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FOREIGN DIVORCES, INCLUDING THOSE OBTAINED
IN A DIFFERENT STATE OF THE UNION.

A DIVORCE obtained in any one of the states of the Union is a foreign divorce in every other: 2 Kent 107; Story on Conflict of Laws, § 230 a.

Marriage is both an institution and a contract; but a contract "*jure gentium*," which deeply concerns the state, which the parties who enter into it alone can constitute, but which they can rescind or modify only by permission of the state, and for causes of which it approves: 2 Kent 75, 87; 2 Bishop on Marriage and Divorce, § 140; Story Confl. of L., § 200; 3 Am. Law Reg. N. S. 196.

It is then apparent that every state has, and should have, full power to regulate this institution, which concerns the personal status of all, either citizens or aliens, who are resident within its limits, which status thus established, as a general rule, accompanies the person everywhere: 2 Bishop M. & D., § 137; Story, *supra*, §§ 540-1. To so regulate it is a matter both of right and of duty. Of right, as included in the power which the sovereign exercises over those from whom allegiance, either full or qualified, is due; of duty, since no other power can perform this function, as by the law of nations the authority of each independent state is, within its limits, supreme and exclusive: 1 Bishop M. & D., § 350; 2 Id., §§ 137 and 139; 2 Kent 115; Story Confl. of L., §§ 18, 55, 65-8, 71, 101.

We are not now concerned with divorce as affected by any sys-

tem of religion, but in its legal aspect only. A sentence of divorce then can be pronounced only under the supreme authority of the state vested in various tribunals, legislative or judicial: 2 Kent 107. The courts of the United States have no jurisdiction in divorce, though they will enforce a decree of a state court for alimony, given in divorce proceedings: *Barber v. Barber*, 21 Howard 582. In England, previous to the Divorce Act of 1858, this power resided in Parliament alone: Wharton Conf. of L., § 127.

If then the tribunal which declares a divorce had full jurisdiction over the parties and the subject-matter—if its act or decree was made legally and formally, and without fraud or collusion—then such divorce should be held valid and of full effect, not only in the state of the tribunal, but in every other: GIBSON, C. J., in *Dorsey v. Dorsey*, 7 Watts 349; *Cheever v. Wilson*, 9 Wall. 109; Wharton Conf. of L., § 208; 2 Bishop M. & D., §§ 133, 754; Story Conf. of L., §§ 229 b, 230 c, 595.

Of necessity this principle is of force only among the states of Christendom. In respect to barbarous and semi-civilized countries, where heathenism, or Mohammedanism, or some other of the eastern religions prevail, the nature of these religions, and the institutions and laws accompanying them, or the absence of any, forbid its application: Wharton Conf. of L., § 207. A divorce, however, by the laws of an Indian tribe was held good in *Wall v. Williamson*, 8 Ala. 48.

So clear and well established, both on reason and authority, is the foregoing general proposition that it may seem strange that any question should ever arise under it. The difficulty is not in its determination, but in its application. When a divorce rendered under the authority of one state is brought in question in the courts of another, these courts must determine whether such act or decree possesses the necessary requisites to its validity, internationally considered.

These requisites are:—

1. Jurisdiction, both as to subject-matter and parties.
2. Legality and formality in the proceedings.
3. Absence of collusion or fraud: Story on Conf. of L., §§ 605-610.

The last two require but a passing notice here. Fraud and collusion are mere questions of fact; and strong evidence will be required to impugn the legality and formality of proceedings in a foreign court, in favor of which there is a presumption of law.

Jurisdiction is a much more intricate question. It must exist both as to subject-matter and parties. An examination of the cases where foreign divorces have been held invalid, will show that a large number of such cases have turned on this point, and the jurisdiction of the foreign tribunal rendering the divorce, either as to subject-matter or parties, has been denied. Jurisdiction then should be the subject of an elaborate examination; considered—

1. As to subject-matter.
2. As to parties.

I. *Jurisdiction as to subject-matter.*

A tribunal must be empowered by its constitution to take cognisance of causes of divorce, but when so empowered it can do so irrespective of the locality where the offence occurred: Story Conf. of L., § 230 a; Wharton Conf. of L., § 236; 2 Bishop on M. & D., § 171.

A limitation of this wide jurisdiction is asserted by some writers, namely, that, "only the tribunals of the common domicile of the parties at the time the cause of divorce arose can take cognisance of such cause." This principle is very strongly urged by Chief Justice REDFIELD in an article on Conflict of Laws, &c., in 3 Am. Law Reg. N. S. 193, A. D. 1864, and also in his edition of Story Conf. of Laws.¹

Judge REDFIELD is sustained by decisions in New Hampshire, Pennsylvania, one in New York (*Mix v. Mix*, 1 John. 204), one in Louisiana, which are commented on in 2 Bishop M. & D., §§ 172-3, &c.

The doctrine seems first to have been distinctly enunciated by Chief Justice GIBSON in *Dorsey v. Dorsey*, 7 Watts 349, though Mr. Bishop (2, § 172) thinks it originated in Massachusetts, under the colonial government, for which opinion, with due respect for so eminent an authority, he does not seem to show sufficient grounds.

In Massachusetts this matter is regulated by statute, and Chief Justice GIBSON's decision gave rise to the Pennsylvania Act of April 26th 1850, allowing a divorce, though the parties were domiciled out of the state when the cause of action arose.

Mr. Bishop takes an opposite view (2, § 172, and cases cited; also *Glason v. Id.*, 4 Wis. 64), and Mr. Wharton also (Conf. of

¹ The seventh edition of this work, that cited in this article, has also the additions of a subsequent editor, Hon. EDMUND H. BENNETT.

L., § 236), but the question is not yet so fully settled as to be dismissed without further comment.

The status of married persons is regulated, it is universally admitted, by the laws of the state of their residence for the time being, irrespective of the place where the marriage was contracted. A marriage once properly constituted in any country and according to its laws, as a rule is recognised in every other country: Story, &c., §§ 113, 124 b; 2 Kent 91. But the right and obligations accompanying and resulting from this status are no less generally held to be, in every country where the relation subsists, those only recognised by the laws of that country: Story, &c., §§ 171, 171 b and c, 189, 222; 2 Kent 115; 3 Am. L. Reg. N. S. 197-200. What then is the ground for drawing a distinction between the right to a divorce and the other incidents of marriage?

So far as causes of divorce are infractions of social order or criminal law, they are cognisable only within the sovereignty where they occur, but the wrong to the other party of the marriage is one irrespective of locality and which accompanies him, certainly in fact, wherever he goes.

An individual who changes his domicile submits to receive such personal status as the law of the new sovereignty under which he takes up his abode may impose on him. Persons married in a state where divorce is allowed only for certain causes, or not at all, may change their domicile to another state, and their right to a divorce for causes *there accruing* (no matter where they may *occur*), and there recognised as valid, is unquestioned: Wharton Conf. of Laws, § 238. So far as marriage is a contract it is one to be performed *wherever* the parties reside; there it is violated, if at all, and there its violation must be inquired into. Is the contract restored unbroken by a removal into another sovereignty? If not, cannot its breach be there redressed?

So far as the violation of marriage rights is a tort, it is a tort against a party to the marriage, and through him to the state in which such party resides. And this breach of contract, this injury, exists in full force and effect as regards the person wherever he goes and affects every state in which he takes up his abode. Is it not unreasonable to say to the injured person, you shall have no redress save within that sovereignty within which you resided when your rights were invaded, even though you knew not of such injury till after you had quitted its jurisdiction; and to the state, you

have no power to relieve either the community or the individual citizen from this evil, since it first arose beyond your sway?

In opposition to this reasoning are the views of Judge REDFIELD, a summary of which we shall now endeavor to give. Divorce proceedings are not *in rem*, but *inter partes*. Causes of divorce are not transitory, but local, being offences against the laws of the state wherein the parties were domiciled when such causes arose and of such a police and disciplinary character that their punishment cannot be delegated to another sovereignty. "Regulations on the subject of marriage and divorce are rather parts of the criminal, than of the civil code, and apply not so much to the contract between the parties as to the personal relations resulting from it."

A cause of divorce is a matter in which the state has an important interest independent of the parties, and which it may remit without their consent (pp. 206-7). Causes of divorce are strictly local in their nature and can no more be tried out of the limits of the forum where the cause of action *accrues*, even by consent of both parties, than an indictment for crime could be tried in a foreign jurisdiction by consent of the respondent (p. 215).

This is the substance of Judge REDFIELD'S argument. He says moreover (p. 206), that a divorce decree has no subject-matter independent of the parties, and that consent, if *bonâ fide*, may perhaps give jurisdiction of the parties. If this is so, it is difficult to see why consent may not also give jurisdiction as to subject-matter. Starting with the principle that divorce proceedings are *inter partes*, the natural conclusion would seem to be that they are *therefore* transitory and *not* local in their nature. Anything more closely connected with the person than their condition as married or single, it is certainly hard to conceive. So far then as the *subject-matter* is concerned, it would seem that if the individual were satisfied to submit it to a tribunal otherwise competent to take cognisance of it, they should not be restrained from so doing, unless the rights of the sovereignty within which they were resident when such subject-matter first arose, would be thus in some way invaded. Grant that offences against the marriage relation are more important to the well-being of the state than to the comfort of the particular parties interested, they can be so, it is plain, only while the parties, or one of them, is *domiciled within* the sovereignty of the state. When even one quits it these evils are trans-

ferred to another domicile, when their effect on the community is not in any degree lessened because they first arose elsewhere.

There remains to be considered the violation of the law, which confessedly cannot be elsewhere redressed as respects the state than within it. And here we must say, with the utmost deference to the authority of Judge REDFIELD and that of the eminent jurists by whom he is sustained, that the analogy between the divorce and criminal law of a state seems to us incomplete. Offences against the marriage relation have confessedly a two-fold aspect, as affecting both the private person and the state; the former may claim a release, either wholly or partially, from the marriage bond; the latter can punish the infraction of its law, either criminally, if a crime has been committed, or civilly by a decree of divorce. The civil cause of divorce manifestly affects the state only in the person of its citizen who is injured; the criminal cause is also an offence against the state itself. Now these rights of the state and the citizen are independent of each other, except as arising out of the same transaction. So also the redress, even where, as is often the case, for the double wrong there is but one, viz., a decree of divorce; and this redress is left to the individual; the state never institutes divorce proceedings: 2 Bishop, §§ 232-3; 2 Kent 100. If the criminal law is infringed, it is the criminal law of the locality *where the offence was committed*, and where alone the crime can be punished.

Manifestly then, when the delictum arises *out of the state* in which the parties reside, the only wrong which this state can take cognisance of is the private injury. When this is beyond its power of redress, because the parties are no longer within its limits, why should it adhere to the rule laid down by Chief Justice GIBSON in *Dorsey v. Dorsey*, 7 Watts 349, and declare that it "parts not with the remedy of past transgression?" Under this rule, where there has been a separation of husband and wife, an innocent party is left remediless for all wrongs constituting cause of divorce, which occur after such separation, if at the time of the occurrence he chances to have a different domicile from the transgressor. In such a case what is the locality of the offence as regards the parties? In whose domicile does it accrue? In Maine and Massachusetts the direct contrary of this has been held; but in Massachusetts, where both parties at the time the cause arose lived in another state, though the libellant afterwards returned to Massachusetts, a divorce

was refused. Judge REDFIELD (p. 216) cites Chief Justice SHAW in support of his views, approving Chief Justice GIBSON's doctrine; but in *Lyon v. Lyon*, 2 Gray 367, the very case cited by Judge REDFIELD, the point did not arise, and in *Harteau v. Harteau*, 14 Pick. 181, Chief Justice SHAW held, that if a husband quit Massachusetts, the domicile of the marriage, *take up a residence* in another state, and there commit adultery, the wife remaining in Massachusetts may therefor obtain a divorce: *Harding v. Alden*, 9 Greenl. 140; *Hopkins v. Alden*, 3 Mass. 158; *Hanover v. Turner*, 14 Mass. 229; *Shaw v. Shaw*, 98 Mass. 158. See also *Hick v. Hick*, 5 Bush (Ky.) 67, where it was held that the delictum must be a cause of divorce in the state where it occurred, which in that case was also the domicile of the parties at the time of the occurrence.

Mr. Bishop remarks that the ground on which Chief Justice GIBSON bases the rule above mentioned, viz., "that the person of the transgressor was not subject to our jurisdiction at the time of the fact," is not that on which the doctrine rests in New Hampshire: 2 Bishop M. & D., § 175. It is impossible to reconcile Chief Justice GIBSON's doctrine with the present law of Pennsylvania, as laid down in Platt's Appeal, 2 Weekly Notes 501, Supreme Court of Pennsylvania 1876.

Now, after a thorough elaboration of his views, Judge REDFIELD admits (pp. 196, 218), that a state *has a right* to dissolve the marriage relation of parties, both of whom are domiciled within its limits, even for causes accruing while domiciled elsewhere, and that no other state would have a just right to complain. But when neither the celebration of the marriage, the cause of divorce, the domicile of the defendant, are within the state, nor the defendant is served with process within the state, a dissolution of the marriage tie under such circumstances "cannot obtain respect beyond the limits of the forum where it is done." The *lex loci contractus*, we may say in passing, is no longer important; even the English doctrine as to the indissolubility of an English marriage elsewhere has been greatly modified: 2 Bishop M. & D., § 180; Wharton Confl. of L., §§ 220, 237. The proposition differs widely from that which the learned writer states at the outset of his argument. He even says (p. 207) that a cause of divorce "cannot be transferred to another forum by even the *bonâ fide* change of the domicile of *both parties*." The inconsistency of these two statements

is evident, and the latter is virtually an abandonment of the writer's former position, for the question, over which Judge REDFIELD has so earnestly labored, is *not*, can one party transfer, by changing his domicile, a cause of divorce, but can such cause be transferred at all, in any way; and its solution is not in any manner affected by the other qualifying circumstances which he finally enumerates. If the assent, or removal to the same new domicile, of both parties, can so transfer the cause of action between them, then such cause of action is not, as Judge REDFIELD strenuously insists, purely local, and the whole ground of his argument falls. Still it may be objected (it is not by Judge REDFIELD), that one party alone cannot so remove such cause, because from the nature of the marriage bond the status therefrom resulting is, as it were, joint, therefore such status can only be acted on, under a jurisdiction to which both parties are subject, and they become subject to a jurisdiction, even as to a pre-existing cause of divorce, when they remove within its limits.

This distinction, however, is apart from the present investigation, and leads to a further inquiry, which will be entered on when jurisdiction as to parties is discussed. The result of such inquiry will show that this distinction is not recognised. Even if otherwise it would be useless, for the latest authorities are most decisively against Judge REDFIELD'S opinion, and show that a cause of divorce will accompany one party into a new domicile, and enable him there to obtain a divorce valid against the other. Nor will it stand with the modern principle of law, that a wife may have a separate domicile from her husband: *Cheever v. Wilson*, 9 Wall. 109; *Standridge v. Standridge*, 31 Ga. 223; *Shafer v. Bushnell*, 25 Wis. 372; *Hall v. Hall*, Id. 600. See also Story Conf. of L., § 230 b, note 1; 2 Bishop, § 113 a; *Platt's Appeal*, 2 Weekly Notes 501, Supreme Court of Pennsylvania 1876.

II. *Jurisdiction as to parties.*

We have now to determine what is necessary to constitute jurisdiction over parties.

As a logical result of the fundamental principles governing this whole subject, and which we have stated at the beginning, it is evident that no tribunal can have jurisdiction in divorce over the parties unless they are domiciled *bonâ fide* within the territorial limits of its jurisdiction. This was the law (see Story, § 230 a), but it is now changed, and it is required only that *one of*

the parties should be domiciled within the jurisdiction : Wharton, § 227 ; 2 Bishop, §§ 137, 144-5. How this change was brought about will be shown hereafter. Appearance alone, even of both parties, will not give jurisdiction, since, as to personal status, it can exist only over persons domiciled within its limits : Story and Bishop, *supra*. Mr. Wharton holds the contrary, and is supported by some cases (see Confl. of L., § 233 and citations), but he is wrong, both on principle and authority, of which last the weight greatly preponderates against him. See *People v. Dawell*, 25 Mich. 247. As is well said by Chief Justice SHAW in *Chase v. Chase*, 6 Gray 157, 161, "appearance is evidence only of consent, and express consent is of no avail."

Jurisdiction over parties may be invoked, or having been exercised, may be called in question—

1. Where both parties are domiciled in the state of the forum.
2. Where one party only is so domiciled.
 - (a) Where the party non-resident appears to the suit.
 - (b) Where the party non-resident is served with process within the limits of the state of the forum.
 - (c) Where the party non-resident has personal notice of the proceedings in divorce, out of the state of the forum.
 - (d) Where there is neither appearance by, nor service of process or notice on, the party non-resident.

And such jurisdiction may be called in question in another state, where one of the parties was domiciled at the time of the divorce, or one or both have since acquired a domicile, or neither is nor has been domiciled. Taking up these several heads in order, let us consider those cases :—

I. *Where both parties are domiciled in the state of the forum.*

Jurisdiction thus founded would seem beyond a question : Story, § 230 a and b ; 2 Bishop, § 141 ; 3 Am. L. Reg. N. S. 218. So the English law : Story, § 227 a ; Wharton, § 223. Yet, on Judge REDFIELD'S theory that offences against the marriage relation are local and not transitory, it is evident that for offences committed *before* the acquirement of domicile in a state, such state could afford no remedy ; nor is it apparent that persons so circumstanced would have any redress. Precisely this case has occurred in New Hampshire : *Clark v. Clark*, 8 N. H. 21 ; 2 Bishop, § 175.

II. *Where one party only is domiciled within the state of the forum.*

Here arises almost inevitably a conflict of laws between different sovereignties. Under the common-law principle of the legal unity of husband and wife, and the necessary sequence that she can have no other domicile than his, obviously this case could not occur. But as regards proceedings in divorce this has ceased to be the law in this country: 2 Bishop M. & D., § 125, &c.; and according to Mr. Wharton (§§ 216, 225), in England also, where C. J. SHAW's decision in *Harteau v. Harteau*, 14 Pick. 181, A. D. 1833, the earliest case in which the doctrine of the wife's separate domicile was first distinctly announced, has been approved.

The same principle is recognised in 2 Kent 118, note a, and the Supreme Court of the United States in *Cheever v. Wilson*, 9 Wall. 109, declared, that the wife may have a separate domicile from her husband whenever it is proper and necessary that she should. In the opinion both of Mr. Bishop and Mr. Wharton (2 Bishop § 156, Whart. Conf. of L., § 227 b), the granting of divorces in the domicile of one party only, is not only a possible, but a proper and necessary consequence of this doctrine. Otherwise the doctrine is futile and meaningless, and has failed entirely to remove the injustice it was devised to remedy. This injustice was that to which any wife was exposed, whose husband, after committing an offence which would entitle her to a divorce, should quit the state of his abode and betake himself elsewhere, perhaps to parts unknown. In such a case the reason of the rule of the common law as to the legal unity of husband and wife having ceased, the rule also should cease, certainly as regards proceedings to dissolve the marriage relation.

The cogency of the reasoning by which this conclusion is enforced by Chief Justice SHAW, Mr. Bishop and others, renders any further discussion of the principle unnecessary. It must, however, be borne in mind that by this modification of the law the authority of many of the cases decided before it came about is much weakened, and of some, indeed, destroyed, since they turned on the very point that the domicile of the wife could be no other than her husband's. In this category are *Dorsey v. Dorsey*, 7 Watts 349, A. D. 1835; *Neal v. Neal*, 1 La. Ann. 315, A. D. 1846; *Maguire v. Maguire*, 7 Dana 181, A. D. 1838; *Jackson v. Jackson*, 1 John. 424, A. D. 1806;

and all cases which were decided on their authority on this point. Judge STORY published the second edition of his Conflict of Laws after *Harteau v. Harteau* was decided, but he does not recognise this principle to its present extent: Confl. of L., § 229 a.

This class of cases may be conveniently examined, as divided above, under four heads.

(a) Where the non-resident respondent appears to the suit.

So far as the rights of the individual are concerned, he who submits himself to the decision of any tribunal waives by so doing all objections to its right of jurisdiction over him. Still the question arises is a divorce cause one which the individual can at his choice submit to any tribunal? Has the sovereignty within which he resides and to which he owes allegiance no rights in the matter? If the principles laid down at the outset of this discussion are correct, it would seem that it has, and that while he remains a citizen of such sovereignty its rights are unaffected by any act of his. If "appearance alone, even of both parties, will not give jurisdiction" (SHAW, C. J., *supra*), is not something more than appearance by the non-resident defendant needed to constitute such jurisdiction as to him? Such appearance to the proceedings frees the judgment from the stigma of having been rendered against a party who had no opportunity of being heard in his own defence, and on the other hand may lay it open to the imputation of collusion: 2 Kent 109. Which of these is the more weighty consideration is not always easy of determination. Let it once become established, however, that a divorce can be granted by any other tribunal than that of the domicile of the party whom it is sought to affect by it, and the fact of appearance to the suit by such party becomes at once most important.

Much of this reasoning applies to those cases where—

(b) The party non-resident (respondent) is served with process within the state of the forum, or,

(c) Has personal notice of the proceedings without the state of the forum.

It cannot be said that a party can be forced to adjudicate his rights before a tribunal which could not take cognisance of the cause even if he appeared voluntarily. In the view above taken of the nature of divorce proceedings, appearance by a non-resident would seem to be of no effect, except so far as it may estop him from thereafter questioning these proceedings. Service on him

then, of process or notice, would be of no avail, and as to the last there is the additional objection that a man cannot be compelled to submit his rights in a cause "in personam" to the decision of a foreign tribunal: 3 Am. Law Reg. N. S. 210; 2 Bishop, § 160.

The position we have here taken is well illustrated by the law of Bavaria, which does not allow its courts to take jurisdiction of matrimonial questions between foreigners, even where the wife is domiciled in Bavaria, unless the husband, with the permission of his government, consents to submit to such jurisdiction: Wharton Conf. of L., § 210 a, note v.

Thus it would seem as respects this objection, namely, the invasion of the rights of the state of the non-resident, these three classes stand on the same footing with the fourth.

(d) Where there is neither appearance by, nor service of process or notice on the party non-resident.

As against such party judgments so rendered are null and void: 2 Kent 109.

Of the logical inconsistency of the principle that a divorce can be obtained in the domicile of one party only.

We have then to consider the question whether a divorce, valid as to both parties, can be obtained where one only is a resident, *under any circumstances*, and the line of argument we have just been pursuing conducts us inevitably to the conclusion that no such divorce can affect the non-resident, either as to person or estate. This conclusion, moreover, is entirely independent of that to which we are brought with equal certainty as regards the party resident in the state of the forum, viz., that the divorce obtained by such party is valid and of full effect in every respect.

The successive steps by which we reach this *reductio ad absurdum* are very clear; we have already cited authority for them, and shall now only recapitulate them briefly.

1. Every sovereignty has exclusive control over the personal status of all domiciled within its limits.
2. Marriage and its rights and incidents are matters of personal status.
3. Husband and wife may have different domiciles.
4. In such case each must seek, and can obtain, a release from the marriage bond only under the authority of the law of his own domicile.

To this position we are logically brought by the adoption of the

doctrine of separate domicile of husband and wife which, as seen above, was an innovation on the common-law rule, and the principle found in all the older authorities that jurisdiction over divorce proceedings resides solely in the domicile of the parties, *i. e.*, both parties (Story Conf. of L., § 230 a), a principle consistent with the nature of the marriage relation, which is a matter of personal status indeed, but *joint* personal status. Manifestly if the alteration in the law stopped here, there would have been no benefit, but merely a change of evils, substituting for a gross injustice to an injured wife, the anomalous and absurd condition of the parties above described, where there would be a husband without a wife, or a wife without a husband, a state varying, moreover, with the location of the persons and property of each.

So serious a public and private evil demands that theoretical consistency should be sacrificed to common sense, and that the rights of the state of the residence of one of the parties to a marriage, should not stand in the way of a divorce properly obtained by the other. Thus the cardinal distinction between judgments in divorce, and other foreign judgments, is done away with as regards the non-resident: *Cheever v. Wilson*, 9 Wall. 108.

Of the conflict of laws in divorces of this class.

Still this evil, of divorces valid in one state or country, but not in another, is of constant occurrence. Especially is this the case in the United States. Here are thirty-seven sovereignties, each with its own code of laws, sometimes most discreditably lax on this subject, acknowledging no universal rule, admitting no other power to control or affect the personal status of those resident within its limits: 2 Kent 107.

A man abandons his wife and takes up his abode in another state whose law, perhaps, like that of Indiana, allows of divorce, "for any other cause for which the court shall deem it proper that a divorce should be granted:" 2 Rev. Stat. (G. & H.) 35 Ind. Having according to its laws acquired a domicile, he procures a divorce and then re-marries. In the state of the forum the divorce is valid, and all the necessary results, both as to persons and property, will follow. But in the state where the first marriage subsisted, and where the wife of that marriage resides, such divorce will be judged of, with all the personal and proprietary rights and liabilities dependent thereon, certainly as regards the wife, according to the laws of this state, and may or may not be held valid.