the same rule is applied to both. The distinction, however, is adverted to in *Jones v. Carter* (15 M. & W. 718); and in *Moore v. Ullcoats Mining Co. Ltd* ([1908] 1 Ch. 575). Warrington J., relying on this case and on a dictum of Bayley J. in *Fenn v. Smart* (12 East, 444, 448), said that "where the condition in the lease is that the landlord may re-enter he must actually re-enter, or he must do that which is in law equivalent to re-entry, namely, commence an action for the purpose of obtaining possession."

In *Finney Isles & Co. Ltd. v. Pelling* (*supra*) the Full Court, like the Court of Appeal in *Serjeant v. Nash Field & Co.*, failed to draw any distinction between breach of condition and re-entry for breach of covenant. It held that a notice to quit was equivalent to the commencement of proceedings and to entry. The language used shows that the Court treated it as equivalent to the commencement of proceedings because it was an unequivocal act of election to forfeit, thereby following the Court of Appeal in its failure to distinguish between the two different modes of determination indicated abov. If therefore in any subsequent case it should be held that under a power of re-entry the mere election to forfeit is not in itself sufficient to determine a lease, this case would not be authority for holding that the notice to quit is the commencement of proceedings and therefore equivalent to actual entry.

The decision in this case, however, appears also to have gone on an alternative ground, viz. that by s.46 the notice to quit in case of forfeiture as in other cases operates to determine the tenancy. Section 46 contains a proviso that "nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted." The Court apparently considered that this proviso did not apply in this case, for Macrossan C.J., delivering the judgment of the Court, said: "The proviso to s.46 has, in my opinion, been inserted to prevent, *inter alia*, the termination of a tenancy for a term of years before that term has expired where a lessor serves a notice to quit and relies upon the grounds specified in s.41 (5) (g), (h) and (i)." No reasons are given for this apparent limitation of the effect of the proviso to some only of the cases in which the notice would not apart from the Act have terminated the lease.

W.N.H.

PERSONAL PROPERTY

Donatio Mortis Causa.

An authoritative exposition of the law as to the requirements of a valid *donatio mortis causa* is to be found in the judgment of the Court of Appeal in *Birch v. Treasury Solicitor*.[1] The deceased, an elderly woman who had suffered a serious accident, told Gladys Birch to go to the deceased's house where she would find some bank books, and said: "I want you to take them home and keep them and if anything happens to me I want you and Frank (Gladys' husband) to have the money at the banks." Gladys complied with this suggestion and

1. [1951] Ch. 298.

got the bank books. In deciding whether there had been an effective *donatio mortis causa* of the money in the deceased's bank accounts it was necessary to consider three main questions. Firstly, was the delivery of the bank books to one of the alleged donees alone (viz., Gladys) a sufficient delivery when a joint gift was intended? This question was answered affirmatively, for the reason that it appeared from the evidence that, at a conversation between the deceased and Gladys and Frank Birch after Gladys had taken delivery of the bank books, the deceased showed that she regarded the taking by Gladys as a taking on behalf of herself and her husband, and Gladys acquiesced in this view. It was held that what passed at this interview impressed on the delivery, which may originally have been a delivery into the hands of Gladys only, the new character of a delivery to both alleged donees. It was further suggested, although it was unnecessary to decide the point, that in any event the delivery to Gladys might well have affected a valid *donation* to Gladys coupled with a trust to hand half the moneys to Frank. The second question was whether the deceased had parted with dominion over the subject matter of the gift as well as with possession. It was argued that she had not, because, after Gladys had taken the bank books, the deceased asked her to draw out some money and pay a bill. This argument was rejected because there had been no antecedent reservation of dominion by the deceased, and at most her request to pay the bill might have amounted to a partial revocation. The third question was whether the money in the banks was capable of being the subject-matter of a *donatio*. The Judge of first instance had applied the test suggested by some earlier authorities as to whether the delivery of a document constitutes a good *donatio mortis causa* of a chose in action, namely does the document express the terms on which the subject-matter of the chose in action is held by the donor or the terms under which the chose in action came into existence, and had dismissed the plaintiff's claim to be paid the moneys because the bank deposit books did not satisfy these conditions. The Court of Appeal, however, held that this test was too wide, and that the real test is whether the document was the essential *indicia* or evidence of title, possession or production of which entitles the possessor to the money or property purported to be given, so that delivery of the document amounts to a transfer of that money or property. They held that this requirement was satisfied, and that since on the evidence it was necessary to produce the bank books on any withdrawal the bank books were *indicia* of title. The plaintiffs accordingly were held to have established their claim to a valid *donatio mortis causa* of the moneys in all the bank accounts. These accounts were deposit or savings accounts, not current accounts, in relation to which the position might well be different.

Innkeeper's liability

The judgments in *Williams v. Linnitt*[2] contain an interesting discussion of the basis of an innkeeper's liability, which, subject to certain exceptions, is absolute, and from which the innkeeper cannot relieve himself by contract. The plaintiff's car was stolen from a car park belonging to an inn to which the plaintiff had resorted to have a few

2. [1951] 1 K.B. 565.

drinks, and the inn-keeper was held liable to pay damages amounting to the value of the car. It was held that the plaintiff was a traveller although he was a local resident who had merely dropped in for a drink before returning home, that the car park was within the *hospitium* of the inn, and that the innkeeper could not escape his liability by exhibiting a notice to the effect that vehicles were admitted only on condition that the proprietor should not be liable for their loss. Denning L.J. disagreed with the other members of the Court of Appeal on the last point, holding that the effect of the notice was to take the car park out of the *hospitium* of the inn. The English equivalent of Section 62 of the Queensland *Liquor Acts* had no application, of course, since that section does not apply to "carriages" (which includes motor cars).

H.T.G.

PRIVATE INTERNATIONAL LAW

Recognition of Foreign Nullity Decrees

The juristic basis of jurisdiction in nullity still continues to agitate the Courts. *Chapelle v. Chapelle*[1] is one of the few cases bearing on the question of the competency of a foreign nullity decree. It is implicit in the judgment in *De Reneville v. De Reneville*[2] that the English Court has a sufficient jurisdiction if the domicil of one of the parties of the quasi-marriage is English. However, in the case abovementioned Willmer J. refused to apply this in favour of a foreign Court. In this case the wife, then domiciled in England, married in England a domiciled Maltese and the parties cohabited in Malta where the husband later obtained a decree of nullity on the ground of lack of compliance with formalities. Later having acquired a domicil in England he for greater certainty petitioned for divorce and the respondent wife raised the issue as to the subsistence of the marriage. Willmer J. held that the woman must be held to have been domiciled in England at the time of the Maltese decree because that decree adjudged that marriage to be formally invalid and therefore ineffectual to effect a change of domicil, and also because "I do not think that the wife can at one and the same time claim a common domicil with her husband in Malta and yet rely on the decree of the Maltese Court which destroys the foundation on which the claim is based." He then proceeded to hold that the Maltese decree should not be recognised because it was not the decree of the common domicil. It is submitted that it is a most inelegant proposition, to say the least of it, that a domestic decree based on the domicil of one of the parties is valid from the viewpoint of jurisdiction whilst a foreign decree similarly based is void. Moreover it is submitted that the Judge should have considered the question of the woman's domicil apart from the effect of the Maltese decree, that he should have pursued the course followed in *De Reneville v. De Reneville*[3] of inquiring whether the marriage was rendered void or voidable by the particular informality alleged. It is probable that such question would be decided by the law of England as the

1. [1950] P. 134.
2. [1948] P. 100.
3. *Supra.*