criminal trial. This belief he based on parts of the judgments, not on the ground that *Preston-Jones v. Preston-Jones* only refers to cases which may bastardize a child.

Fortunately the question came before the High Court last year in the case of *Watts v. Watts* [1953] A.L.R. 485. The Court did not have to discuss the question whether it would refuse to follow a decision of the House of Lords for the judges distinguished *Preston-Jones v. Preston-Jones* on the ground that proof of adultery in that case would bastardize the child and therefore the standard would be higher. In the case before the Court however proof of adultery would not have that effect, and so there was no reason for construing "satisfied" to mean "satisfied beyond all reasonable doubt".

It is clear that the state of authorities in Australia is much less confusing than in England. It is obvious that in a petition on the ground of adultery the standard of proof is not as high as that required in a criminal case. From the dicta in *Watts v. Watts* it seems likely that the High Court would follow *Preston-Jones v. Preston-Jones* if a case of that type came before it.

JUDITH WYATT

PRIVATE INTERNATIONAL LAW — DOMICIL — JURISDICTION — MATRIMONIAL CAUSES ACT (1945)

THE RECENT case of *Leech v. Leech*[1] raises some important problems in the Conflict of Laws. The petitioner, Maria Leech, had petitioned for divorce from her husband, Harold Leech, on the ground of repeated acts of adultery. The petition had been filed on April 22, 1953, at which time the parties were domiciled in Tasmania. On April 26, after the institution of proceedings, the respondent moved to Victoria and, forming an intention of permanent residence, acquired a Victorian domicil. Section 75 of the Victorian Marriage Act (1928) could not be invoked here as the length of domicil necessary for the purpose of dissolution of marriage had not been satisfied. Consequently the petitioner had recourse to a Commonwealth statute, the Matrimonial Causes Act (1945) which invested the State Court with Federal jurisdiction under certain circumstances.

O'Bryan J., who heard the case, referred to the general principle of law that jurisdiction in such cases, apart from special statutory provisions, was exercisable only by the Courts where the parties were domiciled at the time of the institution of proceedings. But the real difficulty lay in deciding whether jurisdiction to dissolve the marriage continued if the parties were no longer domiciled in the

[1] [1953] V.L.R. 621.

country when the Court was called upon to grant the decree of dissolution. Authority on this point was slight. Two cases decided by the Supreme Court of New South Wales showed two opposite trends of thought. In *Gane v. Gane,*[2] Bonney J. held that jurisdiction was based solely upon domicil at the date of institution of proceedings and continued even if the parties changed their domicil before the decree. However, in *Kerrison v. Kerrison,*[3] Edwards J. refused to follow this decision, holding that jurisdiction implied the existence of domicil at the time of dissolution of the marriage. Moreover, examination of the text-books showed some difference of opinion. However, O'Bryan J. found it unnecessary to come to a conclusion on this particular matter, preferring to base his decision on Section 11 of the Matrimonial Causes Act. It would be interesting to see what an English Court would do in a similar case. It might be said with some justification that jurisdiction imports a continuance of domicil up till the time when the Court renders its final decision on the rights called into question, because the personal law affecting the status of the parties will receive its full effect only when the decree dissolving the marriage ties is pronounced.

O'Bryan J. decided that the jurisdiction which the Court possessed in this case resulted from ss. 10, 11 of the Matrimonial Causes Act (1945).[4] Section 10 set up jurisdiction in cases where persons were domiciled in a country other than that of the forum at the institution of proceedings, provided that the petitioner had resided in the forum for not less than one year immediately prior to the institution of proceedings. Section 11 provides that the Supreme Court of a State should exercise the jurisdiction with which it was invested "in accordance with the law of the State in which the person instituting the proceedings is domiciled."

The sections in question were alleviatory and were designed to invest a state Court with federal jurisdiction in cases where the parties had changed their residence from one state to another, but had not fulfilled the qualifications necessary to enable them to take proceedings under the State law. The crux of the problem lay in deciding whether the words "is domiciled" in Section 11 referred to domicil at the time of institution of proceedings or to domicil at the time when the decree was to be made. In other words, was Tasmanian or Victorian Law applicable? O'Bryan J. chose the first alternative: the mandatory effect of the section made it apparent that the Federal Parliament intended the Court to exercise

[2] (1941) 58 W.N. N.S.W. 83.
[3] (1952) 69 W.N. N.S.W. 305.
[4] Commonwealth Statutes Vol. XLIII. Act No. 22.

jurisdiction if the requirements of Section 10 were satisfied. If the words "is domiciled" meant "is domiciled at the time of the decree", then in the event of the parties changing their domicil between the date of the institution of the proceedings and that of the hearing to a place outside the Commonwealth, the parties would not be domiciled in any state or territory and there would be no law in accordance with which a decree could be pronounced.[5] Therefore, in order that the Court might exercise the jurisdiction with which it had been invested, it could only do so if the words "is domiciled" had reference to domicil at the time of institution of the suit. The decree therefore pronounced in this case was in accordance with Tasmanian law.

DARRELL LUMB

[5] [1953] V.L.R. 621 at 624.

MARRIAGE — INCOMPLETE CEREMONY — VALIDITY

Quick v. Quick,[1] although based on a factual situation which "can only be characterized as the scandalous behaviour of the petitioner and the respondent",[2] raises a question of law which has never before been the subject of a reported decision.

The parties were casual acquaintances and fellow employees of the Tramways Board. Whilst drinking together they discussed the subject of matrimony and decided to get married. An obliging J.P. granted them a special licence, and, accompanied by a taxi driver and the respondent's mother, they went to a clergyman's house. He conducted the marriage ceremony according to the rites of the Church of England up to the stage where the man had plighted his troth and said he took the woman to be his wedded wife and the woman had made similar statements. As the ring was being placed on her finger she threw it to the floor saying "I will not marry you", and rushed from the premises. All the requirements, up to this stage, of a valid marriage had been complied with, and according to the evidence accepted by the trial judge (Sholl J.) she was a willing party, giving a real consent, until she ran from the room. The parties did not live together and after three years the man brought an action for a declaration that the ceremony was a nullity, or alternatively for a decree nisi on the ground of desertion. The trial judge referred the question to the Full Court.

It was accepted by the Court that Lord Hardwicke's Act (1753) and the subsequent English legislation on marriage were not applicable to the then situation of New South Wales, and that the

[1] (1953) A.L.R. 1023. [2] Per Sholl J.