

So far, jurisdiction has been considered only from the standpoint of the body which exercises it. Over whom is this jurisdiction exercised? In the first place, it should be noticed in passing that although the Roman Catholic Church recognises annulment of marriage—on the theory that no real marriage has ever existed—it persistently refuses to recognise divorce of two legally married people; it still clings to the old belief that marriage is a sacrament and indissoluble. So, although the Courts may grant divorces to Roman Catholics, their new legal status will not be recognised by the Church.

The second point to note is that the place of the marriage does not make any difference; the status need not have been created within nor according to the law of the jurisdiction. Of course to be a divorce, there must be a legal marriage; and the Court will enquire to see that the parties have complied with the proper law, a question concerned rather with the validity of marriage than with divorce, which starts from the basis of a proper legal marriage. The validity of the marriage will depend on two facts: capacity of the contracting parties, and observance of the necessary formalities. Capacity is the legal power of doing an act which can legally be done by a person. The only logical grounds for incapacity are insanity and infancy, but several others in regard to religion and consanguinity have been added in many countries. By a number of leading cases, it has now been decided that the question of capacity is one to be determined by the *lex actus* together with the *lex domicilii* (as regards essentials as distinct from mere ceremonies in connection with the celebration) of both parties, except where the domicile of one party is British and the incapacity of the other party is not recognised by English Law: *Brook v. Brook*, (1861), 9 H. of L. Cas. 193, 11 E. R. 703, 7 Jur. (N.S.) 422, 9 W.R. 461, (prior to Deceased Wife's Sister Act 1907, (Imp.) ch. 47. This was marriage to deceased wife's sister; both parties were domiciled in England; ceremony was performed in Denmark where such a marriage would be valid. Held invalid in England. *Sottomayor v. De Barros* (1879), 5 P. & D. 94. Marriage in England of two Portuguese subjects, but domiciled in England. They were first cousins, and therefore incapable of contracting a valid marriage with each other in Portugal. Marriage held valid. *De Wilton v. Montefiore*, [1900] 2 Ch. 481, 69 L.J. (Ch.) 717, 48 W. R. 645. Similar to *Brook v. Brook*, except that in this case it was a marriage to a niece. In