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.*

lex loci celebrationis governing matters of form. The writer cannot feel confident of the correctness of the view asserted in the review of the case in the International Law Quarterly[4] that this would lead to the result that the domicil was changed to Malta by the marriage but it is sufficiently clear that the judge did follow the wrong path of reasoning.

Marriage Validity

Risk v. Risk[5] was a case applying the principle of *Hyde v. Hyde*[6] to a nullity suit. The woman who was party to a polygamous union asked for a declaration of nullity on the ground that the marriage was of a polygamous character. The Court asserted the principle that in the case of a polygamous marriage matrimonial relief could not be granted and dismissed the petition. It is obvious from other decisions that such polygamous marriages are not regarded in all respects as nullities. Their validity will depend on the solution of the choice of law problem involved. What *Risk v. Risk* asserts is simply that as the English conception of marriage is monogamous marriage the use of its judicial machinery for affording matrimonial relief is limited to the case of a monogamous marriage. In other cases it refrains from adjudicating whether the relief asked is a decree of divorce or one of nullity.

In *Kenward v. Kenward*,[7] which will be popularly remembered as the case in which the Russian wives of certain Englishmen were prohibited by the Soviet authorities from rejoining their husbands, the marriages were in a suit for nullity held to be void by the Court of Appeal on the short point that they did not comply with the formalities of the Soviet law which was the *lex loci celebrationis*. The existence of the Russian prohibition, however, gave rise to an attack on the validity of the marriages on two further grounds, viz. firstly on the unconvincing ground that they were vitiated by fundamental operative mistake, secondly on the stronger ground that they involved such a denial of the ordinary rights of cohabitation and *consortium* as not to be marriages at all. These last two grounds were negatived, Denning L.J. dissenting on the second point. What is of interest here is that the Court applied English law to these questions presumably on the ground that it was the law of the husband's domicil. The second ground at first glance looks like an attempted application of the *Hyde v. Hyde* principle to an issue other than a polygamous union but if this were so then success of the argument would merely have resulted in the refusal of the Court to adjudicate at all. It is clear that the Court did not so regard it. The Court was merely testing a matter relating to the validity of a particular marriage by reference to the appropriate law governing, they were not considering as they were in *Hyde v. Hyde* a submission that the Court could not grant matrimonial relief in respect of a marriage which was not marriage in the English sense of the word.

It is a well recognised principle that the question of formal validity of a marriage is governed by the *lex loci celebrationis*. In *Savenis v.*

4. International Law Quarterly Vol. 3 p. 247 at 250.
5. [1951] P. 50.
6. L.R. 1 P. & D. 130.
7. [1951] P. 124.

Savenis[8] however a formal requirement insisted on by the *lex loci celebrationis* could not be complied with on account of chaotic conditions following on the termination of the second World War. In such cases the marriages of British subjects are valid if they comply with the English common law and the Court felt itself able to extend the principle in the present case of foreigners. It has been suggested that the question should have been referred to the law of the domicil of the parties[9] but there was no evidence as to domicil in this case though it was presumably Lithuanian.

Divorce Jurisdiction

The decision in *Wall v. Wall*[10] represents something of a milestone in that it was there decided that jurisdiction in the case of a petition for presumption of death and dissolution of marriage[11] is based on residence not domicil. It was pointed out that there must be a difference between the case where the Court is asked to deal with a marriage which is a presently existing one and one which has been presumed by the Court to be non-existent. The decree of divorce follows only in the latter case because facts sometimes prove presumptions to be wrong.

One must also notice the case of *Jacobs v. Jacobs*[12] to the effect that a claim by a husband, who has already obtained a decree of divorce, for damages against an adulterer must be treated like a claim in tort so that domicil is not a condition of jurisdiction. It was therefore held in spite of certain *dicta* in *Phillips v. Batho*[13] that a husband domiciled in South Africa who had obtained a decree of divorce in that country was not prevented from petitioning for damages against the co-respondent in an English Court.

The Commonwealth Matrimonial Causes Act

It seems that when by virtue of this Act the Courts of a State are given jurisdiction and are directed to apply some other law, then conditions which appear in that other law which would limit the jurisdiction of its own Courts if the matter arose before them, are to be disregarded. In *Tavcar v. Tavcar*[14] the Victorian Supreme Court in a case in which it had jurisdiction under Part II of the Act had to deal with a position where the husband was domiciled outside Australia. As the last matrimonial home of the parties was in New South Wales, the law of that State was the law to be applied. However New South Wales law required that the parties be domiciled in New South Wales. Sholl J. held that the Commonwealth Act had impliedly abrogated any domiciliary requirements other than those set out in the Commonwealth Act. It seems that this decision may be justified on the ground that a Commonwealth dispensation from jurisdictional requirements cannot be nullified by the imposition of requirements, inconsistent with that dispensation, as part of the law of a State. The position however cannot be regarded as quite settled

8. [1950] S A.S.R. 309.
9. *Vide* article in 25 A.L.J. 165.
10. [1950] P. 112.
11. *Cf.* The Queensland *Matrimonial Causes Jurisdiction Acts* 1864-1949 s. 39A.
12. [1950] P. 146.
13. [1913] 3 K.B. 25.
14. [1950] V.L.R. 177.

in view of such decisions on Part III of the Act as *Miles v. Miles*[15] followed recently in *Garde v. Garde*.[16]

Legitimation

The common law rule in the case of legitimation is that the infant is deemed to be legitimate only if both at the time of the birth of the child and occurrence of the event relied on to effect legitimation the father is domiciled in a country which allows such legitimation. In *Thompson v. Thompson*[17] the child was born in England out of wedlock at a time when the father was domiciled there. The law of England did not then recognise legitimation by subsequent marriage but after the passing of the *Legitimacy Act* 1925 the father married the mother and the child was rendered legitimate by that Act. It was held that a status of legitimacy so conferred would be recognised by the law of New South Wales if the father was domiciled in the legitimating country (a) at the time of the child's birth, (b) at the time of the passing of the legitimating legislation and (c) at the time of the occurrence of the further act (if any) required to effect legitimation, in this case the marriage. The Judge (Sugerman J.) indicated that when the third time differed from the second, that is to say when the law depended upon the doing of some further act such as marriage, it might not be necessary that there be domicil at the second as well as the third point. In the instant case however there was English domicil at all three points of time.

Contract

The House of Lords in *Bonython v. The Commonwealth*[18] has affirmed the decision of the High Court that the holder of the Commonwealth stock was not entitled to be paid the value of the obligation in terms of English currency. The inscribed stock in question replaced certain Queensland Government debentures which were issued in 1895 for amounts in "pounds sterling" and provided for payment either in Brisbane, Sydney, Melbourne or London at holder's option. It was held that the question as to the money of account is a question of the substantial obligation of the contract and must be determined by the proper law of the contract, that there was overwhelming evidence that the proper law was Queensland and that even if London was the place of payment English law as the *lex loci solutionis* could not determine the measure of the obligation though it would determine the mode of performance. The mere use of the word "sterling" did not mean that the currency of England rather than that of Queensland was concerned as in 1895 the unit of account was the same in both countries. It followed that the obligation to pay was satisfied by payment in whatever currency was by the law of Queensland valid tender for the discharge of the amount of the debt.

Jurisdiction

In *Re Dulles Settlement*[19] in an application for custody and maintenance of an infant, Evershed M.R. examined the meaning of juris-

15. [1947] Q.W.N. 15.
16. [1950] Q.W.N. 36.
17. [1951] 51 S.R. (N.S.W.) 102.
18. [1951] A.C. 201.
19. [1951] 1 Ch. 265.

diction by submission and concluded that there is no warrant for the view that personal presence is the only way in which an individual may render himself amenable to the jurisdiction. Submission to the jurisdiction may be constituted where the defendant even though remaining outside the jurisdiction is represented by solicitors and counsel and contests on its merits a particular piece of litigation.

E.I.S.

PUBLIC INTERNATIONAL LAW

Retroactive Operation of Recognition

When governmental recognition is accorded to a new state or a new government of an existing state, it is a principle of British law that such recognition is retroactive to the time when the new government first established control over the state.[1] Does this mean that all acts of the previously recognised government of the state concerned during that period covered by the retroactive operation of the recognition become null and void in the eyes of British law? This question had never been directly raised before a British court until the case of *Boguslawski v. Gdynia-Ameryka Linie*.[2]

The issue in that case was the validity or invalidity of an agreement made by the Polish Government in London in 1945 after the establishment of the new Government in Poland but before the new Government's recognition by the United Kingdom. The Foreign Secretary's certificate to the court stated that His Majesty's Government recognised the Polish Government having its headquarters in London as being the Government of Poland up to and including midnight of July 5-6, 1945, and as from that point of time recognised the Polish Provisional Government of National Unity as being the Government of Poland, and ceased to recognise the Polish Government in London. One view of this certificate taken by the Court of Appeal was that it meant that recognition in this case could have no retroactive operation because the new Government was recognised only as from a certain time, up to which time the old government continued to be recognised; in other words, so far as the United Kingdom was concerned, the new Polish Government in Poland was the legal successor of the old Government in London. It followed, in accordance with the ordinary principle of international law, that the acts of the old Government retained full legal force and effect unless and until they were properly rescinded or repudiated by the new Government.

However, the Court went on to consider what would be the effect on the agreement in question if the principle of retroactivity was to be applied to the recognition of the new Polish Government. The Court held that the rule that on recognition all acts, legislative and executive, of the new Government during the "twilight period" between the date of assumption of power and the date of recognition were to be given legal recognition and effect, did *not* mean that 'al'

1 *Aksionairnoye Obshchestvo A M Luther* v. *James Sagor & Co.* [1921] 3 K.B. 532; *Lazard Bros & Co.* v. *Midland Bank Ltd.* [1933] A.C. 289.
2. [1951] 1 K.B. 162