181 U.S. 175(1901)

BELL
v.
BELL.

Supreme Court of United States.

Argued April 25, 26, 1900.
Decided April 15, 1901.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

177 *177 *Mr. Henry H. Seymour* for plaintiff in error.

Mr. Charles B. Wheeler fodefendant in error.

MR. JUSTICE GRAY, after stating the case as above, delivered the opinion of the court.

The question in this case is of the validity of the divorce obtained by the husband in Pennsylvania. No valid divorce from the bond of matrimony can be decreed on constructive service by the courts of a State in which neither party is domiciled. And by
178 the law of Pennsylvania every petitioner for a divorce *178 must have had a *bona fide* residence within the State for one year next before the filing of the petition. Penn. Stats. March 13, 1815, c. 109, § 11; May 8, 1854, c. 629, § 2; *Hollister* v *Hollister,* 6 Penn. St. 449. The recital in the proceedings in Pennsylvania of the facts necessary to show jurisdiction may be contradicted. *Thompson* v. *Whitman.* 18 Wall. 457. The referee in this case has not only found generally that at the time of those proceedings the wife was a resident of the State of New York, and the husband was not a *bona fide* resident of Pennsylvania; but has also found that on January 31, 1894, some ten weeks before he filed his petition in Pennsylvania, he described himself, under oath, in a petition for the probate of a will in Erie County in the State of New York, as a resident of that county; and that no evidence was offered that he actually changed his domicil from New York to Pennsylvania. Upon this record, therefore, the court in Pennsylvania had no jurisdiction of the husband's suit for divorce, because neither party had a domicil in Pennsylvania, and the decree of divorce was entitled to no faith and credit in New York or in any other State. *Leith* v. *Leith.* (1859) 39 N.H. 20: *People* v *Dawell,* (1872) 25 Michigan. 247: *Sewall* v. *Sewall.* (1877) 122 Mass. 156: *Litowitch* v *Litowitch,* (1878) 19 Kansas. 451: *Van Fossen* v. *State.* (1881) 37 Ohio State. 317: *Gregory* v. *Gregory.* (1886) 78 Maine. 187: *Dunham* v *Dunham.* (1896) 162 Illinois. 589: *Thelen* v. *Thelen.* (1899)75 Minnesota. 433: *Magowan* v *Magowan.* (1899) 12 Dickinson. (57 N.J Eq) 322.

The death of the husband, since this case was argued, of itself terminates the marriage relation, and, if nothing more had been involved in the judgment below, would have abated the writ of error, because the whole subject of litigation would be at an end, and no power can dissolve a marriage which has already been dissolved by act of God. *Stanhope* v. *Stanhope,* (1886) 11 Prob. Div. 103. 111. But the judgment below, rendered after appearance and answer of the husband, is not only for a divorce, but for a large sum of alimony, and for costs. The wife's rights to such alimony and costs, though depending on the same grounds as
179 the divorce, are not impaired by the husband's death, should not be affected by the delay in entering judgment here *179 while this court has held the case under advisement, and may be preserved by entering judgment *nunc pro tunc,* as of the day when it was argued. *Downer* v *Howard.* (1878) 44 Wisconsin. 82: *Francis* v. *Francis.* (1879) 31 Grattan. 283: *Danforth* v. *Danforth.* (1884) 111 Illinois. 236: *Mitchell* v. *Overman.* (1880) 103 U.S. 62.

Judgment affirmed nunc pro tunc, as of April 261900.