

divorce was legal there, it was legal in British Columbia. In that case, she had capacity to marry, according to English law, and the marriage in the State of Washington, if valid as to form, was valid in British Columbia, and petitioner became her husband.

Murphy, J., regarded as irrelevant, the question as to the law in the States of Washington and Oregon, except as to the statute of Oregon requiring residence by a petitioner, because of his reading of the decision in *Brook v. Brook* (*supra*), and gave no consideration whatever as to the law of Idaho. But this was the real question, was the Oregon divorce of a woman domiciled in Idaho legal by the laws of Idaho? That was, of course, a question of fact within the authority of Murphy, J., to decide, but no evidence concerning it appears to have been given at the trial, and therefore, upon appeal, this case should be sent back for a new trial. It is not unlikely that, according to the laws of Idaho, the divorce granted in Oregon, in this case, would be null and void, on the facts as found by Murphy, J., but Idaho Courts might consider that the apparent defect in the jurisdiction of the Oregon Courts, on the ground of non-residence for the statutory period, was cured by the appearance and submission of the husband, and the law of Idaho was a question of fact as to which evidence should have been given and a finding made by Murphy, J. To illustrate that this was the real point—suppose that by the law of Idaho, the Oregon divorce was good, the husband would be free to marry, and the wife also; *per contra*, if the law of Idaho were otherwise. Suppose Idaho refused to recognize the Oregon divorce of parties domiciled in Idaho, the husband would still be bound in Idaho, and the wife also, but according to the judgment of Murphy, J., the wife would be free in B.C. to marry again, if by the laws of Oregon the divorce were good. The question as to the validity of the divorce according to the laws of the State of Washington, where the form of marriage between petitioner and respondent was gone through, was of course unimportant, though much argued, apparently, by counsel for respondent, for the validity of the form gone through was not questioned. A foreign marriage, good as to form, will be recognised in our Courts, if not prohibited by consanguinity, affinity or previous marriage. (Eversley, 3rd ed., 105.)

DOMICILE.

In all actions involving the validity of foreign divorce an absolutely vital question is, what was the domicile of the husband at the time it was procured? No divorce is entitled to recognition in another State unless the Court had jurisdiction by reason of the *bona fide* and permanent domicile: *LeM. v. LeM.*, [1895] A.C. 531; *Re Sinclair*, [1897] A.C. 469.

"The domicile . . . when the question of divorce arises affords the only true test of jurisdiction to dissolve their marriage. (*Bater v. Bater*, [1906] P. 209; *Ramos v. Ramos*, 27 F.L.R. 515).

"The English Courts will recognise as valid the decision of a competent foreign Christian tribunal dissolving the marriage of a domiciled native in the country where such tribunal has jurisdiction. (*Harvey v. Farnie* (1830), 5 P. 153 (1882), 8 A.C. 43).

It is recognised in *Bater v. Bater* (*supra*), at p. 217, that the question of nationality is of no importance. (See Eversley on Domestic Relations, 3rd ed., 483.)