recognise such divorce. Victoria has legislation similar in purport to the English Act. It was held that it would not. The main judgment was that of O'Bryan J. He regarded *Travers v. Holley* as being based on the view that the only reason why English courts previously confined their recognition of foreign divorces to those based on domicil in fact was that such domicil was the only basis on which the English Courts themselves could act in decreeing divorce. The judgment of O'Bryan J. concluded that this is a wrong generalisation and that there is no link between the principles of domestic jurisdiction and the jurisdictional requirements to which a foreign judgment must conform. Taking his stand on the pronouncements in some of the earlier leading cases, he concluded that there was a *general principle*[3] of private international law that a foreign divorce was entitled to recognition only if it was the decree of the Court of the domicil, that this principle was one flowing from the concept of marriage as a status and had nothing to do with whatever modifications might be made by local statute in relation to the requirements of domestic jurisdiction. The learned judge was not troubled by the argument based on comity[4] as he considered that the question of the enforcement of foreign acquired rights had long ceased to be regarded as based on ideas of comity.

EDWARD I. SYKES.

SUCCESSION.

Testator's Family Maintenance Applications: Effect of Subsequent Events.

The question of the use of subsequent events in determining whether a will has made adequate provision for the proper maintenance of an applicant under the Testator's Family Maintenance Act was settled by the High Court in *Coates v. National Trustees Executors and Agency Co. of Australasia Ltd.*[1] It is perhaps rather unfortunate that this question has so often been considered by the State Supreme Courts in situations which did not call for a decision thereon one way or the other; and even in the instant case it seems that the Court discussed the question solely for the purpose of settling the conflict of opinion in the different jurisdictions.

3. Italics are mine.

4. The judge was inclined to doubt whether the recognition of English divorces on the ground suggested would be socially desirable in view of the differences in jurisdictional requirements in the laws of the Australian States. It might be, for instance, that an English divorce would be recognised in Western Australia but not in Victoria.

1. (1956) 95 C.L.R. 494.

In *Re Brown deceased*[2] Townley J. held that the question of whether a testator has failed to make adequate provision for the proper maintenance and support of an applicant is to be determined upon the circumstances existing at the date of the testator's death, including circumstances which could reasonably be foreseen at the time, and not upon the circumstances existing at the time of the application. The time limitation on applications, imposed through the necessity of winding up as expeditiously as possible the administration of estates, makes this question of no importance in the vast majority of cases; but in cases like *Re Forsaith*[3] where a married daughter was deserted by her husband after the testator's death, and *Re Wheare*[4], where the widower of the testatrix suffered serious injuries in an accident after her death, it assumes vital importance. Townley J.'s view was based upon the well-known statement of Lord Romer in *Bosch's Case*[5] that "the court must place itself in the position of the testator and consider what he ought to have done in all the circumstances of the case, treating the testator for that purpose as a wise and just rather than a fond and foolish husband or father." From this the learned judge concluded that since a moral obligation was imposed upon the testator it must be imposed during his lifetime, and a breach of that obligation should not be imputed to him merely by reason of unforeseeable events arising after his death.

In the High Court Dixon C.J. agreed that the considerations stated by Townley J. confirmed the interpretation which the actual words of the provision suggested. It followed that "the intervening events may be taken into consideration because they suggest or tend to show what antecedently might have been expected but they must not be outside the range of reasonable foresight. If all contingencies that might reasonably have been anticipated have been taken into account, it would be difficult to say that the actual occurrence of some event which antecedently no one could reasonably have foreseen shows that the maintenance or support was not proper or the provision therefor was not adequate. It is therefore impossible to treat intermediate occurrences as more than evidentiary facts."

Webb J. agreed with the "moral obligation" argument; but the other member of the majority on this point, Kitto J., refused to accept it as it was formulated by Townley J. He pointed out that the condition of jurisdiction was the absence of a reasonable provision, and not unreasonableness on the part of the testator. The only question therefore was one of objective fact: was the

2. 1952, St. R. Qd. 47.
3. (1926) 26 S.R. (N.S.W.) 613.
4. 1950 S.A.S.R. 61.
5. [1938] A.C. 463.

applicant left, by the testamentary disposition which the testator made, without adequate provision for his proper maintenance and support. It was not essential to jurisdiction that the testator should be worthy of censure on moral grounds.

This attitude to the "moral obligation" argument was also adopted by Williams J. and Fullagar J., who dissented however as to the conclusion to be drawn from it. With respect, it is suggested that this view is clearly right. The real question at issue is as to the meaning of the language of the legislation, and not as to the consequences to be drawn from a gloss upon the language. Then despite certain reasons of convenience for preferring the date of the application, it seems, as Kitto J. remarked, that the condition of jurisdiction is that the testator has exercised his power of testamentary disposition in such a manner that he has omitted to make adequate provision for the applicant in his will, and not that the applicant is found to be inadequately provided for notwithstanding any provision made for him by the testator's will; and "the question whether such an omission occurred can hardly be intended to admit of a different answer at an interval after the death from that which would have been given to it immediately upon the death."

KEVIN RYAN.*

TORTS.

Master's Right to Indemnity from Servant.

The decision of the House of Lords in *Lister v. Romford Ice Co.*[1] that, where an employer has been rendered vicariously liable in respect of the negligent act of an employee, such employer can recover in damages from such employee the amount for which he has been held so responsible, is one that has aroused considerable controversy.

The facts were simple. The defendant was a lorry driver employed by the plaintiffs and negligently drove the lorry into and injured his father, who was a co-employee. The latter obtained judgment against the plaintiffs. The insurers of the plaintiffs satisfied the judgment and caused action to be brought in the name of the plaintiffs against the defendant, acting under a clause of the contract of insurance enabling them to do so and without consulting the plaintiffs. The trial judge, Ormerod J., purporting to act under the *Law Reform (Married Women and Tortfeasors) Act*

1. [1957] 2 W.L.R. 158.

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