

England and the husband has subsequently acquired a domicile in a foreign country, the wife continuing, in the meantime, to reside in England. In such cases, the English courts will grant a divorce on petition of the wife (see *Armylage v. Armylage* (1898), P. 178, 185; *Ogden v. Ogden* (1908), P. (C.A.) 46).

Until the passing of the Divorce Act in 1857, and indeed for some time thereafter, the English courts were under the predominant influence of what is known as the "contractual theory" of marriage, and no early decision is to be found in English reports recognizing the validity of any foreign decree purporting to dissolve an English marriage, the obvious reason being that the parties had contracted marriage upon the basis of its indissolubility under English law, and that as no courts in England were constituted with power to dissolve such marriage, no foreign court could have any such power. The Divorce Act, however, with its new substantive law and jurisdiction expressly conferred on civil courts to entertain divorce petitions and other matrimonial causes, displaced the contractual theory by providing legal means for the rescission of the contract, and thenceforth the "status theory" that marriage was essentially a civil contract creating a status subject to State regulation and control gradually became the accepted doctrine of the courts, although some of the judges were apparently at first loth to concede that a marriage performed in England between parties domiciled there could be affected by a decree of any foreign court.

In the case of *Wilson v. Wilson* (1872), L.R. 2 P. & D. 435, Lord Penzance in his judgment lays down the principle of jurisdiction in these words: "It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by the tribunals which alone can administer those laws. An honest adherence to this principle, moreover, will preclude the scandal which arises when a man and woman are held to be man and wife in one country, and strangers in another."

The Privy Council, on an appeal from the courts of Ceylon, in *Le Mesurier v. Le Mesurier* (1895), A.C. 517, after exhaustively reviewing the authorities on the question of domicile, stated their