intrastate transactions, if the prohibition of acts which are, or are part of, interstate transactions can surmount the barrier of s. 92 simply because the ban can be said to operate in respect of the gambling character of the acts, one may wonder whether a nationalisation law like the Banking Act 1947, held invalid in the *Banks Case*,[27] ought not also to pass the barrier because it may be said to prohibit acts because of or by reference to their private capitalist character, not any quality which essentially belongs to interstate commerce. Of course it all depends on what things one regards as being "of their own nature" part of interstate trade, commerce, and intercourse, to use a phrase used by Dixon C.J. and Webb J. in *Mansell v. Beck*.

ROSS ANDERSON.*

PRIVATE INTERNATIONAL LAW.

Recognition of "Foreign" Divorces.

In *Travers v. Holley*[1] the Court of Appeal in England followed a principle that they would recognize a foreign divorce based on jurisdictional facts which would, had they existed in England, have justified an English Court in assuming jurisdiction. Accordingly it recognized as valid a New South Wales divorce decree obtained by a deserted wife whose domicil by New South Wales statute was deemed not to have been changed by reason of her husband having (as was the case) obtained a domicil outside New South Wales.

There was similar, though not precisely identical, legislation in England, viz. s. 14 of the *Matrimonial Causes Act* 1937, which provided that where a petitioning wife had been deserted and where the husband was immediately before the desertion domiciled in England and Wales the Court should have jurisdiction notwithstanding that the husband had changed his domicil since the desertion.

In *Fenton v. Fenton*[2] the Victorian Full Court refused to act in a reciprocal spirit. Here the English Court had, pursuant to the abovementioned section of the English Act, granted a decree of divorce to a wife domiciled in England at time of desertion, though the husband at the time of decree had acquired a Victorian domicil. The question was whether the Victorian Court would

27. *Commonwealth v. Bank of New South Wales* [1950] A.C. 235, 79 C.L.R. 497.
1. [1953] P. 246.
2. [1957] V.R. 17, [1957] A.L.R. 412.

* M.A. (Oxon.), LL.B. (W.A.); Chief Lecturer in Law in the University of Queensland; contributing author of *Essays on the Australian Constitution*.

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.