lading, they could neither sue nor be sued on it, and therefore could not rely on the exemption clause; and Fullagar, J., in a judgment with which Dixon, C. J. concurred, said:[31]

> The obvious answer to that argument is that the defendant is not a party to the contract evidenced by the bill of lading, that it can neither sue on that contract, and that nothing in a contract between two other persons can relieve it from the consequences of a tortious act committed by it against the plaintiff, ... I doubt if there was any true exception at common law to the rule laid down by *Tweedle* v. *Atkinson*.

It is submitted, therefore, that at common law there are no exceptions to rule that a stranger to a contract may not sue on it, and that there is no *jus quaesitum tertio* in the common law.

—W. E. D. DAVIES*

[31] *Id.*, at 67.
* Associate Professor, University of Manitoba.

RECOGNITION OF FOREIGN DIVORCES—BASIS—RECENT ENGLISH CASES: *INDYKA* v. *INDYKA* (HOUSE OF LORDS DECISION), *ANGELO* v. *ANGELO*, *PETERS* v. *PETERS*—FOREIGN JURISDICTION BASED ON A REAL AND SUBSTANTIAL CONNECTION.

The past summer has witnessed a major development in the English law concerning the recognition of foreign divorce decrees. Before May, the position was briefly as follows. The English court would directly recognize a divorce decree pronounced in a foreign court if:

a. the foreign court was the court of the parties' domicile;[1]

b. the foreign court had accepted jurisdiction on the basis of legislation similar to English legislation which widened the English court's jurisdiction in divorce—if there was *legislative* similarity in the basis of jurisdiction;[2]

c. the foreign court based jurisdiction on circumstances similar to those on which an English court could have based divorce jurisdiction—if there was *facutla* similarity in the basis of jurisdiction.[3]

The crucial point of all this was that, if the English court was to recognize the foreign decree, there had to be a relationship between the foreign court and the parties which was similar to the relationship that had to obtain between the English court and parties before it in order for the English court to accept divorce jurisdiction. Thus, because an English court would not accept divorce jurisdiction solely on the basis that the parties were British nationals, it would not recognize foreign divorce decrees where the sole basis of jurisdiction was that the parties were nationals in the foreign court's territory. Since the nationality of the parties is a major basis of jurisdiction in civil law systems, the difficulty of the pre-May English position is obvious.

1 *Harvey* v. *Farnie* (1882), 8 App. Cas. 43; *Bater* v. *Bater*, [1906] P. 209.
2 *Travers* v. *Halley*, [1953] P. 246.
3 *Robinson-Scott* v. *Robinson-Scott*, [1958] P. 71.

In May the House of Lords gave their decision in *Indyka* v. *Indyka*.[4]

> The husband had a domicile of origin in Czechoslovakia and married Helena there in 1938. After the War he left her, settled in England, and acquired a domicile of choice there in 1946. In 1949, some months before the English courts acquired jurisdiction to dissolve marriages at the suit of wives domiciled abroad, Helena was granted a divorce in Czechoslovakia, where she had always resided, on the ground of deep disruption of marital relations. It is not clear from the evidence whether the jurisdiction under Czech law depended on the nationality of the parties, or the residence of the wife or both, but clearly it was not based on domicile in the English sense, nor was it based on any jurisdictional grounds under which, at the time, the English court could have exercised jurisdiction.

The House of Lords recognized the Czechoslovakian decree as the Court of Appeal had done but for crucially different reasons. The Court of Appeal had based its decision on the grounds of reciprocity and comity. The House of Lords based its decision on wider grounds.

Lord Reid said:

> It would seem proper at least to hold that, where a husband leaves his wife in the matrimonial domicil and she has by the law of that country a right to obtain a divorce which accrued before he changed his domicil but only sues for and obtains her divorce thereafter, we ought to disregard that change of domicil and recognize the foreign decree.
>
> Nevertheless I think that we must go farther than that . . . Once we get rid of the idea that there can only be one test and that there can never be jurisdiction in more than one court, it seems to me to be very much in the public interest that there should be some other test besides that of domicil.
>
> I think that the need would best be met by reviving the old conception of the matrimonial home and by holding that, if the court where that home is grants decree (*sic*) of divorce, we should recognize that decree. . . . If the husband leaves the matrimonial home and the wife remains within the same jurisdiction I think that we should recognize a decree granted to her by the court of that jurisdiction.
>
> There is one other matter which I should mention and which may require consideration by the legislature or by the courts. In many countries jurisdiction depends on nationality, indeed one might almost say that in half the world domicil in one form or another prevails and in the other half nationality. If they are to live in peaceful co-existence it may be necessary to take note of this.[5]

Lord Reid was cautious with respect to the recognition of foreign decrees where nationality was the basis of jurisdiction. Other Lords were more emphatic on the point.

Lord Morris said:

> No essential or fundamental superiority of our basis for jurisdiction can be claimed over all others. . . . The evidence was that the Czech court accepted jurisdiction on the ground that both the parties were and always had been Czechoslovakian citizens. (Writer's note: This evidentiary point was not so clear for some of the other Lords.) The first wife at the time when she presented her petition in Czechoslovakia undoubtedly had a real and substantial connexion with that country. I see no reason why the decree of the Czech court should not in those circumstances be recognized.[6]

Lord Pearce expressed himself as follows:

> Both parties to the marriage were nationals of Czechoslovakia (and incidentally domiciled there as well until 1946), the matrimonial home was there, the petitioning wife resided there all her life, and their courts took jurisdiction there on the ground of nationality. Undoubtedly the country of the nationality was the predominant country with regard to the parties to this marriage, and as such its decree ought to be recognized in this country.[7]

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4 [1967] 2 All E.R. 689; [1967] 3 W.L.R. 510. The Court of Appeal decision was commented upon in the last issue of this Review at 328.
5 [1967] 2 All E.R. 689, 702-3.
6 *Id.*, at 708.
7 *Id.*, at 717-8.

Lord Pearson said:

> It seems to me that, subject to appropriate limitations, a divorce granted in another country on the basis of nationality or on the basis of domicil (whether according to English case law or according to a less exacting definition) should be recognized as valid in England.[8]

The House of Lords placed the recognition of foreign divorces within a modern-day setting. In an age when not only are there two basic sources of jurisdiction, domicile and nationality, but also a great variety of definitions of domicile, the symmetrical system in the English rules for recognition of divorce led to a great deal of injustice and hardship. By not recognizing divorces granted on a jurisdictional basis dissimilar from the English jurisdictional basis, the English courts were sanctioning "limping" marriages to a greater extent than the needs of justice demanded. As Lord Wilberforce put it:

> For I am unwilling to accept either that the law as to recognition of foreign divorce (still less other) jurisdiction must be a mirror image of our own law or that the pace of recognition must be geared to the haphazard movement of our legislative process. There is no reason why this should be so, for the courts' decisions as regards recognition are shaped by considerations of policy which may differ from those which influence Parliament in changing the domestic law.[9]

Only a week after the House of Lords' decision in *Indyka* v. *Indyka* was handed down, the court of the Probate, Divorce and Admiralty Division decided the case of *Angelo* v. *Angelo*.[10] Mr. Justice Ormrod granted a declaratory judgment recognizing a divorce decree awarded by the Provincial Court of Ravensburg, Germany, which had accepted jurisdiction on the basis that the wife was a German national habitually resident within the jurisdiction of that court. His Lordship pointed out that as the law had stood one week before his decision, this foreign decree was not entitled to recognition in an English court. However, the decree granted to the wife in this case fulfilled the tests propounded by the House of Lord in *Indyka* v. *Indyka* and was, therefore, entitled to recognition.

A little more that a month later, the Probate, Divorce and Admiralty Division handed down yet another decision concerning the recognition of foreign divorces. In *Peters* v. *Peters*,[11] Mr. Justice Wrangham refused to recognize a decree of dissolution of marriage pronounced by a Yugoslav court which assumed jurisdiction on the basis that the marriage had been celebrated within that jurisdiction. His Lordship had been referred by counsel to both *Indyka* v. *Indyka* and *Angelo* v. *Angelo* and had concluded that:

> . . . the high water mark of those decisions, from the point of view of a petitioner seeking to assert the validity of a foreign decree, was the proposition that an English court would recognize the validity of a foreign decree wherever there was a real and substantial connexion between the petitioner and the court exercising jurisdiction.[12]

Furthermore, he was satisfied that:

> . . . the mere fact that the marriage had been celebrated in a particular jurisdiction was not enough to establish such a connexion, nor was it enough to show that

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8 *Id.*, at 731.
9 *Id.*, at 727.
10 This case is not yet reported in the official reports but appears in *The Times*, May 31, 1967, 15.
11 This case not yet reported in the official reports but appears in *The Times*, July 8, 1967, 16.
12 *Ibid.*

> the parties to the marriage had been at the time of the marriage nationals of or domiciled in that foreign jurisdiction. But, if they had continued to be nationals of that jurisdiction or domiciled in it, it would be wholly different.[13]

Thus, we are left with the test of a real and substantial connection between the petitioner and the foreign court granting the divorce decree. If there is such a connection, then the English court will recognize the foreign decree. This is not to say that the English court can exercise divorce jurisdiction when a real and substantial connection exists between it and a petitioner. Different tests now apply to determine whether an English court can accept divorce jurisdiction or whether a foreign court which has granted a divorce decree had a jurisdiction which the English court will recognize. The symmetry of the English conflicts rules in this field has been broken. This is a much needed and highly commendable step in the direction of international justice and practicality.

It remains to be seen whether the Canadian courts will follow the wise lead of the English courts.

—J. SAMMUELS*

[13] *Ibid.*

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COMPANY LAW—PROSPECTUS PROBLEMS—CORPORATE SECURITIES

The provisions of The Securities Act, 1966 (Ontario) pertaining to public offerings of corporate securities came into force on May 1, 1967. The legislatures of British Columbia, Alberta and Saskatchewan enacted new Securities Acts during the current year which have not yet come into force. Important new legislation in this field is bound to create new problems. A few of these will be mentioned, with particular reference to the new Ontario legislation, although it is important to bear in mind that public offerings of corporate securities are commonly made in eight of the ten Canadian provinces, sometimes requiring the services of a different solicitor or firm of solicitors in seven of those provinces, in addition to counsel for the company and the underwriter.

The first problem which developed was the rush of prospectuses submitted in the old form for filing prior to the May 1 deadline in Ontario. By mid-March, it seemed apparent that any prospectus should be drafted in the new form but definitive regulations governing the form and content had not yet been issued. There were draft regulations available but when the definitive regulations became available these proved to be materially different with respect to oil and gas companies.

Section 41 of the Act states that a prospectus shall provide full, true and plain disclosure of all material facts relating to the security proposed to be issued and shall comply as to form and content with the requirements of the Act and the regulations. Space does not permit more than a very brief reference to some of the new requirements.

A preliminary prospectus, in the first instance, to be followed by a prospectus is now required, the main formal difference being that the