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# FORMAL AND ESSENTIAL VALIDITY OF AKAN AND GHANAIAN CUSTOMARY MARRIAGES

## *McCabe* v. *McCabe* [1994] 1 *F.L.R.* 410

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*McCabe* v. *McCabe* is a recent[1] decision of the English Court of Appeal.[2] It raises the important issue of proxies in the celebration or the ceremony of Akan and, generally, Ghanaian customary marriages.

The petitioner/appellant was a Ghanaian woman living in London and the respondent was a Southern Irishman also living in London. The appellant became pregnant by the respondent in June 1984. In December of that year her granduncle, Mark Benson, on a visit with other relatives to London, found out her condition. They held a lunch party at which the appellant and the respondent were present and urged them to marry in view of the appellant's pregnancy. The marriage was to take place in Ghana on the return of uncle Benson. The respondent agreed to the marriage plan and also provided £100 and a bottle of gin (instead of two bottles of schnapps) as *aseda* and for the ceremonial formalities.

The ceremony subsequently took place at the appellant's father's house on 20th February 1985 at Asylum Down in Accra. Uncle Benson could not attend due to ill-health, so uncle Nelson performed the ceremony according to Akan custom.[3] Neither the appellant nor the respondent was present; they were far away in London; but about eight members of the appellant's family attended. Her father subsequently informed her by letters that the ceremony had taken place, describing the ceremony. She read the letters to the respondent.

The parties continued their cohabitation and had two children, but they separated on 17th December 1988 and the appellant

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1 4th August 1993. I wish to record my very deep gratitude to Professor James Read of the School of Oriental and African Studies, University of London who personally brought a photocopy of this decision down to me in Ghana. He is not, however, responsible for my comments.

2 The judgment was written by Butler-Sloss, LJ and concurred in by Bracewell J. The participation of a third judge does not appear on the record.

3 The cash and drink were presented to the appellant's family; the appellant's father and family were asked if they agreed to the marriage and they indicated their agreement. The drink and money were then shared among the relatives; libation was poured. A few days later, the appellant's father visited his home-

thereafter petitioned for divorce on the ground of the respondent's behaviour. In answer, the respondent raised the issue of the validity of the marriage in Ghana saying that he had not gone through any ceremony or form of marriage with the appellant in Ghana.[4]

These facts raised many issues: (1) What law controls the formal validity of a marriage? (2) If it is Ghanaian law, what does it require for formal validity generally, and, particularly, as here, where the parties themselves were not present at the ceremony? (3) What does publicity of the marriage or the ceremony mean? (4) A fourth issue relates to the essential validity of the marriage, that is, the capacity of the parties, particularly the respondent, to enter into the marriage in issue.

## 1. The Law Applicable (The Lex Causae)

The central issue is clearly the formal validity of the marriage. According to the rules of the conflict of laws, such an issue is governed or resolvable by the law of the place or the country where the marriage took place (the lex loci celebrationis).[5] The trial Judge and the Court of Appeal correctly decided that the applicable law is Ghanaian law and that, within this law, the applicable local law is Akan customary law, the marriage being an Akan customary marriage.[6]

## 2. The Procedure

The search for the exact or correct procedural rules governing the marriage led to an analysis of the requirements of an Akan customary marriage. These requirements were approvingly found in the judgment of Ollennu J (as he then was) in *Yaotey* v. *Quaye*[7] where he reviewed earlier decisions and concluded:

"It follows from all these that the essentials of a valid marriage under customary law are:

(1) agreement by the parties to live together as man and wife;

(2) consent of the family of the man that he should have the woman to his wife; that consent may be indicated by the man's family acknowledging the woman as the wife of the man;

town and informed other relatives that the ceremony had taken place and gave them part of the £100 which had been changed into cedis.

[4] [1994] 1 F.L.R. 410 at 412.

[5] *Scrimshire* v. *Scrimshire* (1752) 2 Hag Con 395; *Berthiaume* v. *Dastous* [1930] AC 79 (PC); *Kenward* v. *Kenward* [1951] p. 124. [1950] 2 All ER 297. See also Cheshire & North's Private International Law, 11th ed. (1987) pp. 556-559.

[6] See generally, p. 412.

[7] [1961] GLR 573 at 576. Note that the spelling Quayle is wrong. The correct spelling is Quaye, a Ga name as is in the Ghana law Report itself.



(3) consent of the family of the woman that she should be joined in marriage to the man; that consent is indicated by the acceptance of drink from the man or his family, or merely by the family of the woman acknowledging the man as the husband of the woman; and

(4) consummation of the marriage, i.e. that the man and woman are living together in the sight of all the world as man and wife. Now, one peculiar characteristic of our system of marriage which distinguishes it from the system of marriage in Europe and other places is that it is not just a union of the family of 'this man' and 'this woman': it is a union of the family of 'this man' and 'this woman'."

His Lordship, Butler-Sloss LJ, observed that the two expert witnesses in the case, Professor Read and Professor Allott, agreed with the requirements set out by Ollennu J.[8]

## 3. Consents

These requirements dwell very much on consents. Consequently, considerable attention was given in *McCabe* to the problem of consents. The evidence clearly showed that the two parties to the marriage agreed to be married; that the family of the woman, the appellant, consented to the marriage; and that the marriage was consummated by the parties living together for several years and having children. What caused difficulty, however, was the consent of the man's family. They did not participate in the marriage ceremony, either personally or even by proxy. His Lordship noted significantly, however, that "it appears he (i.e. the respondent) had no family and consequently that formality in any event had to be dispensed with."[9] In effect, where a party to a marriage has no family, the consent of his family will be held unnecessary. This, in itself, is a novel principle.

No Ghanaian court has as yet had an opportunity to make such a pronouncement.[10] To hold otherwise, however, would seem very absurd and downright unreasonable, laying down as

[8] At p. 414.

[9] p. 413.

[10] It would be very rare to find a Ghanaian without a family or a group to which he is affiliated and from which such consent may be expected. In *Omane* v. *Poku* [1973] 2 GLR 66 (CA) the deceased was found to be without a known family. He was not, however, a Ghanaian; he came here from the Ivory Coast and no one in Ghana knew any relatives of his. He was held to have become domiciled in Ghana and to have become an Ashanti, thus making Ashanti customary law applicable to the distribution of his self-acquired property. Perhaps, when he was marrying an Ashanti woman the consent of his family was not required. We do not know.

it would certainly be, a rule requiring the impossible. This would create an inconsistency with the fundamental and pervasive common law principle that no one can or ought to be held to an impossibility. (Nemo ad impossibile tenetur). So, although there was no Ghanaian case decision to rely on, His Lordship correctly, it is submitted, gave the kind of decision which a Ghanaian court would have come to. Situations, such as this, (i.e. the absence of a ready decision by the foreign court) have often arisen under the foreign court doctrine in the conflict of laws.[11]

**4. Is a proxy essential at all?**

In spite of the ruling that the requirement of a proxy could be dispensed with in respect of the respondent, there remains the primary and underlying question whether a proxy was at all essential. Professor Allott, one of the two expert witnesses, was strongly of the view that the husband's proxy must be present at the ceremony.[12] "He expressed the strong view that it was wholly inconceivable and inappropriate that the groom should have nominated the head of the bride's family as his representative."[13] And he asserted that "the absence of representation would be a fatal flaw."[14]

It would be recalled that the respondent gave £100 and a bottle of gin to the appellant's great uncle in London for the performance of the customary marriage rites in Ghana. Did the respondent, by this act, appoint him as his proxy at the marriage ceremony? Even if he did appoint him, the great uncle was, due to ill-health, absent from the ceremony. On these matters His Lordship said:

> "The non-appearance of the great uncle at the ceremony through ill-health was irrelevant ... since the evidence of what he did was accepted by the judge. There was no evidence that the respondent appointed the great uncle to be his proxy. It would have been highly desirable for the respondent to have a proxy and one who was not a member of the appellant's family. But on the evidence of Professor Read and the written evidence of Professor Allott a proxy was not essential, indeed, as Professor Allott himself said, a ceremony itself is not necessary, how can a proxy be essential ... the presence of a proxy does not seem to me to be a requirement, not a necessary formality in the absence of the party to the marriage."[15]

What this case decides, then, is that a proxy is desirable, but its absence is not a legally fatal flaw; the circumstances of a particular case may indicate that it was not necessary. Indeed, the circumstances of *McCabe*, though novel as Professor Read accepted,[16] are not unusual with respect to the absence of a proxy. Professor Read told the trial court, and the Court of Appeal seemed to agree, that he "knew of cases where the bride's family stood in for the groom in the absence of the groom and his family."[17]

**5. Publicity**

The two expert witnesses agreed that 'publicity' (of the marriage or the ceremony) "was a further requirement" beyond those listed by Ollennu J.[18] Professor Read explained, however, that "publicity is another way of referring to the ceremonies."[19] He added that the essential details of the ceremony "can vary ... and may be quite attenuated: brief."[20]

After reviewing the evidence of the experts, His Lordship observed that although "publicity of some sort is an essential feature"[21] it may mean the same thing as the evidence of the ceremony of the marriage or of the marriage itself. Said he:

> "Publicity upon which so much time was spent at the hearing, appears to represent that evidence necessary to authenticate the ceremony entered into by the parties and their families."[22]

Thus, if a ceremony was performed, publicity is satisfied by tangible evidence of its having been performed. If no ceremony was performed publicity may be provided by evidence of the fact that the parties had lived together as man and wife in the sight of all the world and with the consent and acquiescence of their families.[23] Indeed, as Professor Allott said in his evidence, a ceremony itself was not necessary.[24] "In my view," held the

[11] See e.g., *Re Muldonado* [1954] p. 223 [1953] 2 All ER 300; *Re Cohn* [1954] Ch. 5; *In Re Annesley* [1926] Ch. 692.
[12] p. 415.
[13] p. 416.
[14] Id.
[15] p. 417.
[16] p. 415.
[17] id.
[18] p. 414.
[19] p. 415.
[20] 414.
[21] p. 417.
[22] This sort of marriage is comparable to common law marriage—marriage by the consent of the parties, cohabitation and their being regarded as man and wife by members of their community: see Cheshire & North, Private International Law, 11th ed. (Butterworths) pp. 566–574.
[23] p. 417.
[24] Ibid.

learned Judge, "the importance of publicity is the proving of the fact of the marriage, that is to say, the consents of the parties and their families."[25] This simply involves proof of such overt acts as took place and which can be recognised as indicating a marriage.[26] That the parties consensually established the relationship and cohabited and their families acquiesced in it will, in this writer's view, establish publicity and, indeed, the fact of marriage.

In effect, publicity is necessary and essential, but consists merely in the evidence which establishes the fact of marriage.

## 6. Domicil and Capacity to Marry

One very important and perhaps crucial issue which neither counsel nor the Judges raised is whether the respondent possessed capacity to enter into a polygamous marriage. The learned appeals Judge, Butler-Sloss LJ, (with whose judgment Bracewell J entirely agreed) casually referred to the respondent as "a foreigner domiciled and resident in another country . . ."[26](a) He did not indicate the country of domicil. The facts disclose that the respondent was a Southern Irishman living in London.[27] Since he could not be domiciled in both Southern Ireland and England simultaneously, he might be domiciled in only one of them; indeed, he might even be domiciled in a third country. The issue of domicil is further complicated by the fact that the requisite domicil in respect of capacity to contract any marriage is the respondent's domicil at the time of the marriage and not at the time of the divorce; and we do not know which of the two domicils the learned Judge was referring to. It seems, however, that for the purposes of capacity it is immaterial whether the respondent was domiciled at the time of the marriage in Southern Ireland or in England.

In *Fonseca* v. *Passman*,[28] Hedges J, an Australian white judge then sitting in the High Court in Western Nigeria, held that no European had capacity to contract an African customary polygamous marriage. Julio Fonseca was a Portuguese national who went to Nigeria in 1924 and married an Efik woman by native customary rites in 1926 while domiciled in Portugal. The marriage was declared null and void for his lack of capacity. In the

[25] As Professor Read put it: p. 417.
[26] (a) p. 418.
[27] See pages 410, 411.
[28] (1958) WRLR 441. The Judge even said, obiter, that the decision would have been the same, even if the deceased had been domiciled in Nigeria at the time of the marriage.



earlier case of *Savage* v. *MacFoy*[29] it was held that a Sierra Leonean lacked capacity to marry a Yoruba girl by customary rites because he was a foreigner and not subject to customary law. These cases exude two principles:

(1) that a person domiciled in a European country does not have capacity to contract a polygamous marriage and
(2) that a person not subject to customary law lacks capacity to enter into a customary marriage.

The first of these principles is too wide since much will depend on the law of the specific country of domicil of the party marrying. The second principle, though seemingly general in scope, is really very much a local rule, applicable probably only in Nigeria. Indeed, in Ghana the sole test of capacity in terms of the present discussion will be whether the party involved is domiciled in a country which permits polygamy. On any of the two principles, it is clear that the respondent lacked capacity for the Akan marriage.

If the respondent was domiciled in England at the time of the marriage, then he had no capacity in respect of it. *Re Bethell*, (*Bethell* v. *Hildyard*)[30] is authority for the proposition that no person domiciled in England is capable of entering into a valid polygamous marriage. Even on the basis of the intended matrimonial domicil theory, the respondent had no capacity.[31] He was not domiciled in Ghana or any country whose law permitted polygamy nor did the parties intend to make Ghana their permanent home or their matrimonial domicil. In addition, in England, section 11(d) of the Matrimonial Causes Act, 1973, which overrules the intended matrimonial domicil theory as applied in *Radwan* v. *Radwan*, provides that a marriage celebrated abroad after 31st July 1971 *is void* if it is an actually or potentially polygamous marriage and either spouse is domiciled in England at the time of the marriage. The parties in *McCabe* married in 1985; the marriage cannot be valid.

Another possible rule relating to capacity to marry is the law of the country with which the marriage has its most real and substantial connection. Lord Simon of Glaisdale gave his

[29] (1909) Renner's Gold Coast Reports, 504.
[30] (1988) 38 Ch.D 220, [1886–90] All ER Rep. 614, 58 LT 674, 4 TLR 319. See also Dicey, Conflict of Laws, 7th ed. (1958), rule 36, pp. 276 et seq.; Mann, "Legitimacy and the Conflict of Laws" (1948) 64 LQR. 199.
[31] See *De Renefille* v. *De Renefille* [1948] p. 100 at 114 per Lord Greene Mr. *Kenward* v. *Kenward* [1951] p. 124 at 144–146 per Denning LJ; *Radwan* v. *Radwan (No. 2)* [1973] Fam. 35. See also the discussion on the scope of section 11(d) of the Matrimonial Causes Act 1973 in Cheshire & North, Private International Law, 11th ed., pp. 608–610.

support to such a rule in *Vervaeke* v. *Smith*.[32] So also did Lincoln J in *Lawrence* v. *Lawrence*.[33] Again, even on this basis, England would have qualified as the country of real and substantial connection, depriving the respondent of capacity to contract a polygamous marriage.

In any case, the Court of Appeal's decision leaves the issue of capacity uncavassed, unconsidered and undecided. This is clearly unsatisfactory. One can only speculate as to how a Ghanaian court would have decided the issue. It is submitted that the respondent would be held to have no capacity; none of the theories governing capacity would invest him with it, particularly also as the parties showed no intention to make Ghana their matrimonial home.

**Prospects**

Admittedly *McCabe* v. *McCabe* is a novel case. Though not a decision by a Ghanaian court, its ripples will persist and influence decisions by Ghanaian courts and, one suspects, courts faced with cases involving African customary marriages. Most customary marriages are celebrated by proxy, particularly with respect to the man; the woman is led after the ceremony to the husband's house.[34] In the pure customary situation, the bride is present at the ceremony. In *McCabe*, even the bride was absent at the ceremony. It would be interesting to see how Ghanaian courts react to the decision and the future development of the principles for which it may be cited as authority.

There are indications in the case of *In Re Karyavoulas (Deceased), Donkor* v. *Greek Consul General*[35] as to possible reactions from Ghanaian law. K, a Greek national resident in Ghana, married a Ghanaian woman, Adjua Donkor, according to Ghana customary law. The marriage was celebrated in Ghana; both parties were present at the ceremony; they cohabited in Ghana and had two children. K died intestate in Greece and Adjua Donkor applied for Letters of Administration in respect of his

[32] [1983] 1 AC 145 at 166.
[33] [1985] Fam 106 at 112–115.
[34] Professor E.I. Nwogugu of the University of Nigeria writes as follows: "In most systems of customary law in Nigeria, there is no marriage until the bride is led to the house of the bridegroom or his parents and formally handed over by her parent or guardian to a representative of the bridegroom's family. It has been judicially decided that a valid Yoruba or Ibo marriage is not contracted until the formal handover of the bride takes place. [In the Matter of the Marriage Ordinance (*Beckley* v. *Abiodun*) (1943) 17 NLR 59; *Ikedionwu* v. *Okafor* (1966–67) 10 ENLR 178]. The same is true of Bini Customary Law ... Customary law marriage may be contracted by proxy." See E. I. Nwogugu, Family Law in Nigeria (Heinemann) Educational Books (Nig.) Ltd., Ibadan, 1974, pp. 52–53.
[35] [1973] 2 G.L.R. 52.



real property in Ghana. Edusei J dismissed the application saying "I do not think the applicant who married the deceased, a Greek national, is the proper person to ask for Letters of Administration."[36] The holding suggests that the marriage was invalid and that the applicant was not the widow of the deceased; but the grounds for the holding have not been disclosed.

Adjua Donkor then repeated her application as the next friend of the children. Charles Crabbe J granted the application, mainly because "the applicant did not apply as the widow of the Greek national; she applied *as the next friend* of her two children who are recognised as Greek nationals ..."[37] This decision avoids a specific ruling on the validity of the marriage.

The learned Judge nevertheless suggested, *obiter*, that Ghanaian courts would treat the marriage as valid. The Greek Consul General had contended that since the marriage was a native customary one and not celebrated in church, it was "illegal, unrecognised and not binding and contrary to the lex domicilii of the late Karyavoulas who was not a Ghanaian."[38] The learned Judge replied:

> "The courts in Greece may refuse to acknowledge the validity of such a marriage. But I do not see how the High Court of Justice in Ghana can, in all conscience, bow to such a preposterous suggestion as contained in the affidavit that any foreigner can come to Ghana, marry a Ghanaian lady, have issue with her, amass a fortune with the help, comfort and consortium of this poor Ghanaian lady, take the children out of the country and leave the Ghanaian, even when he dies with property in Ghana, helpless and hapless, poor and pesewaless. ... I think there is comfort for such a citizen of Ghana.
>
> The English courts under the applicable rules of private international law can give a decision based upon public policy, which can be described as enuring to the benefit of an Englishman to the disadvantage of a foreigner. It seems to me that the High Court of Justice in Ghana can also give a similar decision. And an English court can disregard a foreign judgment if it considers that it offends the principles of natural justice. It seems to me that the High Court

[36] Id. at 52.
[37] Id. at 63.
[38] Ibid. See also paragraph 13 of the Greek Consul's affidavit as set out on page 57 of the Report.

of Justice in Ghana should not be precluded from coming to a conclusion based upon natural justice."[39]

**Formal Requirements**

His Lordship's suggestions have often played a decisive role in cases involving the formal validity of a marriage.[40] In such cases, an incapacity, particularly one based on creed as in *Karyavoulas*, is regularly disregarded on the ground that it is contrary to or offends against English ideas of substantial justice.[41] The solemnisation of a marriage in a church is classified by Ghana law as relating to formalities and is under normal rules of the conflict of laws, governed by the lex loci celebrationis. In *Karyavoulas* this would be Ghana law; and Ghanaian courts would be justified to ignore the requirement that the marriage be celebrated in church. Indeed, customary marriages do not know churches.

**Essential validity or capacity to marry**

With respect to requirements of essential validity or capacity, there is authority for a number of propositions supporting His Lordship's suggestions. (i) The validity of a marriage celebrated in England between persons of whom the one has an English, and the other a foreign, domicil, is not affected by any incapacity which, though existing under the law of such foreign domicil, does not exist under the law of England.[42] This rule has been claimed to be "an evidently mistaken view of the authorities"[43] but it has been applied in *Chetti* v. *Chetti*[44] and supported by dicta in *Ogden* v. *Ogden*[45] and *Vervaeke* v. *Smith*[46] and seems to be the basis of the decision in *Perrini* v. *Perrini*.[47] Thus if a marriage was celebrated in Ghana and one of the parties was domiciled in Ghana as in *McCabe* and *Karyavoulas*, and the incapacity imposed on the party with the foreign domicil is one which Ghana law does not recognise, the marriage must be held to be valid: Ghana law does not normally recognise in anyone except those married monogamously an incapacity to contract a customary potentially polygamous marriage. The rule has, however, been

39 [1973] 2 GLR 52 at 62.
40 See, for example, *Gray* v. *Formora* [1963] p. 259, *Lepre* v. *Lepre* [1965] p. 52.
41 See per Lord Dunedin in *Salvesen (or von Lorang)* v. *Administrator of Austrian Property* [1927] AC 641 at 663.
42 *Sottomayor* v. *De Barros* (No. 2) (1879) 5 PD 94 at 100.
43 Webb, PRH and Brown, DJL, A Casebook on the Conflict of Laws, (Butterworths & Co. Ltd., London, 1960), p. 194.
44 [1909] p. 67.
45 [1908] p. 46 at 74–77.
46 [1981] Fam 77 at 122.
47 [1979] Fam 84, [1979] 2 All ER 323.



criticised as anomalous[48] and as "unworthy of a place in a respectable system of the conflict of laws."[49] It has not escaped criticism by the English Law Commission.[50] Cheshire and North have observed that "it is xenophobic in that it gives preference to the law of the place of celebration of the marriage if that is English, but not if foreign. It is likely to lead to 'limping' marriages, valid in England but not in the country of the domicil of one spouse. The case for the abandonment of the rule seems clear."[51]

The problem of limping marriages cannot be avoided, particularly in the case of capacity to contract a polygamous marriage. No African country imposes such incapacity under its customary law. In addition, polygamy has not been only Africa's tradition but the tradition of many other peoples of the world, countries "of deep religious convictions, lofty ethical standards and high civilisation."[52] There is nothing obnoxious (except equality of the sexes) about polygamous marriages.

(ii) Akin to the Sottomayor rule are considerations of public policy broadly referred to by His Lordship in *Karyavoulas*.[53] In *Gray* v. *Formosa*, Donovan LJ said "... the Courts here always retained a residual discretion so that flagrant injustice can be avoided."[54] Gray's case involved the contention that the marriage was void because the groom was a Roman Catholic and the marriage should have been celebrated in a Roman Catholic Church but it was solemnised before the civil authorities alone. The marriage was declared valid. The contention was characterised as pertaining to formalities and therefore governed by the lex loci celebrationis, that is English law, since the marriage took place in England and English law does not require that marriage be compulsorily celebrated in a church. In the exercise of its discretionary power, the High Court may refuse to recognise an incapacity if to give effect to it would be unconscionable.[55] The example given by His Lordship of foreigners marrying Ghanaians by customary rights would be a clear case for the application of the discretion. But, because the application of the discretion leads to limping marriages, it should be sparingly applied.[56]

48 *Radwan* v. *Radwan* (No. 2) [1973] Fam. 35 at 50.
49 Falconbridge, Conflict of Laws, 711.
50 Law Commission Working Paper No. 89 (1985) para 3. 17.
51 Private International Law, 11th ed. p. 585.
52 *Cheni* v. *Cheini* [1965] p. 65 at 99 (per Sir Jocelyn Simon P.).
53 [1973] 2 GLR 52 at 62.
54 [1963] p. 259 at 270.
55 *Cheni* v. *Cheni* [1965] p. 85 at 98, [1962] 3 All ER 873 at 882.
56 *Vervaee* v. *Smith* 1 AC 145 at 164.

Perhaps a much more defensible ground for the exercise of the discretion would be to rest it on the intended matrimonial domicil theory. *McCabe* cannot be validated on this basis, but *Karyavoulas* could be. The parties married and cohabited in Ghana. In *Hashmi* v. *Hashmi*[57] the husband, a Pakistani muslim, had no capacity to contract a monogamous marriage in England because he had, at the time, a potentially polygamous wife living in Pakistan.[58] The English marriage was declared void but the same marriage was held by the English court to be a valid actually polygamous marriage according to the law of Pakistan, the law of the husband's domicil.[59] Clearly, the parties themselves, at least the English lady, did not intend to enter into a polygamous marriage, nor did she have capacity to contract such a marriage; and the decision leads to a limping marriage. However, in terms of public policy, the decision is commendable. It would avoid the hapless spectacle which Charles Crabbe J decried.

[57] [1972] Fam 36, [1971] 3 All ER 1253, [1971] 3 WLR 918.
[58] See also *Baindail* v. *Baindail* [1946] p. 122, 174 LT 320 and *Srini Vasan* v. *Srini Vasan* [1946] p. 67, 173 LT 102.
[59] See criticism of this in Cheshire & North, Private International Law, 11th ed., p. 612.