PRIVATE INTERNATIONAL LAW: COMMONWEALTH MATRIMONIAL CAUSES ACT 1945. CHANGE OF DOMICIL.

Part III of the Commonwealth *Matrimonial Causes Act* 1945[1] vests the Supreme Court of a State with federal jurisdiction to make available to persons domiciled in another State the matrimonial remedies of their domicil. Jurisdiction to deal with a particular suit depends on residence by the petitioner for not less than one year immediately prior to the institution of proceedings in the State concerned. The right to relief is determined by the law of the State of domicil; and the manner in which that relief is obtained is determined by the practice and procedure of the Supreme Court in which the proceedings are brought.

In a recent case in the Victorian Supreme Court (*Walton v. Walton*),[2] Barry J. was asked to make a decree for restitution of conjugal rights, a remedy not provided for by Victorian law, but available under New South Wales law to persons domiciled in that State. Under the New South Wales *Matrimonial Causes Act* 1899, either the husband or the wife may petition for such a decree, and if the respondent fails to comply with the decree granted, he or she is deemed to have been guilty of desertion without reasonable cause. On further petition, the Court may pronounce a decree *nisi* for the dissolution of the marriage, although the period of three years normally required for desertion may not have elapsed since the failure to comply with the decree for restitution of conjugal rights.

Having come to the conclusion that the petitioner was domiciled in New South Wales and otherwise entitled, Barry J., in a reserved decision, made the decree asked for, devising a procedure modelled on that of New South Wales.

A further point of interest was discussed by his Honour when considering where the petitioner was actually domiciled. It appeared that the petitioner had been born in Victoria, but had taken up a job in New South Wales where he claimed to have established a permanent home. At the date of the petition, he was stationed in Victoria under army orders, but he stated that he intended after discharge to return to his job in New South Wales.

The question arose, therefore, whether the petitioner had lost his Victorian domicil of origin, and had acquired a domicil of choice in New South Wales. This was of course a question of fact, but it has often been emphasised that the necessary intention to abandon a domicil of origin is not easy to establish. However, a change of domicil within the Commonwealth may well be a thing more lightly undertaken than a change of domicil to a foreign country, and his Honour pointed out that comparatively slight indications may be sufficient to establish such a change, for in Australia the people of the different States have a substantial similarity of social ideas and customs, a common nationality, and a common language. His Honour continued:[3] "The notion that the people of each State form a

1. No. 22 of 1945.
2. [1948] V.L.R. 487; [1949] A.L.R. 148.
3. [1948] V.L.R. 487, 489; [1949] A.L.R. 148, 150.

separate community is held much less firmly and generally than formerly, and changing political conceptions, deriving from domestic and international pressures, and operating coincidentally with improved transport and communication facilities, are contributing greatly to the weakening of the notion."

PRIVATE INTERNATIONAL LAW: EXTRA-TERRITORIAL EFFECT OF STATUTES; PROPER LAW OF A CONTRACT.

Boissevain v. Weil.[1]

While, owing to war conditions, the parties were involuntarily resident in Monaco, which was in military occupation of the enemy, the plaintiff, a Dutch subject, lent the defendant, a British subject, the sum of 960,000 francs, which it was agreed should be repaid at the exchange rate of 160 francs to the pound. The defendant drew cheques in blank for the full amount on an English bank, wrote a letter addressed to the bank informing it of the circumstances, and instructing it, on presentation or as soon as the law permitted, to honour the cheques in sterling. She signed a document undertaking to repay the sum borrowed in cash if the plaintiff failed to obtain payment on presentation of the cheques. The evidence showed that the defendant's bank account did not in fact exist.

The defendant repudiated the debt, and the plaintiff brought an action for money lent with interest. In the divisional court,[2] the defences were: (1) that the transaction was prohibited by the *Trading with the Enemy Act* 1939, (2) that the transaction was illegal by Monegasque law, and (3) that the transaction was prohibited under the *Defence (Finance) Regulations* 1939. Croom-Johnson J. rejected these defences and found for the plaintiff. On appeal, defendant relied only on the *Defence (Finance) Regulations* 1939 which provided: "Except with permission granted by or on behalf of the Treasury, no person other than an authorized dealer shall buy or borrow any foreign currency . . . from any person not being an authorized dealer." Section 3 (1) of the *Emergency Powers (Defence) Act* 1939 provided: "Unless the contrary intention appears therefrom, any provisions contained in, or having effect under, any Defence Regulation shall . . . (b) in so far as they impose prohibitions, restrictions or obligations on persons, apply to all persons in the United Kingdom . . . and to all other persons being British subjects"—with the exception of persons in certain specified territories.

The plaintiff replied that on its proper construction the regulation had no extra-territorial effect and that it should be construed as applying only to territories in which it is possible to obtain a consent of the Treasury, or in which it is reasonable to contemplate the existence of, or access to, an authorised dealer. Counsel argued also that even if it had extra-territorial effect, it should not be applied to transactions in enemy-

1. [1949] 1 All E.R. 146.
2. [1948] 1 All E.R. 893.