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## Husband and Wife, Domicile of Wife

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regard to contracts for the sale of land. It has once been expressed as a contrivance "to improve gentlemen out of their estates."<sup>31</sup> Had the Statute been rigorously enforced the result would have been different. "Few instances of parol agreements would have occurred, whereas it is manifest that the decisions on the subject have opened a new door to fraud." It is useless, however, to bewail the laxity that has prevailed in the enforcement of the Statute which has allowed the doctrine of part performance to spring up that has so firmly become rooted in the courts of equity. Our best way out is to require more rigid acts of part performance—acts that approach the irreparable. —A. P.

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HUSBAND AND WIFE, DOMICILE OF WIFE.—The question of when and under what circumstances a wife may acquire a domicile different from that of her husband is becoming more important in the courts of this country. With the so-called "rise of women's rights," noted in the enabling statutes passed in practically all jurisdictions, and in the present tendency towards more equality of treatment by the law, it seems that the conditions under which a wife can acquire a different domicile may be worth consideration.

It is the general principle of the common law that a married woman merges her legal entity in that of the husband, and upon marriage she acquires his domicile,<sup>1</sup> which changes with every alteration of his, regardless of the actual locality of her residence.<sup>2</sup> The common law theory was that the very being or legal existence of the wife was suspended during marriage,<sup>3</sup> that a person under authority of another has no right to choose a domicile.<sup>4</sup> This is the rule in England at the present time. The fact that a wife actually lives apart from her husband,<sup>5</sup> that they have separated by agreement,<sup>6</sup> that the husband may have been guilty of such misconduct as would furnish a defense to a suit by him for restoration of conjugal rights,<sup>7</sup> does not enable a wife to acquire a separate domi-

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<sup>31</sup> *Lindsay v. Lynch*, 2 Sch. & L. 5 (1804).

<sup>1</sup> MINOR, CONFL. LAWS, 46.

<sup>2</sup> *Cheeley v. Clayton*, 110 U. S. 706 (1883); *Watkins v. Watkins*, 135 Mass. 83, 85 (1883).

<sup>3</sup> 1 BL. COM. 442.

<sup>4</sup> STORY, CONFL. LAWS, 46.

<sup>5</sup> *Warrender v. Warrender*, 2 Cl. and F. 488 (1835).

<sup>6</sup> *Dolphin v. Robins*, 7 H. L. C. 390 (1859); in *re. Mackenzie*, (1911) 1 Cha. 578.

<sup>7</sup> *Yelverton v. Yelverton*, 1 Sw. and Tr. 574 (1859); *Dolphin v. Robins*; Note 6, *supra*.

cile. Though a wife may acquire a separate *home* for herself,<sup>8</sup> she can under no circumstances have any legal home or domicile other than that of her husband.<sup>9</sup>

But in this country, the old common law rule has not been followed in all its strictness. The ancient unity has become dissevered, and the theory of the wife's servitude has been superseded by the theory of equality as to property, torts, contracts and civil rights.<sup>10</sup> If this statement be broad enough to include among civil rights the power to acquire a domicile different from that of the husband, the next inquiry is as to the circumstances which must necessarily be present before the wife can establish her separate domicile. An eminent tribunal has said that she may acquire a separate domicile whenever it is right and proper that she should do so.<sup>11</sup> It is to be noted that the first departure from the strict common law rule is the view that a deserted woman may bring suit in the state of matrimonial domicile where she remains,<sup>12</sup> as her domicile does not follow that of her husband in that case.<sup>13</sup> This view is sometimes known as the Massachusetts rule.

But other states are more liberal. In a recent Virginia case, *Humphreys v. Humphreys*,<sup>14</sup> the husband had been guilty of cruelty sufficient to warrant a divorce under the statute.<sup>15</sup> The wife went to Reno, established a residence, and secured a divorce. The husband in Virginia started a suit for divorce on the ground that the Nevada decree was null and void. *Held*, the wife could acquire a domicile in another state separate from that of her husband for the purpose of getting a divorce.<sup>16</sup>

If it were possible here to give a categorically accurate review of the cases, the decision under consideration would be in accord with the position of numerous other jurisdictions. There are many cases to the effect that where a wife has grounds for divorce, she may remove to another jurisdiction, and establish a separate domicile.<sup>17</sup> So where the husband has been guilty of desertion,<sup>18</sup>

<sup>8</sup> Italics Ours.

<sup>9</sup> DICEY AND KEITH, *CONFL. LAWS*, 3RD. ED., pp. 135-7.

<sup>10</sup> *Shute v. Sargent*, 67 N. H. 305, 36 Atl. 282 (1893).

<sup>11</sup> *Cheever v. Wilson*, 9 Wall. 108 (U. S. 1869); see also *Hunt v. Hunt*, 72 N. Y. 217.

<sup>12</sup> *Ackerman v. Ackerman*, 200 N. Y. 72, 93 N. E. 192 (1908), affirming judgment in 108 N. Y. S. 534, 123 App. Div. 754.

<sup>13</sup> *Perkins v. Perkins*, 225 Mass. 82, 113 N. E. 841, (1916); *Burtis v. Burtis*, 161 Mass. 508, 37 N. E. 740 (1894); *Hartigan v. Hartigan*, 14 Pick. 181, 25 Am. Dec. 372 (Mass. 1833).

<sup>14</sup> 123 S. E. 554 (Va. 1924.)

<sup>15</sup> Va. Code, 1919, 5104.

<sup>16</sup> Note 14, *supra*.

<sup>17</sup> *Atherton v. Atherton*, 181 U. S. 155.

<sup>18</sup> *Carty v. Carty*, 70 W. Va., 146, 73 S. E. 310 (1911); *Petty v. Petty*, 42 Ind. App. 443, 85 N. E. 995 (1908); *Ditson v. Ditson*, 4 R. I. 87 (1856); *Moffatt v. Moffatt*, 5 Cal. 280. (1855). See also *Vachikinas v. Vachikinas*, 91 W. Va. 181, 112 S. E. 316 (1922).

cruelty,<sup>19</sup> or barbarous treatment,<sup>20</sup> habitual intemperance,<sup>21</sup> or adultery,<sup>22</sup> this rule will apply, for the purpose of allowing the wife to sue for divorce. Viewed as an extension of this position is a third treatment of the problem, the view that there is "no reason why a wife who has justifiably left her husband should not have the same choice of domicile for an action for damages that she has against her husband for a divorce."<sup>22</sup> A fourth position is adhered to in at least two jurisdictions, in which a wife can acquire a separate domicile, even though she have no grounds for divorce<sup>23</sup> so that her estate may be administered at the place of her death, despite the fact that the husband's domicile is in another jurisdiction.<sup>24</sup> The theory in these cases is that the separation is just as effectual as if a judicial decree had directed it.<sup>25</sup>

Regardless of the fact that the present tendency of the courts seems to be toward a more liberal interpretation of the principles governing the domicile of the wife, yet there are cogent reasons against the further extension of the Humphreys case. The effect of such policies on the American home might be far from salutary. As long as the husband is the head of the family and is under the duty to support the wife,<sup>26</sup> and is liable for her torts,<sup>27</sup> it seems more logical that he should be allowed to pick the jurisdiction in which he will be held responsible for these duties.

—H. L. S. Jr.

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PROMOTERS—WHAT ARE SECRET PROFITS—DUTY OF PROMOTERS TO DISCLOSE PROFITS.—When one undertakes to promote a corporation, it frequently happens that he wishes to convey his own property to the corporation. Under proper circumstances, such a conveyance is perfectly legitimate. But very frequently the transaction is not entirely free from suspicion of unjust profits or actual fraud. A case arose where a promoter had secured an option on

<sup>19</sup> *Hill v. Hill*, 166 Ill. 54, 46 N. E. 751 (1897).

<sup>20</sup> *Hollister v. Hollister*, 6 Pa. St. 449 (1847).

<sup>21</sup> *Sawtell v. Sawtell*, 17 Conn. 284 (1845).

<sup>22</sup> *Kinnier v. Kinnier*, 45 N. Y. 536, 6 Am. R. 132.

<sup>23</sup> *Williamson v. Osenton*, 232 U. S. 619 (1914).

<sup>24</sup> *Schute v. Sargent*, Note 10 *supra*; *Saperstone v. Saperstone*, 131 N. Y. S. 241, 146 App. Div. 576 (1911); *Lyon v. Lyon*, 30 Hun. 455 (N. Y. 1883). *Contra*, *Anderson v. Watt*, 138 U. S. 694 (1899); *Cheely v. Clayton*, Note 2, *supra*; *Loker v. Gerald*, 157 Mass. 42, 31 N. E. 709 (1892).

<sup>25</sup> *Matter of Florence*, 54 Hun. 328 (N. Y. 1888).

<sup>26</sup> *In re Crosby's Estate*, 148 N. Y. S. 1045, 85 Misc. N. Y. 679 (1914).

<sup>27</sup> *Keller v. James*, 63 W. Va. 139, 59 S. E. 939 (1907).

<sup>28</sup> *Anderson v. Davis*, 55 W. Va. 429, 47 S. E. 157, (1905); *Bogess v. Richards*, 39 W. Va. 567, 673, 20 S. E. 599, 603 (1894).