

Now although the ordinary rule is that the domicile of the wife is the place where her husband has his domicile, yet it is an established exception to this rule in American authority that for the purpose of instituting a suit for divorce the wife may have a domicile separate from that of her husband.

In the case of *Cheever v. Wilson*, 9 Wallace 108, it was decided by the unanimous judgment of the Supreme Court of the United States, that the rule is that the wife may acquire a separate domicile whenever it is necessary or proper that she should do so, that the right springs from the necessity of its exercise, and endures as long as the necessity continues, and that the proceeding for a divorce may be instituted where the wife has her domicile.

In *Harteau v. Harteau* it was said by the Supreme Court of Massachusetts (14 Pick. 181-5) that the law will recognize a wife as having a separate existence and separate interests and separate rights, in those cases where the express object of the proceeding is to show that the relation itself ought to be dissolved or so modified as to establish a separate interest, and especially a separate domicile and home, otherwise the parties would stand upon very unequal grounds, it being in the power of the husband to change his domicile at will, but not in that of the wife.

In *Colrin v. Reed* (5 Smith, Penn., 375-9) it is said "the unity of the person created by the marriage is a legal fiction to be followed for all useful and just purposes, and not to be used to destroy the rights of either, contrary to the principles of natural justice in proceedings which from their nature make them opposite parties."

Mr. Wharton in his work on 'Private International Law' (sec. 46) says: "That the rule that the wife's domicile is that of the husband, it is now conceded on all sides, does not extend to cases in which the wife claims to act, and by law to a certain extent and in certain cases is allowed to act adversely to her husband"; and Mr. Bishop, in his invaluable work upon 'Marriage and Divorce' (Vol. ii. sec. 125) states the rule as collected from the decided cases thus—"When a law authorizes a suit between a husband and his wife for divorce, and makes the juris-

"diction over it depend, among other things, on domicile, there is an irresistible implication that if she needs a separate domicile to give effect to her rights, or if his case requires her to have one to make his effectual, the law has conferred it on her."

In *Deck v. Deck* (2 Swab. & Tr. 91) it has been decided in England that under the provisions of the English statute 20th and 21st Vic., ch. 85, it was competent for the Divorce Court there to entertain a petition for divorce at the suit of an Englishwoman married in England to an Englishman who had left her and gone to the State of New York, where he acquired a domicile, and had married again there, and upon service of process in the suit upon the husband in the United States to make a decree for the dissolution of the marriage.

A similar point decided in *Bond v. Bond* (2 Swab. & Tr. 93), and in *Niboyet v. Niboyet* (4 Pro. & Div. 1) in the case of an Englishwoman who had married a Frenchman at Gibraltar it was decided upon the same statute that the Court had jurisdiction to entertain a petition for divorce presented by the wife, although the husband appeared under protest, and contested the jurisdiction of the Court upon the ground that he had never acquired an English domicile or lost his domicile of origin, and among the exceptions to the general rule that the domicile of the husband is the domicile of the wife, which the above statute creates, Mr. Dicey, in his work on 'Domicile,' states the following:

"1st. The Divorce Court has, under exceptional circumstances, jurisdiction to dissolve a marriage where the parties are, or where one of them is, at the commencement of the proceedings for the divorce resident, though not domiciled in England.

"2nd. The Divorce Court has jurisdiction to dissolve a marriage between parties not domiciled in England at the time of the proceedings for divorce where the defendant has appeared and not under protest.

"3rd. The Divorce Court has jurisdiction to dissolve an English marriage between English subjects on the petition of a wife who is resident, though not domiciled, in England."

Mr. Justice Story, in his 'Conflict of Laws'