jurisdiction if the requirements of Section 10 were satisfied. If the words "is domiciled" meant "is domiciled at the time of the decree", then in the event of the parties changing their domicil between the date of the institution of the proceedings and that of the hearing to a place outside the Commonwealth, the parties would not be domiciled in any state or territory and there would be no law in accordance with which a decree could be pronounced.[5] Therefore, in order that the Court might exercise the jurisdiction with which it had been invested, it could only do so if the words "is domiciled" had reference to domicil at the time of institution of the suit. The decree therefore pronounced in this case was in accordance with Tasmanian law.

DARRELL LUMB

[5] [1953] V.L.R. 621 at 624.

MARRIAGE — INCOMPLETE CEREMONY — VALIDITY

Quick v. Quick,[1] although based on a factual situation which "can only be characterized as the scandalous behaviour of the petitioner and the respondent",[2] raises a question of law which has never before been the subject of a reported decision.

The parties were casual acquaintances and fellow employees of the Tramways Board. Whilst drinking together they discussed the subject of matrimony and decided to get married. An obliging J.P. granted them a special licence, and, accompanied by a taxi driver and the respondent's mother, they went to a clergyman's house. He conducted the marriage ceremony according to the rites of the Church of England up to the stage where the man had plighted his troth and said he took the woman to be his wedded wife and the woman had made similar statements. As the ring was being placed on her finger she threw it to the floor saying "I will not marry you", and rushed from the premises. All the requirements, up to this stage, of a valid marriage had been complied with, and according to the evidence accepted by the trial judge (Sholl J.) she was a willing party, giving a real consent, until she ran from the room. The parties did not live together and after three years the man brought an action for a declaration that the ceremony was a nullity, or alternatively for a decree nisi on the ground of desertion. The trial judge referred the question to the Full Court.

It was accepted by the Court that Lord Hardwicke's Act (1753) and the subsequent English legislation on marriage were not applicable to the then situation of New South Wales, and that the

[1] (1953) A.L.R. 1023. [2] Per Sholl J.

law as to marriage formalities introduced here by 9 Geo. IV c. 83 was the common law. No special form was required by the common law, the essentials being only that the parties plight their troth in the presence of a clergyman ordained by a bishop. The Marriage Act 1928 provides for marriage by certain government officials, and by the clergy of certain religious denominations, among which is the Church of England. Such clergymen must complete a scheduled form, which includes a statement that the marriage was solemnised according to the rites of his denomination.

Martin and Smith JJ. held that the Act does not alter the common law position so as to make any requirements as to form essential. They thought it unlikely that Parliament should have intended minor omissions or variations in ceremonies to become a valid ground for nullity proceedings.

Herring C.J. dissented, his main ground being that the clause in the schedule was sufficient to change the common law position, and thus once a ceremony was commenced, it had to be completed according to the rites of the clergyman's denomination. He also said that where consent is given, as in the present case, it should be regarded as executory until the ceremony is completed.

All three judgments depend to some degree on common sense, and although it is submitted that that of the Chief Justice is the most convincing, it now seems clear that the essential part of a marriage ceremony before a clergyman in Victoria is the "plighting their troth" of the parties.

G. V. TOLHURST

CONSTITUTIONAL LAW — VICTORIA — JURISDICTION OF SUPREME COURT — BILL TO ALTER ELECTORAL DISTRICTS OF LEGISLATIVE ASSEMBLY

CASES on Victorian constitutional law are rare, and *McDonald v. Cain*[1] is one of considerable importance. The Government introduced a Bill which was passed in the Legislative Assembly by an absolute majority, but in the Legislative Council on its second and third readings only by a simple majority. The Bill introduced a new and involved machinery by which the electoral districts of the Legislative Assembly might be altered from time to time.

The plaintiffs, who were both on the electoral rolls for, and members of, the Legislative Assembly, sought declarations that it was contrary to law to present the Bill to the Governor, as it had been passed by fewer than an absolute majority in the Legislative

[1] [1953] A.L.R. 965.