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DOMICILE *of* MARRIED WOMEN

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DOMICILE OF MARRIED WOMEN

In most cases a woman acquires her husband's nationality on marriage; in all cases she acquires his domicile. We hear a great deal about the desirability of women keeping their own nationality. We hear considerably less about the desirability of their keeping their own domicile, and yet from a practical point of view the latter is far more important.

MEANING OF DOMICILE

By domicile is meant the country which the law regards as being a person's permanent home. It depends on intention to reside there permanently as evidenced partly by the fact of living there and partly by expression of intention to remain there always. By the term "country," as used in this connection, is meant the jurisdictional unit or any land which has its own system of law courts. Thus New South Wales and Victoria are just as much separate and foreign countries as New South Wales and France.

When a woman marries she acquires her husband's domicile. That is, although she may continue to reside in her own country, the law says she has acquired her husband's country. If they have married and "lived happily ever after," they usually do have the same home and domicile, and the law merely expresses the actual fact. It is when they have failed to live happily and have, in fact, acquired different homes that it becomes a hardship to the woman to be burdened with the legal consequences of having her husband's domicile.

WHY IS IT A HARDSHIP FOR A WOMAN TO HAVE HER HUSBAND'S DOMICILE?

The most important reason is because jurisdiction in divorce depends on domicile. Before you can obtain a divorce you must prove that you

are domiciled in the country to whose courts you are presenting your petition. This is all right if you are the husband. You can swear you intended to live and die in New South Wales, and the Court will be disposed to believe you, and, anyhow, you are living here, and that is some evidence in itself that you intend to stay here always.

But if you are the wife, it is not your own domicile you must prove, but that of your husband. If he is not living here you have to prove, not only that he did live here, but that he intended to come back and stay here. And this may be sometimes difficult and often impossible.

Take the case of a wife who marries in New South Wales a husband born in Western Australia, who takes a position in the New Hebrides, comes back to New South Wales twice on holiday, and then commits adultery in the New Hebrides. Is he domiciled in New South Wales, or must the wife go to the New Hebrides for a divorce? That is a case in which it would be difficult for the wife to prove a N.S.W. domicile.

But equally frequent are cases where it is not difficult but impossible. Girls who married members of the American Fleet when it was in Sydney, officers of foreign steamers, or merely Scotsmen or Englishmen on a visit to N.S.W.—all these have husbands who were never domiciled in New South Wales, and therefore it would be impossible for any of them to petition the New South Wales courts for a divorce even though they had been born here and had lived here all their lives.

The hardships which result from the wife acquiring the husband's domicile have been slightly alleviated in N.S.W. by Section 16 of the Matrimonial Causes Act, which provides that when a woman is deserted by her husband, who afterwards acquires a foreign domicile, she shall, for the purposes of a suit for divorce on the ground of desertion, be taken as retaining the domicile she had when the desertion took place.

This section remedies the case of a N.S.W. woman who marries a N.S.W. man, who deserts her, and makes his home in a foreign country. And it has been suggested that an amendment to the section to cover the other grounds of divorce, as well as desertion, would remedy all injustice to women.

But neither the section as it stands, nor the suggested amendment, touches the case of the woman who marries a man of different domicile at the time when the offence took place, such as that of the N.S.W. woman married to, say, a Scotsman on a visit to N.S.W., a member of the American Fleet, or an officer of a foreign steamer.

NEW ZEALAND REMEDY

New Zealand has set the precedent of giving women their own domicile for the purpose of obtaining a divorce. Section 12 of the Divorce and Matrimonial Causes Act, 1928, as amended in 1930, provides:—

Where a wife living in New Zealand prays for a divorce on any ground and has been living in New Zealand for not less than three years immediately preceding the filing of the petition and has such intention of residing permanently in New Zealand as would constitute a New Zealand domicile in the case of a femme sole, she shall be deemed to be domiciled in New Zealand and to have been at the time of the petition domiciled in New Zealand.

CIVIL STATUS

The right to petition for a divorce is the first and most important thing which depends on domicile. But domicile often also determines the civil status of a person, her property rights on marriage, her right to make a will as to moveables and the form of such will.

According to French law husband and wife own their property in common, with the husband as the dominant partner. An Australian girl marrying a Frenchman would find her property rights governed, not by our Married Women's Property Acts, but by French law, and all the disabilities which the French law imposes.

The capacity to make a will is another important matter. A woman wishes to make a will; she was born and has lived in N.S.W. all her life; she married a Lithuanian and lived with him in Sydney for a fortnight. He then goes to America, to which State she is not sure, and it is rumoured that he may be returning to Lithuania. Before she can make a valid will—except as regards land—it is necessary to determine in which country her husband is domiciled, whether according to the law of that country she can make a will at all, and, if so, in what form it must be.

Finally domicile determines capacity to succeed to a deceased person's moveables, and even in Australia all this may on occasion be of more than academic interest.

REMEDY AS REGARDS CIVIL STATUS

Admittedly the remedy in this case is not as simple as that which would give women their own domicile for the purposes of divorce only, but the rules of Private International Law are already so complex that a slight addition to their complexity cannot be raised as objection when by so doing an injustice can be righted. It is therefore suggested that it should be provided "that a woman should keep her own domicile on marriage for all purposes unless by the application of this rule she would be without a domicile, and in such cases she should be regarded as having acquired her husband's domicile on marriage." This law should for preference be passed by the Federal Parliament.

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