for the principle that where a defendant who is not an occupier makes realty or fixtures to realty dangerous he will only incur liability if he makes the premises "inherently dangerous".

It would therefore seem that the *Donoghue* v. *Stevenson* principle has invaded the field of liability for dangerous premises, and the decisions in *Buckland* v. *Guildford*[11] and *Davis* v. *St. Mary's Demolition*[12] have been confirmed. But it is still a matter of doubt whether the principle will be admitted where the defendant is unquestionably the occupier of the dangerous premises. In *Thompson* v. *Bankstown Corporation*[13] it was held by the High Court that against an occupier of realty the plaintiff may allege breach of the *Donoghue* v. *Stevenson* principle of liability; yet in *Lewis* v. *Sydney Flour Pty. Ltd.*[14] such a plea was rejected by the N.S.W. Full Court. The "contemporaneous acts" idea adopted in *Dunster* v. *Abbott*[15] for excluding the law of occupier's liability is not always available and would not have been available in *Riden* v. *A. C. Billings & Sons Ltd.* had the respondents been occupiers. The idea of "active creation" suggested by the latter case may prove a better guide to the courts — it could ground a principle that where the defendant has actively created the danger the occupier's tortious liability is irrelevant, its relevance being confined to non-feasance situations. But if this idea is to prevail such authorities as *London Graving Dock* v. *Horton* must go, since in the latter case for instance it is apparent that the Defendant "actively created" the danger. *L. CONTI, Case Editor — Third Year Student.*

FORMALITIES OF MARRIAGE WHERE COMPLIANCE WITH THE *LEX LOCI CELEBRATIONIS* IS IMPOSSIBLE

TACZANOWSKA v. *TACZANOWSKI AND RELATED RECENT CASES*

The recent decision of the English Court of Appeal in *Taczanowska* v. *Taczanowski*[1] raises the interesting question of what law is to be applied by a British court to determine the formal validity of a marriage between non-British subjects in a case where compliance with the *lex loci celebrationis* (the general requirement of formal validity) has been found to be impossible. It appears to have been clearly established that where the parties to such a marriage are British, or at least one of them is, then provided the ceremony complies with the requirements of the common law of England (or the common law insofar as it is suited to local conditions in certain cases) it will be held valid by a British court.[2] What has not come up for decision until the the last few years, however, is the problem which arises where this type of marriage is celebrated between foreigners. Cases of impossibility of compliance with the *lex loci celebrationis* have been said to arise in three different ways all of which were examined and discussed by the Court of Appeal in *Taczanowska* v. *Taczanowski*.[3] They are as follows:—

1. Where there is no local form of marriage in the Christian sense or in the sense "recognised by civilised States"[4] in the country where the marriage takes place.
2. Where a Christian form of marriage does exist but the facilities required to conform to it are non-existent.
3. Where a local form of a Christian nature exists, and can be complied with, but special circumstances render it inapplicable.

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[11] (1948) 2 All E.R. 1086 (K.B.).
[12] (1954) 1 All E.R. 578 (Q.B.).
[13] (1953) 89 C.L.R. 619.
[14] (1956) S.R. (N.S.W.) 189.
[15] (1954) 1 W.L.R. 58.
[1] (1957) 3 W.L.R. 141.
[2] See *Dalrymple* v. *Dalrymple* (1811) 2 Hag. Con. 54; *Lautour* v. *Teesdale* (1816) 8 Taunt. 830; *Phillips* v. *Phillips* (1921) 38 T.L.R. 150.
[3] (1957) 3 W.L.R. 141.
[4] A.V. Dicey, *The Conflict of Laws* (6 ed. 1949) 769.

The first case[5] in which the present aspect of the problem arose was that of *Savenis* v. *Savenis and Szmeck*[6] which came up before Mayo, J. in the Supreme Court of South Australia in 1950. It concerned a marriage which took place in a Roman Catholic church in Bavaria in 1945 between two Lithuanians. At the time German law required *(inter alia)* a civil ceremony before a Registrar of Marriages to give formal validity to a marriage, but owing to chaotic conditions brought about by the Second World War no Registrars were available and hence compliance with the local law was impossible. Mayo, J., held that the marriage was valid on the following basis:

> If the matter be *res integra*, in circumstances where a marriage cannot be lawfully solemnised in accordance with the laws of some territory owing to chaotic conditions brought about *(inter alia)* by warfare, and if the country in which the parties are, or were formerly, domiciled is itself overrun, the government being taken over by an alien power, then in such a case so far as our courts are concerned I think it would be proper to extend (if it be necessary) the area of legal recognition given to marriages that conform to our own common law.[7]

The view of Mayo, J., that such marriages, even between foreigners, could be governed by the common law of the *forum*[8] was dissented from *(obiter)* by Napier, C.J., also of the South Australian Supreme Court, in *Fokas* v. *Fokas*[9] two years later. In that case, which also dealt with a marriage between Lithuanians in post-war Germany, but in 1947 instead of 1945, Napier, C.J. clearly found that it had been possible for the parties to have gone through a civil ceremony of marriage and thus the problem of impossibility of compliance did not arise. However, his Honour, while making it clear that his opinion on the latter matter was purely *obiter*, expressed the view that Mayo, J. had gone too far and indicated that he would not be disposed to follow the principle laid down in *Savenis* v. *Savenis*[10] if the matter came up before him.[11]

The decision of Mayo, J., has also attracted a very different form of criticism from Professor J. G. Fleming[12] who, while approving the decision as eminently rational in establishing an exception to the *lex loci celebrationis* rule in cases of impossibility of compliance, deplored his Honour's application of the "common law marriage" concept to non-British subjects and suggested that in such cases the *lex domicilii* should be substituted for the *lex loci celebrationis*. He pointed out that the consensus of juristic opinion[13] had been in favour of this latter solution and that the decision might be difficult to reconcile with accredited concepts of private international law.

The next time the question of impossibility arose was in 1954 before Myers, J., of the Supreme Court of New South Wales in *Maksymec* v.

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[5] "A case *novae impressionis*, virginal both as regards judicial authority and relevant analogy". *Per* J. G. Fleming, "Common Law Marriage" (1951) 4 *Int. L.Q.* 500.

[6] (1950) S.A.S.R. 309.

[7] *Supra* at 311.

[8] "The logical result of the decision in *Savenis* v. *Savenis* appears to be that where a marriage took place in a country where compliance with the local law is impossible, validity of the marriage will depend upon the law of the place where its validity is called into question". *Per* Myers, J., *Maksymec* v. *Maksymec* (1954) 72 W.N. (N.S.W.) 522, 524.

[9] (1952) S.A.S.R. 152.

[10] (1950) S.A.S.R. 309.

[11] "In the case before me it does not appear that conformity with the local law was — in any proper sense of the word — impossible, and it is, therefore, unnecessary for me to express any opinion upon the question that arose in *Savenis* v. *Savenis* but . . . it seems to me that, if parties find themselves in a situation where a lawful marriage is absolutely impossible, the only course that may be open to them may be to exchange their vows in the manner that satisfies the consciences and to contract a marriage in due form of law when the opportunity offers". *Per* Napier, L.J. *Fokas* v. *Fokas* (1952) S.A.S.R. 152, 154.

[12] J. G. Fleming: "Common Law Marriage" (1951) 4 *Int. L.Q.* 500 and his Letter, *A.L.J.* (1951) 25 *A.L.J.* 406. See also P. Donovan, "Formal Validity of Foreign Marriages" (1951) 25 *A.L.J.* 165.

[13] See A. V. Dicey, *The Conflict of Laws* (6 ed. 1949) 771. M. Wolff, *Private International Law* (2 ed. 1950) 351. J. D. Falconbridge, *Conflict of Laws* (1947) 647.

Maksymec.[14] The case again concerned a post-war marriage in Germany without a civil ceremony as required by German law, this time between a Pole and a Russian. It was found that at the time of the ceremony of marriage in 1946 a civil ceremony before a Registrar was impossible as none were available. Myers, J., first discussed the theory behind, and the need for, the *lex loci celebrationis* rule and came to the conclusion that both were inapplicable to a situation where the "facilities of marriage are denied to the parties".[15] Then he went on to declare that where the *lex loci* was displaced the law to apply was not the *lex fori* as Mayo, J., had stated, but the *lex domicilii*.[16] Although his Honour did not refer to Dr. Fleming's writings, nor to the considerable juristic opinion in favour of the *lex domicilii* cited by the latter, he certainly came to the same conclusion.

The most recent and also up to now the highest authority on the problem of impossibility of compliance is provided by the decision of the Court of Appeal in *Taczanowska* v. *Taczanowski*[17] delivered on June 6, 1957. It dealt with a ceremony of marriage between Polish nationals in Italy in 1946 celebrated by a Polish army chaplain. The husband was a member of the Polish forces in Italy which were stated by the Foreign Office to be in belligerent occupation of Italy. The requirements of Italian law as to the form of the ceremony were not complied with and it was found that it would have been possible to do so.[18] In view of this fact the question of impossibility caused by lack of available facilities did not directly arise for decision and the views expressed on it must be regarded as *obiter*. Nevertheless even *obiter* statements of such a high judicial tribunal must be regarded with the greatest respect particularly when expressed so firmly as in this case. Both Hodson, L.J. and Parker, L.J., (with whom Ormerod, L.J., agreed) referred with approval to the decision in *Savenis* v. *Savenis*[19] and the principle there laid down,[20] and made it quite clear that they would have no hesitation in applying the same principle if similar facts came before them.

Furthermore it must be noted that the views of the Lords Justices of Appeal on what law was to be applied once the *lex loci celebrationis* was displaced were directly relevant to the decision in the case and they were equally contrary to those that had been expressed by Myers, J.[20a] and Professor

[14] (1954) 72 W.N. (N.S.W.) 522.

[15] "The theory of the rule that the validity of a marriage depends upon the law of the place where it is performed is therefore twofold. First that by marrying in that place the parties have subjected themselves to the law of that place; and second that their mutual intention must be presumed to be that it should be a marriage according to the law of that place. But what if the Government of that place by act or commission denies the parties the opportunity or means of subjecting themselves to that law? In such a case I apprehend the parties cannot be taken to have subjected themselves to the law which is withheld from them, nor can an intention be properly imputed to them which must necessarily be contrary to their real intention . . . and from the infinite mischief and confusion that must necessarily arise to the subjects of all nations, with respect to legitimacy, successions, and other rights if the respective laws of different countries were only to be observed, as to marriages contracted by the subjects of those countries abroad, all nations have consented, or must be presumed to consent . . . that such marriages should be good or not, according to the laws of the country where they are made . . . If there is no law or no means of complying with it, mischief and confusion can only be created by insistence on the application of the principle . . . Since the theory underlying the principle and the necessity for it do not exist in the circumstances supposed the rule itself can in my opinion have no application: *cessante ratione legis cessat ipsa lex*". *Per* Myers, J. *supra* at 524, 525.

[16] "The principle that the validity of a marriage is governed by the *lex loci celebrationis* is an exception to the principle that persons are governed by the law of the place where they are domiciled. When there is no *lex loci celebrationis* . . . then I can see no reason why the law of the domicile should not continue to attach". *Per* Myers, J. *ibid.*

[17] (1957) 3 W.L.R. 141.

[18] "In the present case, however, there was no obstacle to the performance of a valid ceremony of marriage in Italy according to Italian law". *Per* Parker, L.J., *supra* at 154.

[19] (1950) S.A.S.R. 309.

[20] (1957) 3 W.L.R. 141, at 152, 153, 156.

[20a] The decision in *Maksymec's Case* was not cited in the Court of Appeal in the *Taczanowska Case*. (*Cf.* Mr. Blom-Cooper (1957) 20 *Mod. L.R.* 641-42). However, in view of the Court's aproval of the decision in *Savenis* v. *Savenis*, it is unlikely that they would have been preferred the view of Myers, J., even if it had been cited.

Fleming. Parker, L.J., pointed out:[21] "Nor do I see any reason why we should look to the law of the domicile of the spouses at the time of the marriage. No doubt English law will look at the law of domicile to determine capacity, but for no other purpose . . . In my judgment there is no authority or reason which requires us to look to any other law (than the common law of England, i.e. the *lex fori*), once the *lex loci* is inapplicable. I agree in this with Mayo, J. in *Savenis* v. *Savenis*".[22]

The reason why the *lex loci* was held to be displaced in the present case was based on the husband's status as a member of an occupation force in a conquered country. The court examined the reasoning in *Scrimshire* v. *Scrimshire*[23] where the *lex loci celebrationis* rule had been laid down back in 1752, and pointed out that it was based on the view that persons entering into a marriage in a foreign country subject themselves to having its validity determined by that country's law. It could thus not be applied to a marriage entered into by a member of an occupying army, unless there was evidence that its members subjected themselves to the *lex loci*, which was absent in the present case. Their Lordships also relied on Lord Stowell's observations in *Burns* v. *Farrar*[24] and *Ruding* v. *Smith*[25] which contained indications in favour of the above view. Hodson, L.J., expressly adopted the view of Karminsky, J., the judge of first instance in the present case, with respect to Lord Stowell's statements in *Ruding* v. *Smith*[26] (as to the inconvenience and hardship which might be caused by compelling the conqueror to submit to the laws of the conquered), that there was nothing in Lord Stowell's judgment to show that he would have taken a different view if the army had not been a British one.[27] Consequently their Lordships held that the *lex loci* was inapplicable. Having done so they went on to hold that the marriage having been celebrated before an ordained clergyman, was valid at common law, which was the law *prima facie* to be applied by an English court if the *lex loci* was inapplicable and hence the marriage was valid.

The Court of Appeal's discussion of the third (or alleged third) aspect of the problem of impossibility of compliance, though only *obiter*, is also of great significance. It dispels the belief, which had arisen from the views put forward by Cheshire,[28] Dicey[29] and other textwriters,[30] that cases like *Maclean* v. *Cristall*[31] (marriage between two British subjects in India) and *Wolfenden* v. *Wolfenden*[32] (marriage between two Canadians in the Chinese province of Hupeh) form a genuine exception to the *lex loci celebrationis* rule, under the heading of impossibility, in the sense that no local form of marriage of a Christian nature exists. Both Hodson, L.J., and Parker, L.J., pointed out in the present case that the above and like cases were only apparent and not real exceptions to the *lex loci* rule, "since they are cases in which British subjects were held to have taken with them to a British colony so much of the common law as was applicable to their present situations, so that, in truth, the law applied was the law as found by the court in the particular cases to be the *lex loci* itself".[33]

What the textwriters had failed to realise, it is now clear, is that all these cases deal with British colonies or with territories treated as analogous thereto for this purpose. Thus in *Wolfenden* v. *Wolfenden*[34] Britain had certain extra-territorial rights in the Chinese province in question which

[21] *Supra* at 155, 156. See also *supra* at 152: "Thus Mayo, J., having rejected the *lex loci* for the reasons he gave, looked not to the law of the domicile (Lithuania) but to the common law". *Per* Hodson, L.J.

[22] (1950) S.A.S.R. 309.

[23] (1752) 2 Hag. Con. 395.

[24] (1819) 2 Hag. Con. 369.

[25] (1821) 2 Hag. Con. 371.

[26] *Ibid.*

[27] (1957) 3 W.L.R. 141, 150.

[28] G. C. Cheshire, *Private International Law* (5 ed. 1957) 329.

[29] A. V. Dicey, *The Conflict of Laws* (6 ed. 1949) 769.

[30] E.g. see R. H. Graveson: *The Conflict of Laws* (3 ed. 1955) 145.

[31] (1849), 7 *Notes of Cases*, Supp. XVII.

[32] (1945) 2 All E.R. 539.

[33] (1957) 3 W.L.R. 141, 153. See also *supra* at 154.

[34] (1945) 2 All E.R. 539.

were exercised by an Order-in-Council[35] in 1925 setting up *(inter alia)* courts of civil jurisdiction for British citizens acting "on the principles of and in conformity with the English law for the time being in force, as far as circumstances admit". As Lord Merriman expressly pointed out in *Wolfenden* v. *Wolfenden*:

> I do not see any distinction in principle between applying in a colony . . . only so much of the English law as suited the situation . . . and applying only so much of the English law as is suited to the situation of a British subject in this province of Hupeh . . . [I]t seems to me that precisely the same principles apply in the one case as in the other.[36]

Again in the more recent case of *Isaac Penhas* v. *Tan Soo Eng*,[37] where the Privy Council approved the decision in *Wolfenden* v. *Wolfenden*,[38] the marriage in question took place in the British colony of Singapore.

Hence this so-called third exception to the *lex loci* rule is not a true exception at all and (contrary to Cheshire's claim[39]) would certainly not apply to a marriage in Siam merely because a Christian form of marriage may not exist there. The real explanation of this apparent third exception lies in the answer to the question whether the place where the marriage is entered into is, or is regarded for this purpose, as a British colony. If it is not then, whether the parties to the marriage are foreigners or British subjects, they cannot benefit from this rule and must comply with the *lex loci celebrationis*. On the other hand, if the question is answered affirmatively, then, if the parties are British subjects, compliance with the common law of England, insofar as it is suited to local conditions, is sufficient. Even then, however, foreigners cannot take advantage of it because, as Sir Erskine Perry, L.J., declared in *Maclean v. Cristall*,[40] the subjects of the rule are English colonists (i.e. British subjects).

Despite the *obiter* nature of much of the judgments in the principal case,[41] they are a significant contribution to the law in this field, exhibiting a liberal tendency towards the application of common law principles in favour of non-British subjects.[42] They also suggest the true principle lying behind cases like *Wolfenden* v.*Wolfenden*[43] which had been obscured by the erroneous interpretation of this case by textwriters of high standing.

Since the judgment of the Court of Appeal in *Taczanowska* v. *Taczanowski*[44] a new decision has appeared in the Law Reports demonstrating a completely new approach to the law dealing with formalities of marriage. In *Kochanski* v. *Kochanska*,[45] Sachs, J., interpreted the decision in *Taczanowska* v. *Taczanowski*[46] as laying down the law in this field in the following manner:

> First, the validity of a foreign marriage as regards formalities is, as a general rule, governed by the law of the country in which it is celebrated. Secondly, the basis of that general rule is a presumption that the parties to the marriage have subjected themselves to the law of that country. Thirdly, the above presumption is rebuttable: the onus of establishing an exception to the general rule being on whoever asserts that exception.

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[35] The China Order-in-Council, 1925. (*S.R. and O.*, 1925, No. 602) art. 104.
[36] (1945) 2 All E.R. 539, 542. [37] *Isaac Penhas* v. *Tan Eng* (1953) A.C. 304.
[38] (1945) 2 All E.R. 539.
[39] G. C. Cheshire: *Private International Law* (5 ed. 1957) 329.
[40] (1849), 7 *Notes of Cases*, Supp. XVII.
[41] See, as to their authority in Australian courts. *Wright* v. *Wright* (1948) 77 C.L.R. 191.
[42] As to another indication of this liberal tendency (this time with respect to evidence of marriage) see *Holewan* v. *Holewan* (1953) 70 W.N. (N.S.W.) 122, where Owen, J. said: "It would be impossible and wrong to disregard the events of the last fifteen or twenty years in Central Europe. What may be regarded in one decade as unsatisfactory evidence of marriage may in another and in the light of changed circumstances be regarded as satisfactory". As cited at 125.
[43] (1945) 2 All E.R. 539. [44] (1957) 3 W.L.R. 141. [45] (1957) 3 W.L.R. 619.
[46] (1957) 3 W.L.R. 141.

> Fourthly, once it is shown that the parties did not subject themselves to the law of the country in question, then it is open to the court to apply the common law of this country. Finally, a common law marriage knows no distinction of race or nationality[47] . . . Once, however, it is appreciated that, in the case of such a marriage, an issue of fact can arise as to whether, in the particular circumstances, the presumption of subjection to local law has been rebutted, it ceases to matter whether the set of circumstances before the court happens to fall into a particular category that has already been the subject of a decision. Naturally a court will proceed with considerable caution before making further inroads on a general rule that has the advantage of certainty and which further ' "is agreeable to the law of nations. . . *Scrimshire* v. *Scrimshire*[48]. . . But that caution may in a specific case mean no more than that the exception to the general rule must be clearly established by evidence.[49]

In the *Kochanski Case*[50] two Poles were married in Germany in June 1945 according to the rites of the Roman Catholic Church. The ceremony of marriage neither purported to, nor did conform to German law. At the time the parties were living in a displaced persons camp in Germany having recently been liberated from a German Prisoner of War Camp. The members of the camp community did not fraternise with the Germans and led a separate existence from the local German inhabitants. Subsequently the husband came to England where he acquired a domicile of choice and in December, 1956, he filed a petition asking for the dissolution of the marriage on the ground of the wife's desertion.

After enunciating the propositions of law stated above, Sachs, J., pointed out that in the present case the parties were in Germany against their will, by sheer force of compulsion, and hence the presumption that they subjected themselves to German law was clearly rebutted by the circumstances.[51] That being so, the court was free to apply the common law of England and as the marriage complied with the common law it was valid and, the wife being guilty of desertion, it should be dissolved.

Although such a wide proposition as that put forward by Sachs, J., has never been judicially asserted before, it must be admitted that there is no clear authority against it containing an unequivocal declaration to the contrary or, at any rate, no authority which cannot be distinguished on its own facts. Furthermore the idea that the basis of the *lex loci* rule lies in the presumption that the parties' intention must be taken to be that the *lex loci* should apply, can be traced back to the judgment of Sir Edward Simpson in *Scrimshire* v. *Scrimshire*[52] and was relied on by both Myers, J. in *Maksymec* v. *Makcymec*[53] and the Court of Appeal in *Taczanowska* v. *Taczanowski*.[54] Once it was decided that the *lex loci* rule is subject to exceptions it would seem logically to follow that the presumption upon which the rule is based is only a *prima facie* presumption and can be rebutted wherever the circumstances constitute sufficient justification for such a rebuttal. It must be remembered, however, that *Kochanski* v. *Kochanska*[55] is not an authority for the proposition that a simple manifestation of intention on the part of the parties is sufficient to rebut the presumption in favour of the *lex loci* rule. The presumption can only be displaced by extraordinary circumstances involving the exercise of State authority over the actions of the parties which takes out of their hands

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[47] (1957) 3 W.L.R. 619, 622.

[48] (1752) 2 Hag. Con. 395. [49] (1957) 3 W.L.R. 619, 623. [50] *Supra.*

[51] "They were at Nordheim because the compulsions of war conditions had not yet ended sufficiently to allow them a choice of where to go".

[52] (1752) 2 Hag. Con. 395, 412.

[53] (1954) 72 W.N. (N.S.W.) 522.

[54] (1957) 3 W.L.R. 141.

[55] (1957) 3 W.L.R. 619.

control of the situation in which they are placed. Thus in *Kochanski* v. *Kochanska*,[56] Sachs, J., when referring to the circumstances in which the presumption could be rebutted, mentioned "circumstances . . . where there are to be found resistance movements, concentration camps, prisoners of war, camps of displaced persons, and groups of persons who may by divers methods be prevented from leaving the country in which they are".[57] All these instances fall within the interpretation of the rule stated above but none of them outside it. In any case a view which held the mere intention of the parties as a sufficient rebuttal would render the general *lex loci* rule, which has stood for over 200 years, virtually impotent and would, it is submitted, call for an immediate repudiation by the appellate courts.

Finally, it is interesting to note that in *Kochanski* v. *Kochanska*[58] Sachs, J., declared that until the decision in *Taczanowska* v. *Taczanowski*[59] it was generally believed (e.g. by Dicey[60] and Westlake[61]) that where the *lex loci* was inapplicable the law to apply was the *lex domicilii*. Now, however, it would appear from the decision of the Court of Appeal that this is not so and that the law to apply in such case is not the *lex domicilii* but the common law of England i.e. the *lex fori*. Though his Lordship did make an attempt to distinguish the judgments of the Lord Justices of Appeal on this point this not very convincing, and he himself admitted[62] that counsel in the case (for the husband) was bound to argue, and he to make his decision on the basis, that the marriage was valid under the common law regardless of the *lex domicilii* of the parties. It may be observed that Sachs, J. failed to refer to any of the Australian decisions on the matter, apart from *Savenis* v. *Savenis*,[63] although that of Myers, J.,[64] is clearly in support of the view which his Lordship evidently preferred but felt unable to follow because he was bound by the decision of the Court of Appeal.

A. HILLER, Case Editor — Third Year Student.

CY-PRÈS DOCTRINE

RE ULVERSTON AND DISTRICT NEW HOSPITAL FUND

In the recent decision of the Court of Appeal in *Re Ulverston and District New Hospital Building Trusts*[1] the court examined the fate of moneys collected for a charitable purpose, which cannot be applied to that charitable purpose owing to failure of some necessary condition.

The case arose out of a public appeal made between 1924 and 1942 in the Ulverston district for funds for building, equipping and maintaining a new hospital to serve the district. Contributions were sought in this appeal for the fund which was to be known as the Ulverston and District New Hospital Building Fund, from a variety of donors by a variety of methods. Some money was collected from named or identified donors, the balance from unidentified sources including anonymous contributions and donations, street collections and entertainments of various sorts. However, insufficient money was raised to carry out the purpose for which the fund was collected, and in 1946 the National Health Service Act came into force and so rendered the carrying out of the purpose impossible. The trustees sought directions from the court as to how they should dispose of money still in their hands.

The Court of Appeal (Lord Evershed, M.R., Jenkins and Hodson, L.JJ.) in a reserved judgment held that the fund had been collected for a particular purpose, and not for the general charitable purpose of improving hospital

[56] *Supra.* [57] *Supra* at 623. [58] *Supra.* [59] (1957) 3 W.L.R. 141.
[60] A. V. Dicey: *Conflict of Laws*, (6 ed. 1949), 772.
[61] J. Westlake: *Private International Law*, (7 ed. 1925) 63.
[62] (1957) 3 W.L.R. 619, 621, 622, 625.
[63] (1950) S.A.S.R. 309. [64] *Supra* n. 53.
[1] (1956) 3 W.L.R. 559.