to any new application for a divorce from bed and board, upon the same ground, up to that time, whether upon the same or different evidence. If there was no such cruelty proved as would sustain that libel, it follows *a fortiori* that there was none which would constitute the extreme cruelty constituting a cause for a desertion leading to the dissolution of the marriage relation. To go behind that judgment would be to admit that, while the parties could not be separated by the authority of the court, there was yet such cause for their separation as would lead to a complete severance of conjugal ties. The libellant now complains of the same thing as she did before, and only asks a more complete remedy because she charges that the effects of the injury have continued for a longer period. But the very foundation of her libel, the thing which she states as the ground of her claim to relief, has been already determined against her, in a suit between the same parties, in which all the evidence she now has was competent, and judgment has passed upon it. She cannot be allowed to re-open that litigation, and the judgment was rightly held to be a bar. *Exceptions overruled.*

MATILDA A. SHAW *vs.* AMOS SHAW.

If the legal domicil of one of the parties to a libel for divorce, who lived together as husband and wife in this state before the time when the alleged cause of divorce occurred in another state, remained at that time within this jurisdiction, that is sufficient to satisfy the provision of the Gen. Sts. *c.* 107, § 12, that in order to enable the divorce to be decreed one of the parties must have been living in this state when the cause occurred.

A husband and wife, whose domicil was in Massachusetts, started to go to Colorado to reside. In Pennsylvania, on the journey, he treated her with extreme cruelty, and she left him there and returned to Massachusetts, where she continued to reside; but he never returned to Massachusetts. *Held*, that she might maintain here a libel for divorce for the cause which occurred in Pennsylvania.

LIBEL for divorce from bed and board for extreme cruelty of the husband. The libellee was defaulted; and, at the hearing before *Wells*, J., the allegations of the libel were proved to the satisfaction of the judge, who reserved the case for determina

tion by the full court of the question of jurisdiction arising on the following facts:

The parties were married April 12, 1866, at Rockport, and came immediately to Boston, where they resided together until about September 1. At this time the libellee decided to go to the territory of Colorado, to reside, and started, with his wife, on the journey. On the way they went to Philadelphia, in Pennsylvania, to enable him to complete some matters of business, and were detained there temporarily till January, 1867, when the libellant, on account of his extreme cruelty and through fear for her life, as he had threatened to kill her, left him, and returned to her home in Boston. The libellee never returned to this state. The acts of cruelty complained of were committed after the parties left Boston, and while so residing together temporarily at Philadelphia.

J. Nickerson, for the libellant.

Foster, J. The jurisdiction of this court to decree divorces is created by statute, and, except when the libellant has resided in this state five consecutive years next preceding the time of filing the libel, "no divorce can be granted for any cause occurring in any other state or country unless before such cause occurred the parties had lived together as husband and wife in this state and one of them lived in this state when the cause occurred." Gen. Sts. *c.* 107, §§ 11, 12. The words to live and to reside, in these provisions, are obviously synonymous, and both relate to the domicil of the party or the place where he is deemed in law to reside, which is not always the place of one's present actual abode. To live, to reside, to dwell, to have one's home or domicil, are usually, in our statutes, equivalent and convertible terms. *Opinion of the Justices*, 5 Met. 587. *Collester* v. *Hailey*, 6 Gray, 517. *Worcester* v. *Wilbraham*, 13 Gray, 586. For the purposes of divorce the general rule of jurisprudence is that a divorce granted in the place of the domicil of both parties, and there valid, is good everywhere. *Clark* v. *Clark*, 8 Cush. 385. And we are clearly of the opinion that the requirement of living in this state when the cause of divorce occurred is satisfied if the legal domicil of the party at that time remained within this jurisdiction.

Every one must have a domicil somewhere, and a domicil once existing cannot be lost by mere abandonment even when coupled with the intent to acquire a new one, but continues until a new one is in fact gained. *Abington* v. *North Bridgewater*, 23 Pick. 170. *Thorndike* v. *Boston*, 1 Met. 242. In the latest case on the subject in the house of lords, decided in May, 1868, Lord Chancellor Cairns said that "the law is beyond all doubt clear with regard to the domicil of birth, that the personal *status* indicated by that term clings and adheres to the subject of it until an actual change is made by which the personal *status* of another domicil is acquired." *Bell* v. *Kennedy*, Law Rep. 3 H. L. 307.

The former domicil remains until both the intent and fact of change of actual residence to another place have concurred to establish a new domicil there. The rule that one who has left this Commonwealth with the intention never to return here to reside is no longer a taxable inhabitant of Massachusetts, even if he has not yet acquired a new domicil in another state or country, is not in conflict with the principles which we have stated, but depends upon different language in the statutes, and upon a different class of considerations. It is such an exception to the ordinary rule of construction as ought not to be extended. *Colton* v. *Longmeadow*, 12 Allen, 598.

The parties to the present libel were married in Massachusetts and resided here until they determined to go to live in Colorado; and, on their way to their future intended home in that territory, they were sojourning temporarily at Philadelphia when the acts of cruelty were committed which constitute the alleged cause of divorce. At that point of time the domicil of both parties remained in this Commonwealth. They could not have acquired a domicil in a new jurisdiction which they had never reached. There existed an intent to acquire a domicil in Colorado, but the concurrent fact of actual residence there was equally indispensable to a change of domicil, and is wholly wanting. They had no claim to a domicil in Philadelphia, where they were only commorant for a temporary purpose, tarrying *in itinere* without any design of making it their home. There is no au-

thority for saying that a former domicil can be lost while one is *in transitu* and before he has arrived at another place in which he intends to establish himself. *Bell* v. *Kennedy*, Law Rep. 3 H. L. 323.

In Philadelphia, in consequence of the husband's cruelty, the wife abandoned him and returned to Massachusetts, where she has ever since resided. The husband never came back to this Commonwealth. After the *delictum* was committed by the husband which caused the wife to separate herself from him and justified her in doing so, no subsequently acquired domicil of his could draw after it hers and change it so as to deprive the courts of Massachusetts of their jurisdiction to grant a divorce for an offence committed while the domicil of both remained in this Commonwealth. Nor is the circumstance that the acts of cruelty were committed out of this jurisdiction of any consequence. *Harteau* v. *Harteau*, 14 Pick. 181. *Brett* v. *Brett*, 5 Met. 233. *Barber* v. *Barber*, 21 How. 582. *Yelverton* v. *Yelverton*, 1 Swab. & Trist. 574. 2 Bishop Mar. & Div. *c.* ix.

Divorce decreed.

WILLIAM C. DURANT & another *vs.* EDWARD N. BURT.

In an action by a broker against his principal for money paid at the defendant's request, evidence that the plaintiff, upon an order to buy stock on time, bargained with a third party for the stock so as to render himself personally liable for the price thereof, and then gave notice of the purchase and the price to the defendant, who "signified his assent thereto;" and that afterwards, before the end of the time limited in the contract, in reply to the plaintiff's request for an advance of money to himself as a "margin" for security against loss by depreciation of the market price of the stock, the defendant said "that it would be all right;" is sufficient to warrant a finding that the defendant knew that the plaintiff had rendered himself liable for the contract price, and ratified that arrangement.

A broker bargained for shares in the stock of a corporation, on time, and, with the knowledge and assent of his principal, became himself liable for the price thereof. At the end of the time limited in the contract, he took and paid for the shares, the principal having failed to do so; and then, after notifying the principal and vainly requesting him to take the shares and demanding repayment, he sold them, the principal at no time repudiating his agency or objecting to his proceedings. *Held*, that he might maintain an action to recover from the principal the difference between the price he paid and the price he realized for the shares, whether or not the party with whom he bargained therefor was at the time of such bargain the owner or assignee of the shares, or authorized by the