in issue, *i.e.*, the evidence of the similar acts must tend to prove something that the prosecution must establish having regard not only to the plea of not guilty, but also to the defences actually relied on by the accused. The decision will be welcomed as bringing clarity to one aspect of an undoubtedly difficult subject, and as reasserting that one of the first interests of justice is that prisoners be tried fairly, and by a jury not prejudiced by the knowledge that, whether or not they are guilty on this occasion, they have been guilty on others.

H.T.G.

PERSONAL PROPERTY

Past Consideration for Negotiable Instruments.

Section 32 (1) of the *Bills of Exchange Act*, 1909-1936 (section 27 (1) of the English Act) provides that "valuable consideration for a bill may be constituted by (*a*) any consideration sufficient to support a simple contract ; or (*b*) an antecedent debt or liability." The existence of this second alternative, which seems opposed to the ordinary rules of the common law with regard to consideration, suggests that another common law requirement, that consideration must move from the promisee, is also inapplicable to the case of negotiable instruments. In the case of bills of exchange it is clear that the requirement does not apply to the case of remote parties ; for example, an acceptor is liable to an indorsee, although no consideration has moved from the indorsee to the acceptor, provided that value has at any time been given for the bill (*e.g.*, by the indorsee). A question that appeared open to doubt was whether a bill or note was given for value if the alleged consideration had moved from a stranger to the instrument, and this question was considered by the High Court in *Wragge* v. *Sims Cooper and Co. (Aust.) Pty. Ltd.*,[62] where it was held that a promissory note given to the agent of a vendor in respect of outstanding purchase money owing to the vendor by the maker of the note was given for good consideration. It is suggested that this decision rested on the principle that the agent was entitled to avail himself of the consideration previously given by the vendor, because he was under a legal duty to the vendor to pay over the amount received as soon as the note was paid. In other words, the consideration required by section 32 of the *Bills of Exchange Act* must move either from the payee or from a person to whom the payee is accountable for the amount of the bill or note.

In that case the instrument was given by the debtor to a third party, but in the recent case of *Oliver* v. *Davis*[63] the Court of Appeal had to consider the case of an instrument given by a third party to the creditor. The facts were that the plaintiff lent £400 to X. in exchange for a post-dated cheque drawn by X., who, when he was unable to meet his cheque, persuaded the defendant to draw a cheque for £400 in favour of the plaintiff. This latter cheque was later stopped by the defendant, and in an action on the cheque it was held that there was no consideration within the meaning of the above section, so that the plaintiff was not entitled to recover. The members of the Court of Appeal considered that the words "antecedent debt or liability" refer to an antecedent debt or liability of the promisor, *i.e.*, the drawer of the bill or maker of the note, and not of a third party. It was therefore

62. (1933) 50 C.L.R. 483.
63. [1949] 2 All E.R. 353.

necessary for the plaintiff to show a consideration sufficient to support a simple contract under section 32 (1) (*a*), such as a promise by the plaintiff to forbear to sue X., but on this point he failed on the facts. In his judgment, Evershed M.R. stated that, for the antecedent debt or liability of a third party to be relied on to support a bill, there must be some relationship between the receipt of the bill and the antecedent debt or liability, and he could not see any distinction between a case in which there is a sufficient relationship for this purpose and a case in which there is in the ordinary sense consideration passing from the payee to the drawer. It is suggested that the effect of these authorities is that, so far as immediate parties to a bill or note are concerned, if past consideration in the form of an alleged antecedent debt or liability is relied on, to constitute value the debt or liability must be one owed by the drawer or maker of the instrument, and owed to the payee or someone to whom the payee is accountable, *i.e.*, owed by the promisor to the promisee or his principal.

H.T.G.

PRIVATE INTERNATIONAL LAW

Jurisdiction in Nullity.

The echoes of *De Reneville* v. *De Reneville*[64] are still with us. That case in addition to deciding the question of domicil also made it clear that mere residence of the petitioner within the jurisdiction was not sufficient to give the Court jurisdiction. It expressly left open the point whether residence of both parties would be sufficient and also impliedly left open the question of the effect of the residence of the respondent alone and of the effect of the marriage being celebrated within the jurisdiction. In *Lougheed* v. *Clark*[65] Mansfield S.P.J. had carried the position one step further by holding that the fact of the celebration of the marriage in Queensland, together with the fact of the petitioner being resident in Queensland, could not give the Supreme Court of Queensland jurisdiction. The decision of *Casey* v. *Casey*[66] in 1949 seems to do no more than confirm the decision in *Lougheed* v. *Clark* and leave other matters still unsettled. In *Casey* v. *Casey* the marriage had taken place in England and the petitioner was resident there, but the domicil of the parties and the residence of the respondent was in Canada. The judge came to the conclusion that the marriage by the law of Canada was voidable and hence the basis of England being the place of celebration even when coupled with the petitioner's residence was insufficient. This case again left open the point as to whether the residence of both parties would be sufficient as was asserted in *Hutter* v. *Hutter*.[67] The vice of such a decision as *Casey* v. *Casey* appears to be that it creates different principles for void and voidable marriages respectively, as there is no doubt that in the case of marriages *void ab initio* celebration of the marriage within the jurisdiction is a sufficient basis for jurisdiction. This means that it is necessary to refer to the *lex domicilii* to decide whether the marriage is void or voidable. Such an approach seems contrary to the spirit of *De Reneville* v. *De Reneville*.[68] Such case, it is true, did decide that where the basis of jurisdiction was domicil then the decision of the question whether the marriage was void or voidable

64. [1948] P. 100.
65. [1948] St. R. Qd. 157.
66. [1949] P. 420.
67. [1944] P. 95.
68. *Supra.*