did the transferor, when executing the deed, know what he was doing? If he did not know and if there was no lack of *bona fides* on the part of the transferee, then it would seem that the transferor should not be allowed to avoid his deed. But be there good faith or not, the main contention is that the powers of avoidance lie in the hands of the transferor, and that the conveyance, or transfer, is not *ipso facto* void and a nullity.

PETER L. WALLER

PRIVATE INTERNATIONAL LAW—DIVORCE—STATUTORY RESTRICTION UPON RE-MARRIAGE—EXTRA TERRITORIAL EFFECT

The most important point at issue in *Miller v. Teale*[1] was whether an Act of South Australia should receive recognition extra-territorially in New South Wales. The Act in question was the Matrimon Causes Act (S.A.) 1929. Section 17 of the Act provides that parties to a marriage dissolved by decree may remarry after the expiration of three months from the order absolute or upon the dismissal of any appeal against that order.

In this case, the appellant sought a decree of nullity for a ceremony of marriage between himself and the respondent. The respondent, who had been divorced by a decree of a South Australian Court, had then participated in the ceremony of marriage in Grafton, New South Wales, on the day the decree of divorce was made absolute. She had therefore flouted the provisions of s. 17 of the Act.

Both Mr Miller and Mrs Teale were domiciled in New South Wales at the time of the marriage. Consequently New South Wales law was both the *lex domicilii* and the *lex loci celebrationis*. The question before the High Court[2] was whether s. 17 of the South Australian Act with its disabling provision should be recognized in New South Wales, with the subsequent result that the marriage ceremony between appellant and respondent would be a nullity.

The unanimous opinion of the Court was that the section of the South Australian Act should be recognized in New South Wales by the rules of private international law, and thus that the appeal should succeed and the marriage be declared a nullity. The provision, the Court held, was part of the mechanism of appeal allowed after pronunciation of a decree absolute. It was not a penalty upon one party of the marriage, which would prevent the section being granted extra-territorial recognition, in the terms of the decision in *Scott v. A-G.*,[3]

[1] [1954] A.L.R. 1109.
[2] Dixon C.J., McTiernan, Fullagar, Kitto, and Taylor, JJ.
[3] (1886) 11 P.D. 128.

supported by Beale.[4] In such a case as s. 17 "where the law under which the decree was granted imposes a restraint on both parties and it is merely in order to provide against a remarriage before the time for appealing has expired, the restraint is then regarded as a temporary qualification of the effect of the decree and as entitled to extra-territorial recognition . . . .".[5]

A short chain of English authority was discussed by the Court, all of which pointed to a proposition, first enunciated by Hannen P. in *Warter's* case[6] that such a statutory limitation on remarriage is an integral part of the proceedings by which alone both the parties can be released from their incapacity to contract a fresh marriage.

The principle adopted is, it is submitted, sound. It would be ludicrous, as Kitto J. remarked in a short separate judgment, if the Courts of one country (such as New South Wales), while recognizing the jurisdiction of Courts of a "foreign country" (such as South Australia) to give a judgment dissolving a marriage, did not also recognize the jurisdiction of a foreign appellate Court to reverse that judgment. The section of the South Australian Act protected the right of appeal—it prevented a party to a divorce entering into a valid marriage for three months after the decree absolute in order to allow appeal. The High Court was right, it seems, in holding that this prohibition should be recognized in New South Wales.

PETER L. WALLER

[4] *Conflict of Laws*, (1935) 685-6.
[5] [1954] A.L.R. 1109, 1113.
[6] (1890) 15 P.D. 152.

CONSTITUTIONAL LAW—TRADE AND COMMERCE—INCONSISTENCY BETWEEN COMMONWEALTH AND STATE LAWS

The decision of the High Court in *O'Sullivan v. Noarlunga Meat Limited*[1] has re-opened discussion on two very important questions in Australian constitutional law (a) the characterization of the Commonwealth powers enumerated in s. 51 of the Constitution; (b) the interpretation of s. 109 of the Constitution, which invalidates a State law inconsistent with a law of the Commonwealth. Both questions are at the very basis of Commonwealth-State relations in the Australian federal structure.

The facts of the case were as follows.[2] The Noarlunga Company held a licence in the form prescribed by the Meat Export Control (Licences) Regulations of the Commonwealth by which it was licensed to export meat, and the Company's premises were registered under the Commerce (Meat Export) Regulations[3] in respect of the

[1] [1955] A.L.R. 82.
[2] They are set out *ibid.* 83.
[3] A complete summary of the Regulations will be found in the judgment of Fullagar J. *ibid.* 95-96.