The case reiterates the view of the High Court that the exercise of the trial judge's discretion to reject confession evidence depends on the particular circumstances of the case, and affords an example of a contravention of the standards set by the Judge's Rules which was not considered unfair in all the circumstances.

PRIVATE INTERNATIONAL LAW

Jurisdiction in Nullity Suits—Choice of Law

Corlevich v. *Corlevich*[1] was an action by a husband for an order declaring his marriage to the respondent null and void upon the following facts:

In 1950 he went through a ceremony of marriage with the respondent in Italy; they migrated immediately afterwards to South Australia where they were both resident at time of the action. In 1943 the wife had married M. in Italy. She had lived with him until 1947 when he left her and went to Yugoslavia. He was then aged twenty-six. She received a letter from him in 1948 but heard no more of him until 1956 when a letter from her family in Italy spoke of him as still being alive. Expert evidence was called to establish that certificates of both ceremonies which were produced would be evidence of a valid marriage in an Italian Court, and further that the second ceremony would have no legal effect by Italian law and would be regarded as never having existed, without any proceedings being taken to declare it void (assuming that the husband was alive beyond question at the time of the ceremony).

Reed J. found that the onus was upon the plaintiff to show that M. was still alive at the date of the second ceremony, following the rule stated by Dixon J. in *Axon* v. *Axon*.[2] He found that this burden was discharged by the presumption of continuance of life as stated and limited in the same case.[3]

The case raises two questions of interest with respect to the private international law rules in nullity suits. The first concerns the jurisdiction of the Court.

This is assumed by Reed J.[4]: "The jurisdiction of this Court to declare the marriage void is clear, as both parties reside in this State; cf., for example, *Ramsay-Fairfax* v. *Ramsay-Fairfax* (*otherwise Scott-Gibson*)."[5] Strangely enough there does not seem to be any direct authority to this effect in relation to 'void' marriages.

A line of English cases have considered whether in the case of a *voidable* marriage there is a wider jurisdiction in the court than the rule applying to divorce proceedings that only the Courts of the domicil of the parties has jurisdiction: *Le Mesurier* v. *Le Mesurier*.[6] In *Inverclyde* v. *Inverclyde*[7] Bateson J. considered that the rule in

1. [1954] S.A.S.R. 131.
2. 50 C.L.R. 395 at p. 403-404.
3. ibid at p. 404-405.
4. [1958] S.A.S.R. at 135.
5. [1956] P. 115 at p. 133.
6. [1895] A.C. 517.
7. [1931] P. 29.

Le Mesurier's case applied to nullity proceedings in the case of voidable marriages. This was not followed by Hodson J in *Easterbrook* v. *Easterbrook*[8] and Pilcher J. in *Hutter* v. *Hutter*[9]; it was overruled by the Court of Appeal in *Ramsay-Fairfax* v. *Ramsay-Fairfax*.[10] But all these cases assume that the rule relating to void marriages is that jurisdiction exists in the courts of the country in which both parties are resident (see, for example, the passage referred to by Reed J. in *Ramsay-Fairfax* v. *Ramsay-Fairfax*[11]). This was the rule of the Ecclesiastical Courts before 1857 and departure from it in the case of a void marriage could not be maintained for the reason given by Bateson J. in the case of voidable marriage that the nullity suit affected the status of the parties and was therefore of a similar nature to divorce proceedings.

Reed J. therefore had firm authority on which to base his proposition but it should be noted that his is the first statement of the principle as part of the ratio decidendi of a case.

The second point of interest is that the learned trial judge seems to consider the choice of law as a question separate from that of jurisdiction. He discusses the expert evidence given as to the invalidity of the marriage under Italian law. He does not however indicate that he does so because that was the law of the domicil of the parties at the time of the second ceremony or because it was the lex loci celebrationis. It should be noted that if it is the latter proposition that has been applied then the case would represent a departure from previous authority. Be that as it may the learned judge has avoided the confusion which results when the lex fori is applied without further consideration once jurisdiction is established. This regrettable tendency has been a feature of the English decisions already discussed: *Easterbrook* v. *Easterbrook*, *Hutter* v. *Hutter* and *Ramsay-Fairfax* v. *Ramsay-Fairfax* (though the trial judge in the last case did consider the question in the way that Reed J. has done).

8. [1944] P. 10.
9. [1944] P. 95.
10. [1956] P. 115.
11. ibid at 133.

COMMONWEALTH IMMIGRATION ACT

Meaning of Offence Punishable by Imprisonment for One Year

The Commonwealth *Immigration Act* 1901-1949 s. 8A provides that "where the Minister is satisfied that within five years after the arrival in Australia of a person who was not born in Australia . . . that person —(a) has been convicted in Australia of a criminal offence punishable by imprisonment for one year or longer he may make an order for his deportation."[1] In *Ex Parte Tenuta*[2] acting under this section, the Minister of Immigration ordered Francesco Tenuta to be deported and kept in custody until so deported. An application for the issue of a writ of *habeas corpus ad subjiciendum* directed to the Minister

1. cf. *Commonwealth Migration Act* 1958 s. 13 (A).
2. [1958] S.A.S.R. p. 238.