



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CARLE C. WALKER, EXECUTOR OF THE WILL)
OF ARABELLA WARNER BELL, DECEASED)

Appearances:

For Appellant; Harvey A. Harkness, Attorney at Law

For Respondent: Peter S. Pierson, Assistant Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board denying the claims of Carl e C. Wal ker , executor of the will of Arabell a Warner Bel l , deceased, for refund of personal income tax in the amounts of \$3,431.16, \$2,390.50, \$1 ,447.27, \$3,262.98, \$2,062.58, \$1 ,447.48 and \$2,145.59 for the years 1950, 1951, 1954, 1956, 1957, 1958 and 1959, respectively.

The only question presented is whether Arabella Warner Bell was a resident of California during the years under review. No appeal has been f i l e d for the year 1952 or 1953, years in which Mrs. Bel l was in Cal ifornia continuously, or for the year 1955, when she was in this state for a total of eight months.

Arabella Warner Bell, a native of Ill inois , married Grant E. Bel l in 1904 and she thereafter made her home at 209 South Center Street, Clinton, Illinois, in a house that had been given to her by her father as a wedding present. This house had been acquired in 1903 at the cost of \$7,000 and is presently valued at about \$40,000. Mrs. Bell owned this home throughout the period under review.

Mr. Bell retired in 1910 and five years later, in 1915, he built a large, three-bedroom home in Los Angeles at a cost of \$30,000. The Bel l s divided their time, almost equally, between Ill inois and Cal ifornia and over a thirty-five year period they established a pattern of spending each winter here.

During the period 1950 through 1959, with the exception of 1952 and 1953, appellant spent an average of 5.75 months in this state each year. The years 1952 and 1953 are omitted from this average because they are not typical of Mrs. Bel l's usual practice. In each of those years she remained in this state the entire twelve months in order to be with her husband during his last illness. Mr. Bell passed away in February of 1954 and his remains were returned to Cl inton, Ill inois, where he is buried.

Appeal of Carle C. Walker, etc.

It was Mrs. Bell's habit to leave California in the spring. She generally spent a short time in Chicago shopping and visiting with her sister, who lives in that city, before going on to her home in Clinton. Mrs. Bell owned twelve farms in Illinois which were valued at \$750,000 as of August 1962, the date of her death. Although she employed a full-time manager for these farms, she took an active interest in their operation while in Clinton. In late fall she would leave Clinton for Los Angeles. Following the death of her husband, Mrs. Bell's practice varied somewhat in that she never returned to her home on South Center Street. The Bells, who had no children, had been a very devoted couple. Mrs. Bell found that she could not return to the home "alone and so, whenever she was in Clinton, she stayed at the Taylor Magill Motel where, she was given the same room each year. Mrs. Bell passed away in August of 1962 at the age of 85 in the Clinton hospital.

Arabella Warner Bell belonged to the Universalist Church and several clubs in Clinton, including the local chapter of P.E.O., of which she was a fifty-year member. The records of De Witt County, Illinois, show that from 1942 through 1960, she voted there in every major election year and in several off years as well. There is no indication of how many times she voted by absentee ballot, which she must have used in 1952 when she spent the entire year in California. Mrs. Bell maintained bank accounts in California and Illinois, the latter far, exceeding the former. She employed an Illinois accountant, and social security and withholding tax returns for wages paid in Illinois and California were filed in Illinois, as were her income tax returns. She had charge accounts in California. It appears, however, that, at least some of her California bills were sent to Illinois for payment. All dividend checks were mailed to Illinois and then forwarded if Mrs. Bell were in California. It is perhaps worth noting that whenever Mr. Bell finished reading a book it was sent to Clinton to be placed in his collection there.

During her lifetime Mrs. Bell regularly made gifts to her church and the Clinton Chapter of P.E.O. Her last will and testament, which was admitted to probate in DeWitt County Court, on September 20, 1962, provides for some twenty-six specific bequests. Of this number, only four are to Californians and one is to a music and arts school located in Idyllwild, California. The vast majority of the objects of her bounty are located in Clinton or within the State of Illinois.

In addition to her Illinois properties, Mrs. Bell owned land in Riverside County, California, a ranch in Kern County, California, and rangeland in Texas. She also owned approximately \$250,000 in securities. During the period under review, her income from California sources averaged about 20 percent of her total income. The highest percentage for a single year was 35 percent and the lowest was zero.

Section 17014 (formerly 17013) of the Revenue and Taxation Code provides that the term "resident" includes every "person who is in California for other than a temporary or transitory purpose." Prior to its amendment in 1951, section 1701.6 (formerly 17015) provided that every individual spending more than, nine months out of a year here or maintaining a "permanent place of abode" in this state shall be presumed to be a resident, provided, however, that such presumption may be overcome by "satisfactory evidence" that the person is here for a temporary or transitory purpose. The language regarding a permanent abode was deleted by the Legislature in 1951.

Appeal of Carle C. Walker, etc.

The Franchise Tax Board's regulations explain that whether a person is present in this state for a temporary or transitory purpose depends largely upon the circumstances of each case. Generally, if he is here for a brief rest or vacation, or to fulfill a particular engagement, he is here for a temporary or transitory purpose. If, however, he is in California to improve his health and his illness will require a relatively long or indefinite period of recuperation, or if he is here for business or some other reason which will require a long or indefinite stay, or if he came here with no definite intention of leaving shortly thereafter, the person is here for other than a temporary or transitory purpose and is a resident. The regulations further explain that the underlying theory of sections 17014 to 17016 (formerly 17013 to 17015) is that "the state with which a person has the closest connection during the taxable year is the state of residence." Thus, "... where a person's time is divided equally between California and the state of domicile, he will not be held to be a resident of California." (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

Respondent does not dispute appellant's claim that Mrs. Bell's domicile was in Clinton, Illinois, and we are in accord with that conclusion. Further, we are of the opinion that her visits to California were for a temporary or transitory purpose. She came here to spend the winter, a purpose that was neither indefinite or relatively long. Each time she entered this state she did so with the definite intention of leaving it in a few months. This was the pattern that was generally followed over a period spanning nearly four decades. The years 1952 and 1953, years not on appeal here, are not typical of Mrs. Bell's normal routine and for that reason we give them little weight in determining her residence for other years.

The only permissible finding on the record before us is that Mrs. Bell was more closely connected with Illinois than with California during the years in question. As noted earlier, she was domiciled in Illinois. Economically, her interests were overwhelmingly centered in that state. Socially, her ties with church and clubs in Clinton were long standing. The vast bulk of the persons, who shared her affections and who, upon her passing, shared in her bounty, were located in Clinton. Insight into the role the Clinton home played is gained from the fact that Mr. Bell always sent his books there. He apparently felt that this was the most permanent place for his collection. The fact that following the death of her husband, Mrs. Bell lived in a hotel while in Clinton does not compel a conclusion that she was no longer closely connected with Clinton. Finally, the fact that the Bells chose Clinton as their last resting place testifies to their close relationship with that community.

According to the Franchise Tax Board's regulations, a person will not be held to be a resident where his time is equally divided between California and that person's state of domicile. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) Those words are applicable here, and, we think, support our conclusion that Arabella Warner Bell was not a resident during any of the years on appeal.

Respondent also relies upon the presumption of residence under section 17016 (formerly 17015) which, it argues, arises from the fact that Mrs. Bell maintained a "permanent abode" in Los Angeles and the fact that she spent more than nine months of the year here in 1952 and 1953. Although the years 1952 and 1953 are not on appeal, section 17014 (formerly 17013) provides that a person who is a resident of California remains in that status even though

