inhabitant of the state in which he shall be chosen.” Mr. Bailey was elected in Massachusetts on the 8th September 1823. He had been appointed a clerk in the Department of State by Mr. Adams on the 1st October 1817, ~~at that time~~ then resided in Massachusetts. He immediately accepted the appointment & from that time until the 23rd last, performed its duties. His residence during the time he held the office, as Mr. Adams declared, was necessarily in this District. There is testimony to prove ~~that~~ that he intended to return to his native state after he should cease to perform the duties of his appointment, and he considered it as his home.

Upon this state of facts could a plain man unacquainted with technical subtleties entertain a doubt?

That a man an inhabitant of Massachusetts at the time of his election who had held a lucrative office in his District & resides here performing its duties for almost six years before & who continues to retain it for more than a month after: who during that time has married a wife in this District & ever since has resided in the family of his mother.

The constitution was intended not for [?], but for the masses of people. Its best construction is according to the plain rules of common sense. If the palpable meaning which it carries on its face, can be frittered away by technical rules, then does it become a counterfeit. [sic] It speaks one language and means another, & when a plain man desires to understand it, he must consult a lawyer for that purpose.

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The meaning of the word inhabitant can be best ascertained by discovering the reasons why it was inserted.

1. The wants & the wishes of the State should be understood by its [rex?]: he ought \to to be identified in feeling & interest with them; hence his actual residence should be among them.
2. The framers of the constitution saw the example of England.

There the influence of the Executive is sufficiently powerful to bring into a parliament the sycophants who are dependent on court favor and who live upon the smiles of the great. Men who are aliens both in residence and in feeling from the people they represent who are guided by the wishes of the Executive – on whose influence they depend.

The ~~old~~ order of that day was considerable jealousy of the ~~Ex~~ Fed. govt [sic].

To prevent dependents upon it – men who had for years breathed a court from coming into the House – they presented ~~not~~ that he must be an inhabitant of the State at the time of his election. [needs reworking]

If they had been disposed to except any place the District of Columbia w^d have been the last place in the union: if any occupation, the last w^d have been one which made the representative a dependent of the Executive branch of the government.

I ask what w^d have been thought - if after Gov: Hamilton had been properly refused to appear on the floor to explain & advocate his report in [end of sentence]

If he had [obtained?] a man who had been a dependent upon his will who had been a clerk in his office to the elected in the state from w^c he had only come & if after the election when called upon by a committee of the House to state facts only had given an opinion that he was eligible an inhabitant of the state he had left because at some future indef [sic] period he intended to return to it.

Such a measure at that time w^d have agitated the nation to its centre [sic]. The cry of usurpation w^d have been heard throughout the land.

Then a wholesome jealousy existed.

Is there less reason why we should close our eyes now upon the danger. [sic]

If in the infancy of our institutions when we had no navy & but a very small army – when civil offices were comparatively few & their emolument trifling, the best patriots of the country dreaded the power of the gen: govt. what ought now to be our apprehension, when its necessarily increased & increasing patronage has extended its influence into the bosom of [easy?] society.

If they were disposed thus to exercise their power a reversal of this report will give to the executive departments as many representatives on the floor, as the influence wielded by the government would enable them to elect. Reps: unacquainted with the situation of their constituents, estranged from them by a long absence – & connected with that branch of the govt: w^c as representatives it is their duties to watch with argus [sic] eyes.

I am free to admit that from the character of the present admin. & from the character of the Head of that Department - & from the character of Mr. Bailey [?] – no danger is in the present instance to be apprehended. We should never forget that it is the nature of all govts. [sic] to love power.

In good times however we should be careful in establishing precedents which may be [?] against the liberties of the people in times which are bad.

Such a precedent as the present w^d open wide the flood gates of executive influence & pour it out upon the people.

It cannot be said that Mr. Bailey's case is a rare one.

The construction would render a large proportion of the inhabitants of their District eligible.

How many leave their native state & settle here, without a fixed intention of returning to their home at some indefinite period. [sic]

A place destitute of civil rights to say no more is not one where an American citizen is to be [?] to fix to lay his bones.

Almost all the clerks in the offices are in this situation. Such a contraction w^d depopulate the district & at once – by construction of law a goodly portion of its inhabitants, to the respective states.

It has not occurred – therefore Mr. W. B. not dangerous. If a second case in danger. [sic]

The reason why it has not occurred.

It will be recorded as a precedent.



There is one point on w^c he says he is [to] rest his case – The nature of the District.

It proves too much.

Again, I presume it will be granted that the same individual cannot be an inhabitant of the State of Massachusetts & the District of Columbia at the same time.

If therefore on the 8th Sep: 1823 he was an inhabitant, or according to the meaning of the word I the Lexicons, a dweller or one that lives in Massachusetts this monstrous absurdity w^d follow that he was an inhabitant of the place where he did not dwell, & that he was not an inhabitant of the place where he did not dwell.

Inhabitant. Dweller, one that lives in a place. The constitutions of N. Hampshire & Mass. Confirm the def. So does Vattel.

Resident. Dwelling or having abode in a place – Abode “habitation dwelling”

If there be a distinction – Resident more general in the significance, inhabitant more local.

We have all heard of a legal residence - & an actual residence – the one referring to be a right – the other the place of residence – No one has heard of a legal & an actual inhabiting.

2 Peters 450. U. S. v. The Penelope decided that the terms “Resident” and “Inhabitant” mean the same thing.

Let us however proceed a little further & examine the argument by which such a position is supported.

It has been contended that Mr. Bailey’s original domicil [sic] was Massachusetts, & that his residence or inhabitancy was not changed that he acquires no new domicil [sic] by living in the District because he always intended to return to his native state.

It has been said that the quo animo or intention to return prevented him from acquiring a residence here & enabled him to retain his old domicil [sic]

In support of this proposition, Vitalls [sic] definition of a domicil [sic] has been cited.

“Domicil is a residence in a country, with the intention either tacitly or expressed declared, & making it a permanent place of abode.”

Bynkershock would not venture to define it.

If it be understood by this definition that the individual in order to acquire a residence in any place must have a fixed determination of living & dying there, then this is a clear mistake.

If that were the case, the person who reluctantly leaves his native home with an intention after acquiring an independence of returning to the country of his father though he might open a store in this district, engage in trade, contract matrimony & die here , yet he could never acquire a residence provided his intention had been uniform.

So the thousands who annually leave England for the East Indies w^d still be inhabitants of the parishes which they left.

The definition is clearly too ~~explosive~~ limited.

Binney [?] 352. the one adopted by Judge rush much more in accordance with the nature of things.

He defines a domicil to be a resident at a particular place accompanied with positive or presumptive proof of continuing it an unlimited time.

Judge Story in my humble opinion approached still nearer the truth when he says in 7 Cranch 542 speaking of the right of domicil says – if a person be settled bona fide in a country, with the intention of indefinite residence, he is to all foreign countries to be deemed a subject, of that country.

This definition then is sufficiently extensive to embrace the case of a man who comes and resides in a place & enters upon an employment for an indefinite period of time, without including that of a traveler who has merely stopped for pleasure- or a sojourner who is occupied with transacting some particular business & returns returning to his domicil when it is completed.

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A person coming to this district occasionally, as a captain of a ship in the course of trade – or an [1 Dall 153 in left margin] individual to settle his account with the government to spend a session of Congress – although they may e detained here for a long time – dont [sic] cease to be an inhabitant of the place which they left not don't [sic] one here.

Mr. Bailey came here for no temporary purpose. He came to make his living. He came to discharge the duties of an office to which an annual salary was annexed & intended to remain here an indefinite period of time.

He may have calculated at some future period when perhaps deprived of his office – or when he became tired of these duties – or had better prospects at home to return.

But it was a permanent annual office requiring constant employment & I defy all the industry of gentlemen to cite a single case, where the acceptance of such an annual office & a continuance in it for six years – as the means of substance – did not domiciltate a man.

The truth is a declaration of intention only serves to explain a doubtful evidence – but where from the nature of the employment the evidence is fixed – facts speak louder than words.

It is a circumstance with others – but to use the language of Judge Story, when once the domicil is fixed & ascertained, all other circumstances become immaterial.

When the residence is equivocal – when it is not ascertained by the circumstances attending it – whether it be temporary or indefinite, then the quo animo is always a circumstance of explanation.

In the state of Pennsylvania we have a process called foreign attachment which by an act of the Assembly only be issued against individuals “not inhabitants of the state. “ Under the authority the goods of such persons can be seized.

It became a question whether an individual who had gone abroad & was resident abroad was not an inhabitant of the state & whether his property was subject to foreign attachment – He is no public minister.

Vattel 148. –

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The Court decided that it was

1. Dallas 305. This must have been before the adoption of the Constitution.
Caldwell v. Barclay & others.

In legal language there is I think a shade of difference in the meaning of the words.

If the people of Norfolk District are in opposition to the people of U. S.

